

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,  
  
Petitioner,  
  
vs.  
  
Market Hall, LLC, d/b/a Soda City Market,  
  
Respondent.

Docket No. 24-ALJ-17-0391-IJ

**ORDER ENFORCING SUMMONS**

**APPEARANCES:** For the Department: Jason P. Luther, Esq.  
Thomas C. Hughes, Esq.  
  
For the Respondent: James E. Smith, Jr., Esq.

**STATEMENT OF THE CASE**

This case is before the Administrative Law Court (ALC or court) pursuant to a Petition for Rule to Show Cause filed on November 8, 2024, by the South Carolina Department of Revenue (Department). The Department asserts that Market Hall, LLC, d/b/a Soda City Market (Respondent or Soda City) failed to comply with two administrative summonses to produce certain business records related to its vendors. The Department requests that this court order Soda City’s registered agent, L. Emile DeFelice, to appear and show cause why he should not be required to comply with the summonses and why he should not be held in contempt for his failure to comply.

A hearing on the petition was held on May 20, 2025, at the ALC in Columbia, South Carolina. After careful consideration of the evidence presented, the parties’ arguments, and the applicable law, the court finds that the Department had the authority to issue the summonses and that Soda City is required to comply.<sup>1</sup>

**BACKGROUND**

The Respondent owns and operates Soda City Market, a weekly street market located in Columbia, South Carolina. Soda City has roughly 7,000 to 10,000 visitors and between 150 and 220 vendors every Saturday. To participate in Soda City Market, prospective vendors must submit

<sup>1</sup> As explained below, in light of the evidence and testimony presented at the hearing, Soda City’s compliance is only disputed as to one of the summonses issued by the Department. Accordingly, this order of enforcement is limited to that remaining summons.



an online application to the Respondent. The Respondent requires its vendors to have, among other things, a South Carolina retail license, which must be disclosed in the application, along with various contact and business information.

On or about June 5, 2024, an authorized agent of the Department delivered an administrative summons to the Respondent (First Summons). The First Summons directed the Respondent to produce certain specified records to the Department on or before June 12, 2024. Specifically, the First Summons sought copies of certain business records allegedly in the Respondent's custody and control related to Elevation Catering, LLC, a/k/a Bubblelicious Waffles LLC, Cedric McEachin, and Felicia Mack (collectively, Bubblelicious). More specifically, the First Summons sought:

- All **Business Records** related to Contracts/agreements/applications with Elevation Catering, LLC/Bubblelicious for the period Jan 2020 – Current;
- A copy of all **Titles** evidencing any ownership interest by the Taxpayer in personal property (anything other than land) and for each, produce a copy of the most recent ad valorem tax bill. In lieu of producing a copy of the actual titles, you may produce a list of each item of personal property, and the list should contain sufficient information to identify both the specific property as well as the present location of the property. Identifying information for the personal property should include such things as Make, Model, Year, VIN, Tag Number, Serial Number, or any other unique number that identifies the property;
- For each **Bank** Account of any kind in which the Taxpayer has an ownership interest, including, but not limited to, every checking account, savings account, money market account, and produce a copy of the last month's bank statement. If not all bank statements are available, you are required to produce a list containing all of the accounts. For each account, the list must include the name of the financial institution, the routing number, and the account number; and
- A list of the Taxpayer's **Current Employers**. The list should contain the name, address, and telephone number of each employer, the amount received from each employer per week or month. If a list is not available or not in existence, you are required to bring the last or latest written document(s), of any kind, that includes any piece of the aforementioned requested information.

On or about June 8, 2024, an authorized agent of the Department delivered an administrative summons to the Respondent (Second Summons). The Second Summons directed the Respondent to produce certain specified records to the Department on or before June 28, 2024. Specifically, the Second Summons sought copies of certain business records allegedly in the Respondent's custody and control related to Soda City Market's vendor applications for calendar year 2024. More specifically, the Second Summons sought:

- All **Business Records** related to Soda City Market Vendor Applications for the period 2024; and
- Owner Name - Vendor Name - E-mail - Phone Number- Production Address - Website Link - Vendor Category - SC Retail License - Dates of Vendor Attendance.

The Department asserts that the Respondent failed to respond to or otherwise comply with the First and Second Summons. The Respondent contends that it fully complied with the First Summons and provided the requested information with respect to Bubblelicious. As to the Second Summons, the Respondent contends that the summons is a fishing expedition and that it would be unduly burdensome to provide the requested information when the Department could seek it directly from the vendors.

By letter dated August 15, 2024, counsel for the Department communicated with the Respondent in an effort to facilitate the production of the requested information. The letter included two revised versions of the previously issued summonses (Revised Summonses) and requested the information be provided to the Department by August 30, 2024.<sup>2</sup> The letter and Revised Summonses were delivered to the Respondent by an authorized agent for the Department and also sent via USPS and email.

The first revised summons (First Revised Summons) sought:

- All **Business Records** related to contracts/agreements/applications with the above entity and Market Hall LLC for the period January - July 2024; and
- Copies of all Business Record related to Elevation Catering, LLC, Bubblelicious Waffles, LLC, Cedric McEachin, and Felicia Mack for the period of January 2020 through July 2024. These Business Records include, but are not limited to contracts, agreements with Market Hall, LLC , or vendor applications to be a member of the Soda City Market.

The second revised summons (Second Revised Summons) sought:

- All Business Records related to All Soda City Market Vendor Applications for the period January - July 2024;
- Owner Name- Vendor Name- E-mail- Phone Number- Production Address- Website Link- Vendor Category- South Carolina Retail License Number- Frequency of a vendors participation at Soda City (per their application);
- Copies of all Soda City Market Vendor Applications for the period of January 2024 through July 2024;

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<sup>2</sup> With the issuance of the more narrowly tailored Revised Summonses, the Department no longer seeks the information requested in the First Summons and Second Summons.

- Copies of all documents listing the business information for every Soda City vendor or member for 2024, to include the vendors name, email address, phone number, business name (legal and d/b/a), production address, website link(s), vendor category, South Carolina Retail License number, and frequency of the vendors participation of Soda City Market in 2024.

On August 20, 2024, Mr. DeFelice, President of Soda City, contacted Bailie Campbell, a Revenue Officer with the Department, regarding the Revised Summonses and emailed certain information to her. The Department maintains, however, that this information was not fully responsive to the Revised Summonses.

On August 29, 2024, the Department granted the Respondent's request for a thirty-day extension to respond to the Revised Summonses to allow the Respondent's counsel an opportunity to review the request. This made September 30, 2024, the due date to respond to the Revised Summonses.

On October 10, 2024, counsel for the Department sent a follow up email to counsel for the Respondent noting that the Department had not received any response to the Revised Summonses and requesting the information that was due on September 30, 2024.

On November 8, 2024, the Department filed the Petition for Rule to Show Cause why Mr. DeFelice should not be required to comply with the Department's Revised Summonses, and further, why he should not be held in contempt for his failure to comply. The Department maintained that, as of the date of its filing, the Respondent has neither appeared nor produced any of the records sought or requested in the Revised Summonses.

On November 18, 2024, the Respondent filed a Response to Rule to Show Cause asserting that it has fully complied with respect to the portions of the Revised Summonses that are not unduly burdensome. It maintained that it supplied information regarding Bubblelicious but argued that information relating to the remaining vendor applications is not within its custody or control. It further argued that the Department should be required to seek that information directly from the vendors. The Respondent reiterated that the Department's request for the remaining vendor information is a fishing expedition and that it would be unduly burdensome to provide that information when the Department can seek that information directly from the vendors.

At the hearing, Bailie Campbell and Jeffrey Moore testified on behalf of the Department. Ms. Campbell is a collections supervisor at the Department with a focus on businesses. In that role, she conducts compliance checks, including ensuring that businesses have retail licenses and

that out-of-state businesses are remitting sales tax for sales in this State. For festivals and markets like Soda City, this entails obtaining vendor license and tax information to compare to Department records to ensure compliance.

With respect to Bubblelicious, Ms. Campbell testified that its retail license was revoked due to noncompliance, specifically for sales tax issues. Thereafter, Bubblelicious applied multiple times for a retail license under different names, all of which were denied by the Department. The Department then became aware that Bubblelicious was still operating, including at Soda City. She testified that the Department attempted to contact Bubblelicious but did not receive a response from the operators. She reached out to Soda city via email to request information related to Bubblelicious, specifically who was registered for that vendor at that particular time. In response, she was told the information was available online. However, she testified that the only thing available publicly was the business name or doing-business-as name, not the name of the entity that is licensed or the individual operating it, which can often be different from the business name. Therefore, that information was insufficient for her purposes. She noted that Soda City gathers various vendor business and contact information from prospective vendors in their applications, which is the information she was seeking. She, therefore, issued a summons to Soda City seeking contact and business information regarding Bubblelicious. She also issued a second summons for Soda City vendor application and attendance information for other vendors. After not receiving a response, she reached out to Mr. DeFelice, who told her that she could do her own research.

Accordingly, the Department then issued the Revised Summonses. In response, Soda City provided a partial response with an imprecise list of Bubblelicious' transactions with or at Soda City, the name of who it had on file for Bubblelicious, and certain contact information, including an address and email address. The Department did not receive any attendance records, contracts, or agreements pertaining to Bubblelicious. She also testified that an email from Mr. DeFelice that was sent to "Cedric"—a name not listed on Bubblelicious' Soda City vendor application—shows that Soda City is in possession of more information than it acknowledged. Ms. Campbell testified that Soda City never asserted that they were not in possession of the requested information. As for the master list of vendors, the Department did not receive any response. After reaching out to Soda City, Mr. DeFelice sent an email purportedly containing vendor application information, but Ms. Campbell testified that the included hyperlink was nonfunctional.

While Ms. Campbell could not recall a market she has summoned for a list of all its vendor information, she maintained that most markets and festivals comply willingly. In response to questions from counsel inquiring why she did not go to the vendors directly, she testified that, while it is possible to request information from vendors directly, they are typically more forthcoming with information with third parties than they are with the State. Ms. Campbell also noted that the Department prefers to have a taxpayer's information before having to contact them directly so they can complete compliance reviews and back-end work beforehand. She reiterated that the Department routinely requests and receives the same vendor information sought from Soda City from festivals, markets, and malls throughout the State. Ms. Campbell asserted that the Department has the authority to ask any person it considers proper for information related to matters it has the authority to investigate, and that the Department has the authority to investigate and determine whether retailers have retail licenses and are paying their taxes. She maintained that the Department is not seeking to fine or penalize Soda City, it simply wants Soda City to comply with the summonses.

Jeffrey Moore, a revenue officer with the Department, also testified. As part of his role, Mr. Moore issues summonses for the Department, most often to banks, and has only issued summonses for special events roughly three times in his career because most comply voluntarily with information requests. With respect to this case, Mr. Moore testified that he issued the summonses to Soda City. He testified that he had trouble serving Mr. DeFelice personally, who refused to open the door of his residence when he tried to deliver the summons to him.

On behalf of Soda City, Mr. DeFelice and Stephen Ruxton testified. Mr. DeFelice testified that Soda City routinely interacts with officials from other State agencies, including law enforcement and the fire department, both of which help monitor and regulate the event. He does not object to regulators performing compliance and enforcement work when the market is operating. He believes that it demonstrates that State regulators care about compliance. He opined that enforcing regulations during operations communicates to other vendors that compliance is important and will be enforced.

With respect to Bubblelicious, Mr. DeFelice spoke to the difficulties communicating and dealing with the owners, a husband and wife named Cedric and Felicia. Though he could not recall which one of them applied, he testified that the couple is "a handful to deal with" and that Felicia is "one hundred percent noncommunicative," so he communicated with Cedric instead because he

was a more reliable point of contact. He testified that it would not surprise him if Ms. Campbell did not get information, or received incorrect information, from Bubblelicious when asked. However, Mr. DeFelice testified that he has already provided the Department with everything in his custody or control related to Bubblelicious and that Soda City has no other responsive information or documentation to provide.

As to the information for the rest of his vendors, Mr. DeFelice testified that information from vendor applications is compiled into a Google Doc, along with a Google Doc with weekly vendor registrations for the upcoming market. He frequently gets requests for vendor information but takes the position that the information is private. Mr. DeFelice testified that Soda City is unable to verify information submitted in vendor applications and contended that the City of Columbia has more accurate information regarding its vendors. He similarly noted that the vendors themselves also have that information, as well as anyone with access to the internet, arguing that nearly all the information provided in vendor applications is publicly available. Mr. DeFelice contended that the Department should research Soda City vendor information or ask the vendors directly instead of summoning Soda City. He also noted that the Department has not articulated that any of his other vendors are suspected of violating tax laws.

Mr. DeFelice conceded, however, that it would be “amazingly easy” to provide the information sought by the Department. Nevertheless, he testified that he refuses to willingly give the Department the information because that is his proprietary information and he will not give it up just because the government asks for it. He asserted that he does not follow the rules simply because someone sends him an email or shows up to his house. When told that it would take a Department revenue officer twelve hours to check all of the vendors operating any given Saturday at a Soda City event if the Department attempted to get that information from the vendors directly, Mr. DeFelice replied that it was not his problem and suggested the Department send more revenue officers.

Mr. Ruxton, the market manager for Soda City, testified that city regulators occasionally go to the market to seek information directly from vendors and that Soda City has never received a request for information from the City of Columbia. Mr. Ruxton testified that when Mr. Moore delivered the summonses to him, Mr. Moore remarked that he would rather be with his kids or at a baseball game than issuing summonses. From that, Mr. Ruxton drew the conclusion that Department officials do not want to be working on Saturdays and doing their jobs. Though Mr.

Ruxton was not aware of any Department officials visiting Soda City before, he testified that he had no reason to doubt Mr. Moore's testimony that Department officials have visited Soda City Market in the past.

At the conclusion of the hearing, the court granted an earlier motion to dismiss the petition as to the First Revised Summons regarding Bubblelicious, which the court had taken under advisement, based on the evidence presented at the hearing that Soda City had no further information to provide about Bubblelicious. The court denied the motion as to the Second Revised Summons, which is now the only remaining issue in dispute. Additionally, the court requested a memorandum of authorities from each party addressing their legal arguments pertaining to the Second Revised Summons, which both parties submitted.

### **STANDARD OF REVIEW**

Pursuant to section 12-54-110:

If a person [administratively summoned by the Department] neglects or refuses to obey the summons, the [D]epartment may apply to the Administrative Law Court for an attachment against him for contempt. Any administrative law judge may hear the application and, if satisfactory proof is made, shall issue an attachment directed to the sheriff of the county in which the person resides for his arrest. When the person is brought before him, the judge shall proceed to a hearing of the case and may enforce obedience to the requirements of the summons by making an order consistent with existing laws for the punishment of contempt.

S.C. Code Ann. § 12-54-110(D) (2014). "In an action for contempt, the burden of proof is on the moving party." *Brasington v. Shannon*, 288 S.C. 183,184, 341 S.E.2d 130, 131 (1986) (citing *State v. Bowers*, 270 S.C. 124, 241 S.E.2d 409 (1978)). "In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance." *Id.* (citing *Means v. Means*, 277 S.C. 428, 288 S.E.2d 811 (1982)). "Once the movant makes a prima facie showing by pleading an order and demonstrating noncompliance, 'the burden shifts to the respondent to establish his defense and inability to comply.'" *Eaddy v. Oliver*, 345 S.C. 39, 42, 545 S.E.2d 830, 832 (Ct. App. 2001) (quoting *Henderson v. Henderson*, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989)).

### **DISCUSSION**

The Department argues that it had the authority to issue the Second Revised Summons to Soda City and that the information sought will assist the Department with compliance checks of

Soda City vendors for business retail license and sales tax purposes. The Respondent contends that its vendor application information is private and proprietary, and that the State should not be able to compel private citizens to relinquish such information. It argues that there are other sources from which the Department could obtain that information but forcing Soda City to give up its information is intrusive government overreach. To that end, the Respondent maintains that nearly all of the information sought is available publicly, and that the request to Soda City for that information is overly broad and unduly burdensome. Finally, it argues that the information will not aid in the enforcement of any tax laws and that, in the absence of an investigation or allegation of criminal activity with respect to the remaining vendors at Soda City, the Department's request is nothing more than a fishing expedition. For the reasons set forth below, the court finds that the Department had the authority to issue the summons under the broad authority granted to it by the General Assembly, and that the Respondent must comply with the Second Revised Summons.

Initially, the court must determine whether the Department had authority to issue the Second Revised Summons for the information requested therein. The two operative statutes pertaining to the Department's authority to issue administrative summonses are sections 12-4-330 and 12-54-110 of the South Carolina Code (summons statutes). Pursuant to section 12-4-330, "[t]he director may summon witnesses to appear and give testimony and to produce records, books, papers, and documents relating to any matters which the [D]epartment has authority to investigate or determine." S.C. Code Ann. § 12-4-330(A) (2014). Accordingly, the Department may summon:

- (1) a person who:
  - (a) is required to make a return or obtain a license pursuant to the provisions of law administered by the department and who fails to do so at the time required;
  - (b) delivers a return that the department considers erroneous; or
  - (c) refuses to allow an authorized agent of the department to examine his books and records;
- (2) another person having possession, care, or custody of books of account containing entries relating to the business of such person; or
- (3) *another person it considers proper.*

*See* S.C. Code Ann. § 12-54-110(A)(1)-(3) (2014) (emphasis added); *see also* S.C. Code Ann. § 12-54-100(A) (2014) (stating that, in the administration of state tax laws, the Department may examine or investigate property, books, data, information, and other records of a taxpayer "or other

person bearing upon the matters required to be included on a return”). “The summons may demand that the person appear before the [D]epartment and produce the books at a time and place named in the summons and to give testimony and answer questions under oath relating to a tax or other matter administered by the [D]epartment.” S.C. Code Ann. § 12-54-110(B) (2014). Thus, pursuant to the summons statutes, the Department has broad authority to summon anyone the Department “considers appropriate” “relating to any matters which the [D]epartment has authority to investigate or determine.” *See* S.C. Code Ann. § 12-4-330(A); S.C. Code Ann. § 12-54-110(A)(1)-(3).<sup>3</sup>

The Department is charged with administering and enforcing the requirements of the South Carolina Sales and Use Tax Act in Chapter 36 of Title 12 (the Act). *See* S.C. Code Ann. § 12-36-2660 (2014). Among other things, the Act requires every retailer operating in this State—including transient or temporary businesses, “artist[s] and craftsm[e]n selling at arts and crafts shows and festivals,” and “[r]etailers making sales at a special event”—to obtain a retail license from the Department before making any retail sales that are subject to sales and use tax. *See* S.C. Code Ann. § 12-36-510 (2014).

Here, the Department summoned the Respondent for records and documents relating to Soda City vendor applications, various contact and business information for vendors, and vendor attendance records. The purpose of the Second Revised Summons is to aid in conducting compliance checks, including whether Soda City vendors are appropriately licensed and otherwise complying with the Act. The Department intends to use the information to gain an understanding of which vendors may be operating at Soda City to enable it to more efficiently identify and facilitate compliance with any noncompliant vendors. The Respondent does not dispute that the

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<sup>3</sup> South Carolina’s statutory scheme with respect to administrative summonses is not unique. Congress has endowed the Internal Revenue Service (IRS) with similarly broad authority to examine books and records by way of an administrative summons. *See* 26 U.S.C. § 7602(a). In fact, section 12-54-110 of the South Carolina Code largely mirrors the section 7602 of the Internal Revenue Code. Many of South Carolina’s sister states have also authorized their respective state taxing authority to issue administrative summonses through statutes similar to section 12-54-110 of the South Carolina Code. *See, e.g.,* Ala. Code § 40-2A-7(a)(4) (authorizing the Department of Revenue to summon “records, books, or other information of any kind relating to any matter which the department has authority to administer”); Ark. Code Ann. § 26-18-305(c) (authorizing the Secretary of the Department of Finance and Administration to compel production of records by summons for purposes of enforcing state tax laws in relation to any investigation or inquiry); Ga. Code Ann. § 48-2-8(a)(4) (authorizing tax commissioners to subpoena the production of records and documents of any relevant person); N.C. Gen. Stat. Ann. § 105-258(a)(2) (authorizing Secretary of Revenue to summon persons to produce records as may be relevant or material to an inquiry); Va. Code Ann. § 58.1-3110 (authorizing the revenue commissioner to summon records and granting jurisdiction to courts to compel compliance of a summoned taxpayer).

Department has the authority to investigate or determine retail license and tax matters with respect to its vendors.

While a main facet of the Respondent's argument is that there is no evidence of any pending investigation or suspected violation of any tax laws relating to its other vendors so as to warrant the summons for its vendor information, that argument misconstrues the Department's authority under the summons statutes. A pending investigation or suspected violation of tax laws is not required to issue an administrative summons, only that the summons relates to matters that the Department has the *authority* to investigate or determine. S.C. Code Ann. § 12-4-330(A); *see also U.S. v. Powell*, 379 U.S. 48, 51 (1964) (“[T]he Government need make no showing of probable cause to suspect fraud unless the taxpayer raises a substantial question that judicial enforcement of the administrative summons would be an abusive use of the court's process.”). Conducting compliance checks and enforcing retail business license and sales tax matters is plainly within the Department's purview to investigate or determine. Though the Respondent may disagree with the broad summons authority provided to the Department by statute, this court lacks the authority to question the will of the General Assembly. Accordingly, the court finds that the Department had the authority to issue the Revised Second Summons to the Respondent.

Next, this court must determine whether the Respondent complied with the Second Revised Summons. Ms. Campbell testified that the Department did not receive any responsive documentation or information with respect to the Second Revised Summons and the Respondent acknowledged that it would not willingly provide that information in response to the Department's request. Therefore, in light of the testimony and evidence presented at the hearing, the court finds that the Respondent did not comply with the Second Revised Summons.

Having determined that the Respondent did not comply with the Second Revised Summons, the court must decide whether to enforce the summons. Pursuant to section 12-54-110, in order to enforce an administrative summons, the Department need only show to this court satisfactory proof that the person summoned neglected or refused to comply with the summons. *See* S.C. Code Ann. § 12-54-110(D). However, the Supreme Court case of *U.S. v. Powell* is instructive in determining when an administrative summons was issued in good faith and when it should be enforced. *U.S. v. Powell*, 379 U.S. 48, 57-58 (1964). The Court held that the taxing authority “must show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within

[the taxing authority's] possession, and that the administrative steps required . . . have been followed . . .” *Id.* Additionally, it is the court’s duty to ensure that the administrative summons process is not being abused when determining whether to enforce a summons. *See id.* “Such an abuse would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation.” *Id.* Thus, the administrative summons process cannot be used to harass a taxpayer or for any purpose that calls into question the legitimacy or sincerity of the inquiry. The burden to show an abuse of process is on the taxpayer or person summoned. *See id.*

Here, the Department has demonstrated, and the Respondent admits that it did not comply with the summons. Thus, the Department has met its burden to enforce the summons under section 12-54-110 of the South Carolina Code. Furthermore, the Department maintains that the information and records summoned will be used for purposes of administering and enforcing provisions of the Act with respect to vendors at Soda City conducting retail sales in South Carolina. The Department intends to use this information to, among other things, determine whether vendors actively operating at Soda City are appropriately licensed and in compliance with the Act, and facilitate compliance with any noncompliant vendors. Accordingly, the court finds that the Department has demonstrated a legitimate purpose for the inquiry.

The summoned information also appears relevant to this purpose. Soda City requires its vendors to submit an application with business and contact information, as well as maintain a retail license to operate at the market, which Soda City also documents. It is apparent that some vendors or operators can be difficult to communicate with and less than forthright with business information, as evidenced by Soda City having to obtain another contact point for Bubblelicious, one of the operators of which Mr. DeFelice characterized as “one hundred percent noncommunicative.” After denial of its retail license application, Bubblelicious also applied to the Department for a retail license under multiple names with conflicting information. Ms. Campbell testified, however, that vendors are typically more forthcoming with information when dealing with third parties. With Soda City’s third-party vendor information, the Department intends to cross reference the data against its own records to verify accuracy and compliance. The Department also intends to use the requested information to compile a “master list” of vendors ostensibly operating at Soda City, so that it can determine which vendors may not be in compliance

with the Act in advance of the market to better enable it to bring those vendors into compliance. Thus, the court finds that the summoned information is relevant to the legitimate purpose for the request.

Additionally, there is no evidence to suggest that the Department is already in possession of this information. While the Department may have some business records for some Soda City vendors in its files, it is not disputed that it does not have the information vendors provide to Soda City in their respective applications. It is similarly undisputed that the Department followed the requisite administrative procedures in issuing the summons. This includes describing the requested records with reasonable certainty, requiring production of the records at a time and place named in the summons, and serving the summons through an authorized agent of the Department. *See* S.C. Code Ann. § 12-54-110(B)-(C) (2014). Finally, there is no evidence that the summons was issued for an improper purpose, such as to harass Soda City or put pressure on the Respondent to settle a collateral dispute. Thus, the court finds that the Department's Second Revised Summons passes muster under *U.S. v. Powell*.

The court must now turn to the Respondent's arguments for noncompliance. The Respondent's objections center around four main arguments: 1) that the requested information is publicly available, or available from other, less intrusive sources, and that use of the summons statutes should essentially be a tool of last resort; 2) the requested information is private and proprietary, and violates the Respondent's constitutional right to privacy; 3) that the summons is overly broad; and 4) that responding to the summons would be unduly burdensome.

Though the Respondent argues that the requested information is available publicly or from other sources, there is no statutory requirement that the Department exhaust other sources prior to issuing an administrative summons, nor is there a requirement that it be used only as a tool of last resort, and the Respondent cites to no authority for those propositions. Even if there are other sources for some of this information, the evidence reflects that, contrary to the Respondent's assertions, the Soda City vendor application information is not public. That information is compiled in a spreadsheet accessible only to Mr. DeFelice and a few other individuals in his organization. While some information from the vendor applications may be available publicly, the majority of information Soda City vendors elected to share in their applications is not public information, regardless of whether it may or may not correlate to publicly available data. There may be vendors whose application information correctly corresponds to publicly available data

and there may be other vendors whose application information bears little relation to publicly available data. In any event, the information submitted to Soda City by way of its vendor applications is not public information.<sup>4</sup>

Next, despite claiming that nearly all the information sought is publicly available, the Respondent argues against enforcement of the summons on the grounds that the information is private and proprietary. It argues that both Soda City and its vendors have a right to privacy with respect to that information, citing the South Carolina Constitution. *See* S.C. Const. art. I, § 10 (“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated . . .”). However, our State constitution does not provide an absolute right to privacy; it protects only against “unreasonable invasions of privacy.” *See id.*; *Planned Parenthood S. Atl. v. State of S.C.*, 440 S.C. 465, 482, 892 S.E.2d 121, 131 (2023) (“When viewed in its full and proper context, it is undeniable that the South Carolina Constitution does not create an absolute bar against all state action that infringes on a person’s privacy. Instead, the state constitution draws the line at *unreasonable* invasions of privacy.”) (emphasis added). In this case, the General Assembly made, by way of the summons statutes, a policy decision that an administrative summons properly issued by the Department does not constitute an unreasonable invasion of privacy. This court is not permitted to question the will of the legislature with respect to that policy. *ArrowPointe Fed. Credit Union v. Bailey*, 438 S.C. 573, 580, 884 S.E.2d 506, 509 (2023) (“Determinations of public policy ‘are chiefly within the province of the legislature, whose authority on these matters we must respect.’”) (citation omitted). Nevertheless, it is difficult for this court to understand how Soda City can assert a legitimate privacy right claim over the requested information while simultaneously arguing that nearly all that information is publicly available. It is similarly unclear from the Respondent’s arguments how its vendors could have a reasonable expectation of privacy for the general business and contact information they divulge to Soda City in their vendor

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<sup>4</sup> During the hearing, there was unrefuted testimony from Mr. DeFelice that some information sought by the Department, namely the existence retail licenses for Soda City vendors, is available at the City of Columbia, the municipality where the Soda City market is held. While the Department is not required to seek information from any particular source before issuing a summons to Soda City, the evidence indicates that the information publicly available at the City of Columbia – at least as to the issue of whether vendors possess a retail license, would be easily available and would also be more reliable, given Mr. DeFelice’s testimony that he does not regularly update his vendor information and often has informal knowledge of changes in ownership, contact points, etc. for his vendors.

applications if, as Soda City Asserts, the information is public. Thus, the Respondent has not demonstrated that the Department's inquiry amounts to an unreasonable invasion of privacy.

The Respondent also failed to show that the Second Revised Summons is overly broad. It seeks business and contact information for Soda City vendors for the Department to compile a "master list" of vendors actively doing business at Soda City, which is consistent with and reasonably tailored to the Department's objective of obtaining vendor information to cross check with their records for compliance purposes. The Respondent did not establish how the request could be more targeted or how the information sought is overly broad in relation to that purpose.

Finally, the Respondent failed to show that complying with the Second Revised Summons would be unduly burdensome. "A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." Rule 45(c)(1), SCRPC; *see also* SCALC Rule 68 (stating that the South Carolina Rules of Civil Procedure may be applied to resolve questions not addressed by the Rules of Procedure for the Administrative Law Court). "Our courts have interpreted 'undue burden' as requesting materials irrelevant to the matter before the court." *Taylor v. Taylor*, 434 S.C. 307, 324, 863 S.E.2d 335, 344 (Ct. App. 2021) (citing *Ex parte Smith*, 407 S.C. 422, 422-23, 756 S.E.2d 386, 386 (2014)). As stated above, the information sought by the Department is relevant to the Department's objective of creating a "master list" of Soda City vendors for purposes of determining compliance with and enforcing the Act. The Respondent does not contend that the requested information is irrelevant to those purposes. Moreover, despite claiming that the request is unduly burdensome, Mr. DeFelice testified that the information is already compiled in one or more Google Docs, which he conceded would be "amazingly easy" to provide, requiring only a few clicks of a computer mouse. The court finds that the Respondent's undue burden objections are not based on any time or financial burden to produce the requested information but, rather, out of principle. Consequently, the court finds that the Respondent did not meet its burden of showing a legally sufficient reason for its failure to comply with the Second Revised Summons.

Based on the foregoing, the court is obligated to conclude that the Respondent must comply with the Second Revised Summons. The court must, therefore, determine how to enforce compliance. Pursuant to section 12-54-110, this court "may enforce obedience to the requirements of the summons by making an order consistent with existing laws for the punishment of contempt" and, upon satisfactory proof of noncompliance, "shall issue an attachment directed to the sheriff

of the county in which the person resides for his arrest.” S.C. Code Ann. § 12-54-110(D). The court declines to hold the Respondent in contempt or impose any penalty at this juncture. The Respondent challenged the request on a good faith belief that the Department exceeded its statutory authority in issuing the summons. While the Respondent, after exercising its right to be heard, failed to establish a legally sufficient basis for its noncompliance, the court finds that the Respondent should be given an opportunity to comply with this court’s enforcement order prior to the imposition of any sanctions. Moreover, the Department emphasized at the hearing that it was not seeking to punish or fine the Respondent’s noncompliance but, rather, have this court compel the Respondent’s compliance. Accordingly, the Respondent must comply with the Second Revised Summons within thirty (30) days of the date of this order. Any further willful noncompliance will be grounds for a finding of contempt.

**ORDER**

Based upon the foregoing, the court finds that the Respondent must comply with the Second Revised Summons.

**THEREFORE, IT IS HEREBY ORDERED** that the Respondent shall fully comply with the Second Revised Summons by producing responsive documentation and information within its custody or control to the Department within thirty (30) days of the date of this order.


**AND IT IS SO ORDERED.**

August 4, 2025  
Columbia, South Carolina

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S. Phillip Lenski  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler  
Judicial Law Clerk

August 4, 2025  
Columbia, South Carolina

