

**ORIGINAL**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

**RECEIVED**

AUG 19 2013

**SC Court of Appeals**

Appellate Case No. 2013-000577  
Trial Court Case No. 12-CP-40-08469

Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, and  
South Carolina Public Interest Foundation..... Appellant,

v.

South Carolina Department of Revenue, and James F. Etter, its Director,..... Respondents.

**RECORD ON APPEAL**

James G. Carpenter S.C. Bar No. 1136  
Jennifer J. Miller S.C. Bar No. 13611  
819 East North Street  
Greenville, SC 29601  
Telephone: (864) 235-1269  
Facsimile: (864) 331-3083  
Attorneys for Appellants

Milton G. Kimpson (Bar No. 7917)  
Chief Counsel for Litigation  
Adam N. Marinelli (Bar No. 79031)  
Counsel for Litigation  
Harry T. Cooper Jr. (Bar No. 1383)  
General Counsel for Litigation  
PO Box 12265  
Columbia, SC 29211  
(803) 898-5130  
(803) 896-0171 Fax  
Attorneys for Respondent

**INDEX**

Index .....1

Final Order and Decision of the Court, dated February 8, 2013 .....2

Complaint (with Exhibits), and Motion for Preliminary Injunction FOIA  
Enforcement, all filed on or about December 18, 2012 .....3

Answer filed on February 5, 2013 .....13

Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary  
Injunction with attachments, submitted to Circuit Court February, 2013 .....17

Transcript of record in Circuit Court hearing, dated February 6, 2013, before the Hon.  
G Thomas Cooper, Jr., Circuit Judge presiding..... 36

Certificate of Counsel .....50

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

CASE NUMBER: 2012-CP-40-08469

Edward D Sloan

South Carolina Department of Revenue

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------------	--

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),  Other \_\_\_\_\_
  - Rule 43(k), SCRPC (Settled),  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON)**
  - Rule 40(j), SCRPC,  Bankruptcy,  Other \_\_\_\_\_
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award,  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
  - Affirmed,  Reversed,  Remanded,  Other \_\_\_\_\_

RICHLAND COUNTY  
 FILED  
 2013 FEB 11 AM 2:46  
 JENNIFER W. McBRIDE  
 CLERK OF COURT

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 complaint for FOIA enforcement is DENIED. Issue is moot.

ORDER INFORMATION

This order  ends  does not end the case  
Additional Information for the Clerk \_\_\_\_\_

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge G. J. Carpenter Judge Code 2126 Date 2-8-13

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of Feb, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows

James G Carpenter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	CIVIL ACTION NO 12-CP-40-_____
Edward D Sloan, Jr, individually and on behalf of all others similarly situated, and South Carolina Public Interest Foundation, Plaintiff,	)	
	)	<b>Complaint for FOIA Enforcement</b>
	)	
v	)	
	)	
South Carolina Department of Revenue and James F Etter, its Director, Defendants	)	

---

Plaintiffs, complaining of the Defendants, would show unto the Court:

1. Plaintiff Edward D Sloan, Jr, ("Sloan") is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina
2. Plaintiff South Carolina Public Interest Foundation is a corporation not for profit, organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the proper enforcement of the South Carolina Freedom of Information Act, S C Code Ann § 30-4-10 *et seq* ("FOIA")
3. Defendant South Carolina Department of Revenue is an agency of the State of South Carolina whose principal place of business is in Richland County
4. Defendant South Carolina Department of Revenue is a "public body" under FOIA
5. Defendant James F Etter is the Director of the South Carolina Department of Revenue and is named in his official capacity
6. This Court has jurisdiction under FOIA
7. Venue is properly placed in Richland County

8 Plaintiffs served a FOIA request on the Defendants, which they received November 23,  
2012 (**Exhibit A**, FOIA Request and Receipt)

9 In response to a request, FOIA requires a “public body” to “notify” the Plaintiffs “of its  
*determination* and the *reasons* therefor” within 15 business days S C Code Ann § 30-  
4-30(c) (emphasis added)

10 Defendants made a written response to the Plaintiffs on December 10, 2012 (**Exhibit B**),  
but failed to “notify” the Plaintiffs “of [their] determination and the reasons therefor” *Id*

11 Furthermore, Defendants’ December 10, 2004 letter states, “if we are unable to  
release the requested file(s) you *will be notified* of the *decision* and the *reasons* therefor”  
(**Exhibit B**) (emphasis added)

12 This “*decision* and the *reasons* therefor” must be communicated to the Plaintiffs within  
15 business days S C Code Ann § 30-4-30(c)

13 More than fifteen days, excluding weekends and holidays, have passed, but Defendants  
have failed to

- a Comply with Plaintiffs’ request,
- b Make a proper response to Plaintiffs’ request,
- c Respond timely that the requested public records would be made available,
- d Actually make the requested records available for copying, or
- e. Furnish the records;

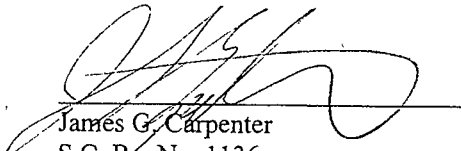
all in violation of § 30-4-30(c)

14 As a result the foregoing failures, Defendants have violated S C Code Ann § 30-4-30(c),  
and Plaintiff’s “request must be considered approved” *Id*

**WHEREFORE**, Plaintiffs pray the Court for an Order

- 1 Declaring that Defendants have violated FOIA,
- 2 Declaring that the request is deemed approved,
- 3 Enjoining Defendants to provide Plaintiff a copy of all requested documents,
- 4 Awarding the Plaintiff attorneys' fees and costs of litigation pursuant to S C Code  
Ann § 30-4-100(b), and
- 5 Granting Plaintiffs such other and further relief as the Court deems just and  
proper

Respectfully submitted,  
THE CARPENTER LAW FIRM, P C



James G. Carpenter  
S C. Bar No 1136  
Jennifer J Miller  
S C Bar No 13611

819 E North Street  
Greenville, SC 29601  
Telephone (864) 235-1269  
Facsimile (864) 242-5500  
Attorneys for Plaintiff

12/18/2012 08:59 8644517290

E D.SLOAN JR

PAGE 07/07

**EDWARD D. SLOAN, JR.**

**Box 25999**

**GREENVILLE, S.C.**

**29616-0999**

864 451 7290 voice and fax

November 19, 2012

**COPY**

CERTIFIED MAIL NO 7011 0470 0001 5427 6290

The Hon. James F. Etter, Director,  
Department of Revenue  
301 Gervais Street  
Columbia, SC 29201-3041

Dear Mr Etter:

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. 552, I request that you mail me a copy of the following public records:

1. A contract, including all documents included therein by reference, that you formed in 2011 and 2012 to procure services related to an invasion by others of your Internet system
2. The solicitations and related documents that you issued enabling you to make those procurements.
3. All determinations that you made to enable you to use the process, emergency, sole source, etc., which you used to make those procurements.
4. All determinations that you have made subsequent to those procurement about those procurements
5. All documents about any consultant that you used in making those procurements

To that extent please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits but excluding drawings. In



the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request that you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

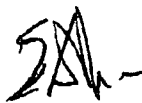
If you determine that all documents responsive to any individual requested item (or portion thereof) have not been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you determine you have no document responsive to an individual request item (or portion thereof), I request specific written confirmation of that fact.

This request constitutes notice of demand for production of all described documents. If, for any reason, you determine that you will not send me any document or portion thereof, or that this request will not, in whole or in part, be complied with, I request prompt notice of any action taken. In addition, I request such notice include complete identification of the withheld documents or portions thereof by title, author, date, nature of such material, and a thorough explanation of all legal and factual bases for your determination to deny disclosure. I request that in responding to this request you adhere to the time limitations set forth in § 30-4-30(c).

This request for disclosure of these public records is primarily to benefit the general public, I request that you waive the fees, if any, pursuant to § 30-4-30(b).

I will pay the reasonable and direct costs of locating and reproducing the requested public records to the extent required by § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed \$100.

Yours very truly,



12/18/2012 08 59

8644517290

E D SLOAN JR

PAGE 03/07

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <input checked="" type="checkbox"/> Add Yours <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	C. Date of Delivery
1. Article Addressed to: James F. Effer 301 Gerweis St. Columbia, SC 29201	B. Received by (Printed Name)	C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address on front <input type="checkbox"/> No	
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)	7011 0470 0001 5427 6290	
PS Form 3811, February 2004	Domestic Return Receipt	
	102596-02 M-1540	

12/18/2012 08 59 864451/298

E D SLOAN JR

PAGE 01/07



State of South Carolina  
Department of Revenue

300A Outlet Pointe Blvd, Columbia, South Carolina 29210  
P O Box 125, Columbia, South Carolina 29214

C-450 (Rev 8/28/12) 6371

December 10, 2012

ZIP 29201 \$ 000.42<sup>4</sup>  
02 1W  
0001369382 DEC 13 2012

Edward D. Sloan, Jr.  
P O Box 25999  
Greenville, SC 29616

Re Freedom of Information request

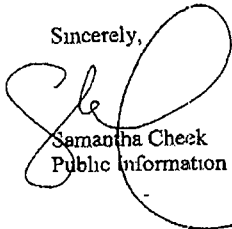
Dear Mr Sloan

The South Carolina Department of Revenue has received your Freedom of Information request dated November 19, 2012. Your request is currently being researched and reviewed. As soon as the information has been compiled, you will be contacted again and the requested information will be sent to you.

If we are unable to locate, obtain or release the requested file(s) you will be notified of the decision and the reasons for it.

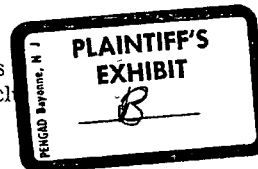
If you have any questions, please do not hesitate to give me a call at (803) 898-5281

Sincerely,

  
Samantha Check  
Public Information Director

enclosures.

To that extent, please produce responsive documents including all attachments, enclosures, and exhibits but excl



STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Edward D Sloan, Jr, individually and )  
on behalf of all others similarly )  
situated, and South Carolina Public )  
Interest Foundation, )  
Plaintiff, )

v )

South Carolina Department of Revenue )  
and James F Etter, its Director, )  
Defendants )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO 12-CP-40-\_\_\_\_\_

**Motion for Preliminary Injunction  
FOIA Enforcement**

NOW COME the Plaintiffs, by their undersigned attorney, and move the court for a preliminary injunction for the enforcement of the South Carolina Freedom of Information Act, S C Code Ann § 30-4-10 *et seq* ("FOIA"), and in support thereof would show unto the Court

1 Plaintiff Edward D Sloan, Jr, ("Sloan") is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina

2 Plaintiff South Carolina Public Interest Foundation is a corporation not for profit, organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the proper enforcement of the South Carolina Freedom of Information Act, S C Code Ann. § 30-4-10 *et seq* ("FOIA")

3 Defendant South Carolina Department of Revenue is an agency of the State of South Carolina whose principal place of business is in Richland County

4 Defendant South Carolina Department of Revenue is a "public body" under FOIA

5 Defendant James F Etter is the Director of the South Carolina Department of Revenue and is named in his official capacity

6 This Court has jurisdiction under FOIA  
7 Venue is properly placed in Richland County  
8 Plaintiffs served a FOIA request on the Defendants, which they received November 23,  
2012 (**Exhibit A**, FOIA Request and Receipt)  
9 In response to a request, FOIA requires a “public body” to “notify” the Plaintiffs “of its  
*determination* and the *reasons* therefor” within 15 business days S C. Code Ann § 30-  
4-30(c) (emphasis added)  
10 Defendants made a written response to the Plaintiffs on December 10, 2012 (**Exhibit B**),  
but failed to “notify” the Plaintiffs “of [their] determination and the reasons therefor ” *Id*  
11 Furthermore, Defendants’ December 10, 2004 letter states, “if we are unable to  
release the requested file(s) you *will be notified* of the *decision* and the *reasons* therefor”  
(**Exhibit B**) (emphasis added)  
12 This “*decision* and the *reasons* therefor” must be communicated to the Plaintiffs within  
15 business days S C Code Ann § 30-4-30(c)  
13 More than fifteen days, excluding weekends and holidays, have passed, but Defendants  
have failed to.  
a Comply with Plaintiffs’ request,  
b Make a proper response to Plaintiffs’ request,  
c Respond timely that the requested public records would be made available;  
d Actually make the requested records available for copying, or  
e Furnish the records,  
all in violation of § 30-4-30(c)  
14 As a result the foregoing failures, Defendants have violated S C Code Ann § 30-4-30(c),

and Plaintiff's "request must be considered approved" *Id*

15 FOIA requires

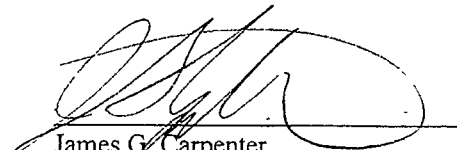
The General Assembly finds that it is *vital* in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. 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)

**WHEREFORE**, Plaintiffs pray the Court for a Preliminary Injunction

- 1 Declaring that Defendants have violated FOIA,
2. Declaring that the request is deemed approved,
- 3 Enjoining Defendants to provide Plaintiff a copy of all requested documents,
- 4 Awarding the Plaintiff attorneys' fees and costs of litigation pursuant to S C Code Ann § 30-4-100(b), and
- 5 Granting Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,  
THE CARPENTER LAW FIRM, P C

  
James G. Carpenter  
S C Bar No 1136

819 E North Street  
Greenville, SC 29601  
Telephone (864) 235-1269  
Facsimile (864) 242-5500  
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Edward D. Sloan, Jr., et al,	)	CIVIL ACTION No.: 2012-CP-40-8469
	)	
Plaintiffs,	)	THE DEFENDANTS' ANSWER
	)	TO COMPLAINT FOR
vs	)	FOIA ENFORCEMENT
	)	
South Carolina Department of	)	
Revenue and James F. Etter, its	)	
Director,	)	
	)	
Defendants.	)	

2013 FEB -5 PM 4:24  
 C.C.P. & G.

Defendants, South Carolina Department of Revenue (Department) and James F. Etter, its Director (Etter) (collectively referred to herein as the Department), hereby answer the Plaintiffs' Complaint for FOIA Enforcement (Complaint). Any allegations of such Complaint not admitted, explained, or qualified herein are denied.

**AS A FIRST DEFENSE**  
**(Denials of Complaint)**

1. The Department lacks sufficient information to answer the allegations of paragraphs 1 and 2 of the Complaint and therefore denies the same.
2. The Department admits the allegations of paragraph 3 of the Complaint to the extent the Department is an agency of the State of South Carolina and that its principal office was located in Richland County at the time the Complaint was filed.
3. The Department admits the allegations of paragraph 4 of the Complaint to the extent the Department is a public body as defined under S C. Code Ann § 30-4-20(a)
4. The Department admits the allegations of paragraph 5 of the Complaint to the

extent Etter was Director of the Department at the time the Complaint was filed and was named in his official capacity. Etter is no longer the Director.

5. The allegations of paragraphs 6 and 7 of the Complaint are admitted.

6. The Department admits the allegations of paragraph 8 of the Complaint to the extent the Department received a request from Plaintiffs for documents pursuant to S C. Code Ann. § 30-4-10, et seq. ("FOIA"). The Department denies the remaining allegations of paragraph 8 of the Complaint.

7. Paragraph 9 of the Complaint asserts only legal conclusions and makes no allegations of fact. To the extent that the South Carolina Rules of Civil Procedure require an admission or denial, the Department denies the assertions

8. With regard to paragraph 10 of the Complaint, the Department admits that it replied to Plaintiffs by letter dated December 10, 2012 pursuant to S C. Code Ann. § 30-4-40(c). The Department denies the remaining allegations of paragraph 10 of the Complaint.

9. The Department admits the allegations of paragraph 11 of the Complaint to the extent it alleges that the Department replied to Plaintiffs by letter dated December 10, 2012 pursuant to S C Code Ann. § 30-4-40(c) and further craves reference to the letter itself

10. The allegations of paragraphs 12, 13, and 14 of the Complaint are denied.

11. The remaining paragraphs of the Complaint constitute prayers or demands for judgment for the relief to which Plaintiffs deem themselves entitled. To the extent that the South Carolina Rules of Civil Procedure require an admission or denial, the Department denies that Plaintiffs are entitled to the relief sought.

**AS A SECOND DEFENSE**  
**(No Justiciable Controversy)**

12. Paragraphs 1 through 13 of this Answer, to the extent not inconsistent herewith, are reiterated as if fully set forth herein

13 By letter dated January 11, 2013, the Department has provided Plaintiffs with the requested public record.

14. Accordingly, there is no matter in controversy and Plaintiffs are not entitled to the relief sought.

**AS A THIRD DEFENSE**  
**(Good Faith)**

15. Paragraphs 1 through 16 of this Answer, to the extent not inconsistent herewith, are reiterated as if fully set forth herein

16 Acting completely in good faith, the Department provided Plaintiffs with written notification as to the availability of the requested public records within the statutorily prescribed period and, therefore the Department did not frustrate Plaintiffs' FOIA request.

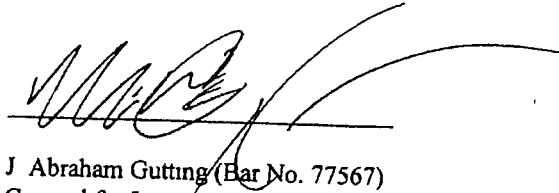
17. Plaintiffs chose not to inquire further upon receiving the Department's December 10, 2012 letter

18. Plaintiffs were not required to seek relief in the court and incur litigation costs, but rather chose to pursue litigation

19. Again acting in good faith, the Department provided the requested public records on January 11, 2013, within four (4) days of receiving the Complaint.

20 Accordingly, Plaintiffs are not entitled to attorneys' fees and costs pursuant to S C Code Ann. § 30-4-100(b)

Wherefore, having fully answered the Complaint, the Department prays that the same be dismissed with costs. The Department further prays for such other relief as the Court may deem just and proper.



J Abraham Gutting (Bar No. 77567)

Counsel for Litigation

Benjamin J Tripp (Bar No. 79789)

Counsel for Litigation

Milton G Kimpson (Bar No. 7917)

General Counsel for Revenue Litigation

Harry T. Cooper, Jr (Bar No. 1383)

Executive Deputy Director

Post Office Box 12265

Columbia, South Carolina 29211

803-898-5130

Attorneys for Defendants

Columbia, South Carolina  
February 5, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	CIVIL ACTION NO. 12-CP-40-08469
Edward D Sloan, Jr, individually and	)	
on behalf of all others similarly	)	
situated, and South Carolina Public	)	
Interest Foundation,	)	
Plaintiff,	)	
	)	
v.	)	
	)	
South Carolina Department of Revenue	)	
and James F. Etter, its Director,	)	
Defendants.	)	

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

COMES NOW, named defendants, South Carolina Department of Revenue and James F. Etter<sup>1</sup> (collectively referred to hereinafter as "Department") and hereby submits the following memorandum of law in opposition to the Plaintiffs' Motion for Preliminary Injunction:

**A. TIMELINE/BACKGROUND**

1. By letter dated November 19, 2012, the Plaintiff Edward D. Sloan, Jr, ("Sloan") issued a request under the Freedom of Information Act, S.C. Code Ann. § 30-4-10, et seq., to the Department for certain information. See Ex. A.
2. According to the Plaintiff, the Department received the FOIA request on or about November 23, 2012.<sup>2</sup>

---

<sup>1</sup>The Plaintiffs named Mr Etter in his official capacity as Director of the Department of Revenue Mr. Etter is no longer employed with the Department.

<sup>2</sup>The date of receipt of the FOIA request by anyone acting on behalf of the Department is actually uncertain. The return receipt provided by the Plaintiff is addressed to Mr Etter and bears a post office stamp of November 23, 2012 but the Department's offices would have been closed on November 23, 2012 as this was the day after Thanksgiving Further, the signature affixed to the receipt is not recognizable as that of a Department employee Nevertheless, it is undisputed that the Department did

3. By letter dated December 10, 2012, the Department's Public Information Director responded to the Plaintiffs' request as follows:

The South Carolina Department of Revenue has received your Freedom of Information request dated November 19, 2012. Your request is currently being researched and reviewed. As soon as the information has been compiled, you will be contacted again and the requested information will be sent to you.

If we are unable to locate, obtain or release the requested file(s) you will be notified of the decision and the reasons for it.

If you have questions, please do not hesitate to give me a call at (803) 898-5281.

The December 10, 2012 letter was sent to the Plaintiff on the 11<sup>th</sup> business day after the Department's receipt of the FOIA request See Ex. B.

4. By letter dated December 18, 2012, the Plaintiff, through counsel, mailed his Summons and Complaint and Notice of Motion and Motion for Preliminary Injunction to the Richland County Clerk of Court for filing; the pleadings were filed in Court on December 21, 2012.
5. On January 7, 2013, counsel for the Department accepted service of the Summons and Complaint and Notice of Motion and Motion for Preliminary Injunction.
6. On January 11, 2013, the Department supplemented its December 10, 2012 letter to the Plaintiff with a letter to Plaintiff's counsel enclosing the requested documents - a copy of the Department's October 2012 contract with Mandiant Corporation. See Ex. C.
7. On January 14, 2013, Plaintiff's counsel responded to the Department's January 11, 2013 letter with a letter indicating the Plaintiff's satisfaction with the production of the Mandiant Corporation contract and suggesting that the Plaintiff "is interested in receiving a copy of some of the investigative reporting on the invasion, produced by the Department or Mandiant" and further indicating that "he is likely to request it, unless the Department volunteers it in coming months." See Ex. D

---

receive the Plaintiff's FOIA request and for the instant matter, November 23, 2012, is an acceptable date of receipt

8 The Department has received no further FOIA requests from the Plaintiffs

## B. LEGAL ARGUMENTS

1. Because the requested documents have been provided to the Plaintiff the standards for issuance of a preliminary injunction are not met

Our Supreme Court has recently opined in Hook Point, LLC v Branch Banking and Trust Co., 397 S.C. 507, 725 S.E.2d 681 (2012) that “[a] preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” (citing Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010)).

While the Department acknowledges that S.C. Code Ann. § 30-4-100(a) appears to provide that “irreparable injury for which no adequate remedy at law exists” flows from a violation of FOIA, the Plaintiffs’ motion should be denied because the issuance of a preliminary injunction is unnecessary and accomplishes nothing under the present circumstances. A preliminary injunction is certainly not needed to preserve the status quo or to force the Department to do anything. The Department has already produced the requested documents and the Plaintiffs have indicated their satisfaction with the same. If this Court were to issue a preliminary injunction, the injunction would compel the Department to take an action that it has already taken<sup>3</sup>

2. No justiciable controversy exists inasmuch as the Department has already

---

<sup>3</sup>A movant must further show a likelihood of success on the merits. As will be explained, because there is no longer a justiciable controversy, this element cannot be met such that Plaintiffs’ request for a preliminary injunction should be denied for this reason as well.

provided the requested documents.

In their underlying complaint, the Plaintiffs seek a declaration that the Department has violated FOIA. The fact that the requested information has now been provided, however, renders the Plaintiffs' claim moot as there no longer is a justiciable controversy before this Court.

In the seminal case of Sloan v. Friends of the Hundley, 369 S.C. 20, 630 S.E.2d 474 (2006), the Supreme Court ruled that the underlying FOIA case had become moot because the Defendants' therein provided the requested documents:

Generally, this Court only considers cases presenting a justiciable controversy Byrd v Irmo High School, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract. \*26<sup>Id</sup> at 431, 468 S.E.2d at 864. A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. Mathis v South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). If there is no actual controversy, this Court will not decide moot or academic questions. Id (citing Jones v Dillon-Marion Human Res. Dev. Comm'n, 277 S.C. 533, 535, 291 S.E.2d 195, 196 (1982)); see also Wallace v City of York, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981). Although this Court has not addressed the issue of mootness as it pertains to FOIA, other courts have held that once the requested documents are produced, a justiciable controversy no longer exists. Trueblood v U.S. Dept. of Treasury, IRS, 943 F.Supp. 64, 67 (D.D.C. 1996); Misegades Douglas v Schuyler, 456 F.2d 255, 255 (4th Cir 1972); Kaye v Burns, 411 F.Supp. 897, 901 (S.D.N.Y. 1976).

In the instant case, Sloan concedes that Friends has provided all documents requested pursuant to FOIA. Additionally, since the filing of this appeal, Friends has

conceded that it is presently a public body as related to this litigation. The purpose of FOIA is to protect the public by providing a mechanism for the disclosure of information by public bodies. Bellamy v Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). Because the information Sloan sought has been disclosed, there is no continuing violation of FOIA upon which the trial court could have issued a declaratory judgment. Additionally, Sloan has further conceded that his interest in this matter is purely academic. Therefore, we find that the question is moot, and any judgment by this Court would constitute an advisory opinion. Accordingly, the trial court did not err in granting Friends' motion for summary judgment as to Sloan's request for a declaratory judgment.

(Emphasis added)

Although the Sloan case was decided in the context of motions for summary judgment, the same principal should warrant dismissal of the Plaintiffs' motion for preliminary injunction. Because there is no justiciable controversy, the case is moot.<sup>4</sup> Such an eventuality militates against any possible finding that the Plaintiff has a likelihood of success on the merits.<sup>5</sup>

3. Attorney's Fees should not be decided at the preliminary injunction stage.

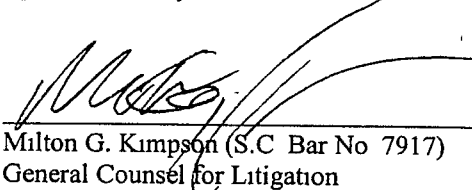
---

<sup>4</sup>The Plaintiffs will undoubtedly argue that one of the exceptions to the mootness doctrine exists to salvage their case. The Department would respectfully contend that no recognized exception is applicable here. Nevertheless, a reliance on exceptions to the mootness doctrine weakens any legitimate argument that the Plaintiffs' requisite likelihood of success on the merits exists.

<sup>5</sup>The Sloan Court considered it significant that after the Defendants' release of the requested records, Sloan's remaining interest in the litigation was "purely academic." Here, the Plaintiffs' only remaining interest is somewhat academic as well. See Ex. D. It may be an interesting issue whether the Department's December 10, 2012 response is sufficient under § 30-4-30 (c). However, given that all requested documents have been provided, this question falls short of the actual justiciable controversy needed for this Court to invoke its decision-making authority. Furthermore, even if there should be a decision on this issue, it should not be rendered at the preliminary injunction stage but only after a hearing on the merits.

S C Code Ann. § 30-4-100(b) provides that a prevailing person “may be awarded reasonable attorney’s fees and costs of litigation.” (Emphasis added) The discretionary nature of the decision about attorney’s fees is underscored by the next sentence in this same statute: “If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.” The Department would respectfully submit that no decision on attorney’s fees should be made on a motion for preliminary injunction but only after a hearing so the Court may adequately weigh all circumstances. See, Litchfield Plantation Company v Georgetown County Water and Sewer District, 314 SC 30, 443 S.E 2d 574 (1994)(Court upholds the trial court’s award of \$0.00 in attorney’s fees to FOIA prevailing party.)<sup>6</sup>

Based on the foregoing, the Defendants South Carolina Department of Revenue and James F. Etter, respectfully request that this Court deny the Plaintiffs’ motion for preliminary injunction



---

Milton G. Kimpson (S.C Bar No 7917)  
General Counsel for Litigation  
J. Abraham Gutting (S C. Bar No 77567)  
Counsel for Litigation  
Benjamin John Tripp (S.C. Bar No. 79789)  
Counsel for Litigation  
Harry T. Cooper, Jr. (S.C. Bar No. 1383)  
Executive Deputy Director  
South Carolina Department of Revenue  
P O. Box 12265  
Columbia, SC 29211

---

<sup>6</sup>Sloan v. Friends of Hundley, 393 SC 152, 711 S.E.2d 895 (2011) stands for the proposition that under certain circumstances, a prevailing FOIA litigant may not be able to recover attorney fees for time periods after the agency has produced the requested information. In the event this Court decides to consider attorney fees here, the Department respectfully requests that no fees be awarded for time periods after January 11, 2013.

803-898-5131  
Attorneys for Defendants  
South Carolina Department of Revenue  
and James F. Etter, Director

Columbia, South Carolina  
February 6, 2013

# EXHIBIT A

12/18/2012 08:59 8644517290

E. D. SLOAN JR.

PAGE 07/07

**EDWARD D. SLOAN, JR.**

**Box 25999**

**GREENVILLE, S.C.**

**29616-0999**

864 451 7290 voice and fax

November 19, 2012

**COPY**

CERTIFIED MAIL NO. 7011 0470 0001 5427 6290

The Hon. James F. Etter, Director,  
Department of Revenue  
301 Gervais Street  
Columbia, SC 29201-3041

Dear Mr. Etter:

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. 552, I request that you mail me a copy of the following public records:

1. A contract, including all documents included therein by reference, that you formed in 2011 and 2012 to procure services related to an invasion by others of your Internet system.
2. The solicitations and related documents that you issued enabling you to make those procurements.
3. All determinations that you made to enable you to use the process, emergency, sole source, etc., which you used to make those procurements.
4. All determinations that you have made subsequent to those procurement about those procurements
5. All documents about any consultant that you used in making those procurements.

To that extent, please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits but excluding drawings. In



12/18/2012 08:59 8644517298

E. D. SLDAN JR

PAGE 02/07

the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request that you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

If you determine that all documents responsive to any individual requested item (or portion thereof) have not been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you determine you have no document responsive to an individual request item (or portion thereof), I request specific written confirmation of that fact.

This request constitutes notice of demand for production of all described documents. If, for any reason, you determine that you will not send me any document or portion thereof, or that this request will not, in whole or in part, be complied with, I request prompt notice of any action taken. In addition, I request such notice include complete identification of the withheld documents or portions thereof by title, author, date, nature of such material, and a thorough explanation of all legal and factual bases for your determination to deny disclosure. I request that in responding to this request you adhere to the time limitations set forth in § 30-4-30(c).

This request for disclosure of these public records is primarily to benefit the general public; I request that you waive the fees, if any, pursuant to § 30-4-30(b).

I will pay the reasonable and direct costs of locating and reproducing the requested public records to the extent required by § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed \$100.

Yours very truly:



# EXHIBIT B

12/18/2012 08:59 8644517298 E.D SLOAN JR. PAGE 01/07



State of South Carolina  
Department of Revenue  
300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P O. Box 125, Columbia, South Carolina 29214

C-460 (Rev. 0/28/12) 0371

December 10, 2012  
ZIP 29201 \$ 000.42<sup>4</sup>  
02 1W  
0001369382 DEC 13 2012

Edward D Sloan, Jr.  
P O. Box 25999  
Greenville, SC 29616

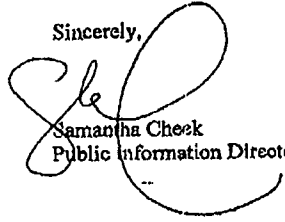
Re: Freedom of Information request

Dear Mr Sloan:

The South Carolina Department of Revenue has received your Freedom of Information request dated November 19, 2012. Your request is currently being researched and reviewed. As soon as the information has been compiled, you will be contacted again and the requested information will be sent to you.

If we are unable to locate, obtain or release the requested file(s) you will be notified of the decision and the reasons for it.

If you have any questions, please do not hesitate to give me a call at (803) 898-5281.

Sincerely,  
  
Samantha Check  
Public Information Director

procurements.

To that extent, please produce responsive documents including all attachments, enclosures, and exhibits but excl



# EXHIBIT C

---

State of South Carolina  
Department of Revenue  
Office of General Counsel for Litigation  
300A Outlet Point Blvd, 29210; P.O. Box 12265, Columbia, South Carolina 29211  
Telephone (803) 898-5130 FAX (803) 898-5147

---

January 11, 2013

James G Carpenter, Esquire  
The Carpenter Law Firm, P.C.  
819 E. North Street  
Greenville, SC 29601

Dear Mr Carpenter:

This letter is in reply to the recent request of your client, Edward D. Sloan, Jr., for access to records of the South Carolina Department of Revenue under the South Carolina Freedom of Information Act, codified at S.C. Code Ann § 30-4-10, et. seq. The Department has extensively considered the requests and provides the following responses. The responses are numbered in correspondence with the numbered requests in Mr. Sloan's original letter. Nothing in this letter or the release of any documents constitutes an admission by the Department of any fault, liability, or other responsibility.

- 1 In response to an invasion of the Department's information technology systems in 2012, the Department formed a contract for services with Mandiant Corporation. The Department has enclosed a copy of this contract. The Department did not form such a contract in 2011.
2. The Department did not make any written solicitations or review any documents in deciding from whom to procure these services or what specific services to secure
- 3 The Department's determinations supporting the procurement of services from Mandiant Corporation were recorded in a Justification for Emergency Procurement document. The Department has enclosed a copy of this document.
4. The Department has not made any other determinations in connection with the procurement of services from Mandiant Corporation.
5. The Department did not use any documents about any consultants in procuring these services.

James G Carpenter, Esquire  
Page Two  
January 11, 2013

As we discussed by phone earlier this week, the Department was initially unsure as to exactly what documents Mr. Sloan's request was describing. As a result of our conversation, the Department has focused these responses on materials related to the network security breach

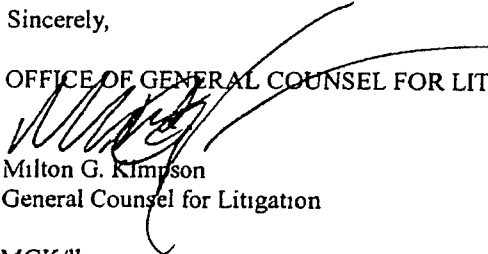
that the Department announced on October 26, 2012. Please let me know if these responses do not adequately address your client's requests or if your client desires additional documents.

The South Carolina Legislature has charged the Department with administering and enforcing tax laws in order to support a healthy and orderly state, and this responsibility entails maintaining openness and accountability. The Department undertakes its service with all due fidelity, and it appreciates your client's interest and willingness to consider the Department's decision making and performance. The Department sincerely thanks you and your client for your continued attention, cordiality, and patience in working with it, as it is indispensable to the Department's success in serving the State of South Carolina.

If you have any questions or concerns, you can contact me at [kimpsom@sctax.org](mailto:kimpsom@sctax.org) or (803) 898-5131. You can also contact Ben Tripp, an attorney in my office who is familiar with this matter, at [trppb@sctax.org](mailto:trppb@sctax.org) or (803) 898-5773.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION



Milton G. Kimpson  
General Counsel for Litigation

MGK/lbc

Encls.

# EXHIBIT D



ATTORNEYS AND COUNSELORS AT LAW

JAMES G. CARPENTER  
james.carpenter@carpenterlawfirm.net

JENNIFER J. MILLER  
jennifer.miller@carpenterlawfirm.net

L. WARREN CLAYTON, III  
warren.clayton@carpenterlawfirm.net

LICENSED IN S.C. & N.C.

January 14, 2013

Milton G. Kimpson  
General Counsel for Litigation  
South Carolina Department of Revenue  
P O Box 12265  
Columbia, SC 29211



Re *Sloan, et al v South Carolina Department of Revenue, et al*

Dear Milton:

Thank you for your January 11 e-mail, letter and response to our FOIA request.

My client does not request any information about Experian or SourceLink from the Department at this time.

I noticed that the Department's Determination to enable it to procure pursuant to SC Code Ann. § 11-35-1570 is not dated. Will this Determination apply to an automatic renewal of the procurement contract pursuant to its section 5? We would consider a renewal to be a separate procurement.

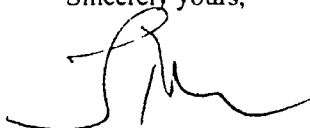
My client is interested in receiving a copy of some of the investigative reporting on the invasion, produced by the Department or Mandiant. He is likely to request it, unless the Department volunteers it in coming months.

My client has no interest in documentation related to the Department's efforts to deter future invasions.

My client's reimbursable costs on this matter are modest at this point. If the Department is willing to concede that its December 10 response to his FOIA request was insufficient to satisfy the requirements of the law, I propose that a quick Consent Order to conclude the suit will be appropriate.

Shall I draft one?

Sincerely yours,

A handwritten signature in black ink, appearing to read 'James G. Carpenter'. The signature is fluid and cursive, with a large initial 'J' and 'C'.

James G. Carpenter



ATTORNEYS AND COUNSELORS AT LAW

\*JAMES G CARPENTER  
james.carpenter@carpenterlawfirm.net

JENNIFER J MILLER  
jennifer.miller@carpenterlawfirm.net

L WARREN CLAYTON, III  
warren.clayton@carpenterlawfirm.net

\*LICENSED IN S C & N C

December 18, 2012

The Hon. Jeanette McBride  
P O Box 2766  
Columbia, SC 29202

Re *Sloan, et al v South Carolina Department of Revenue et al*

Dear Ms McBride

We enclose an original and one copy of the Civil Action Cover Sheet, a Summons, and a Complaint, and a Motion for Preliminary Injunction in the above-caption action

We also enclose a check (\$175) for the filing fees (\$150 for the Complaint, and \$25 for the Motion)

Please file-stamp the extra copy and return it to us in the enclosed self-addressed, postpaid envelope

Thank you very much for your help and cooperation. If you have any questions, please telephone me

Sincerely yours,

James G Carpenter

Enclosures

State of South Carolina

Court of Common Pleas

County of Richland

2008-CP-40-1038

Edward D. Sloan, Jr., et al. :

-VS-

:  
: TRANSCRIPT OF RECORD  
:

S.C. Department Of Revenue, :  
et al. :

February 6, 2013  
Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge.

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

James G. Carpenter, Esquire  
Attorney for the Plaintiffs

Milton Kimpson, Esquire  
Benjamin Tripp, Esquire  
Attorneys for the Defendants

Daphne D. Helms  
Circuit Court Reporter

1           **The Court:** All right. Now Sloan versus D.O.R.

2           **Mr. Kimpson:** Judge Cooper, if I might pass up a  
3 memorandum of law. Good morning, sir.

4           **The Court:** Good morning.

5           **Mr. Kimpson:** Thank you, sir. Good to see you. Of  
6 course, I have provided that to Mr. Carpenter.

7           **The Court:** I'm sorry?

8           **Mr. Kimpson:** I've provided that to Mr. Carpenter.

9           **The Court:** All right.

10          **Court Reporter:** Mr. Kimpson, you're definitely going to  
11 have to speak up when you start presenting your argument

12          **Mr. Kimpson:** Certainly.

13          **The Court:** Mr. Carpenter, the only thing in this file  
14 is the summons and complaint. Did you file something else?

15          **Mr. Carpenter:** With the summons and complaint I filed a  
16 motion for a preliminary injunction, Your Honor. I would  
17 expect it to be behind the summons and complaint. I have  
18 another copy if the Court needs it.

19          **The Court:** Come here. This is the only thing... This  
20 is literally the only thing in the file.

21          (Mr. Carpenter looks at the document at the bench.)

22          **The Court:** When did you file it? If you filed it  
23 yesterday, I don't have it---

24          **Mr. Carpenter:** Oh, no, no. I filed this with the  
25 summons and complaint.

1           **The Court:** Well, maybe it got in the...

2           **Mr. Carpenter:** The motion is very, very similar to the  
3 complaint itself. I have another copy, Your Honor.

4           **The Court:** Have you got a stamped copy?

5           **Mr. Carpenter:** Yes, sir.

6           **The Court:** Mr. Kimpson, well, you obviously were  
7 provided with something.

8           **Mr. Kimpson:** Yes, Your Honor. We are aware of the  
9 motion for a preliminary injunction, Your Honor.

10          **The Court:** Well, I'm not.

11          **Mr. Kimpson:** Well, of course, part of our argument is  
12 -- part of our argument is going to be, Your Honor, that we  
13 don't need to have this motions hearing today.

14          **Mr. Carpenter:** This is the file stamped copy of...

15          **The Court:** Did you hear what he said?

16          **Mr. Carpenter:** I heard what he said and I understand  
17 why he said it, and I'll address that.

18          **The Court:** Okay. I just didn't know if we needed  
19 something on the record -- I mean, if there's some agreement.

20          **Mr. Carpenter:** Well, we tried. We tried to -- we tried  
21 to resolve it all by agreement. We sent a couple of consent  
22 orders back and forth, but we were unable to. It comes down  
23 to---

24          **The Court:** All right. Well, let's---

25          **Mr. Carpenter:** It's a very narrow issue.

1           **The Court:** Well, start from the beginning.

2           **Mr. Carpenter:** Yes, sir. From the beginning, Mr. Sloan  
3 sent a FOIA request to the Department of Revenue asking for  
4 certain documents. He mailed it out on Monday,  
5 November 19th. He has a return receipt that is stamped by  
6 the post office November 23rd which they point out is the day  
7 after Thanksgiving and nobody was there, but the timing is  
8 not the real issue. On December 10 the Department of Revenue  
9 sent back a letter, which we have it as Exhibit B. to our  
10 complaint. I have extra copies here if the Court wants it.

11           **The Court:** What date?

12           **Mr. Carpenter:** December 10. That was within the 15  
13 business days required by the statute, but what they said was  
14 -- in the second paragraph of their letter they said, "If we  
15 are unable to locate, obtain, or release the requested files,  
16 you will be notified of the decision and the reasons for it."  
17 This is very typical or fairly common in how government  
18 agencies respond to FOIA requests, and part of that arises  
19 from the statute.

20           The statute requires that within 15 business days the --  
21 each public body shall within 15 days -- and I'm ellipsing  
22 (verbatim) -- doing an ellipsis of the statute. This is  
23 30-4-30. "Each public body shall within 15 days notify the  
24 person making such request of its determination and the  
25 reasons therefor." What the Department of Revenue did was

1 within 15 days they sent a letter that says: We will notify  
2 you of the decision and we will notify you of the reasons  
3 therefor, but they didn't say when they were going to do it.  
4 They basically gave themselves an unauthorized extension of  
5 time from what the statute requires. The statute requires  
6 that within 15 days the public body shall notify the person  
7 making such request of its determination and the reasons  
8 therefor, and they within 15 days said we will notify you of  
9 our decision and the reasons therefor. And we believe -- and  
10 that's the nub of the dispute, Your Honor.

11 They have since then provided the documents we asked for  
12 well beyond the 15 days, but the point that Mr. Sloan would  
13 like this Court to decide is: Does this letter that says "we  
14 will notify you" comply with the statute that says, "Within  
15 15 days the public body shall notify the requesting party of  
16 its determination and the reasons therefor"? We contend that  
17 this letter does not satisfy the statute, and we have  
18 requested a declaratory judgment.

19 Now, the statutes say that any citizen can seek  
20 declaratory and/or injunctive relief for a violation of FOIA.  
21 Injunctive relief, as Mr. Kimpson will soon argue, that  
22 there's -- there's not a point that we need an injunction to  
23 get the documents. What we need is declaratory relief that  
24 says this response did not fulfill the public body's  
25 obligation under FOIA. I think that would be an important

1 decision, not only for this case but for all the other public  
2 bodies who have---

3 **The Court:** I understand.

4 **Mr. Carpenter:** ---pretty much taken it on themselves to  
5 give themselves an unlimited extension of time just by  
6 writing a letter that says we will tell you when we feel like  
7 it. That's a slight exaggeration, but that's the effect of  
8 it. And, Your Honor, I think that's a case of great public  
9 importance because it's very widespread. I don't have  
10 statistics or anything else, but that's what they do. When  
11 you send a FOIA request, if they're so inclined they'll send  
12 a letter that says we'll tell you someday when we feel like  
13 it, and then they give themselves basically an unlimited  
14 extension of time simply by writing you a letter back instead  
15 of doing what the statute says is notifying you of the  
16 determination and the reasons therefor.

17 So what we need is a decision and the basis -- in the  
18 nature of a declaratory judgment. We filed our motion with  
19 the complaint---

20 **The Court:** That's the only relief you're seeking.

21 **Mr. Carpenter:** Yes. We filed a motion---

22 **The Court:** Not attorney's fees or---

23 **Mr. Carpenter:** Oh, yes, attorney's fees, of course.

24 Yes.

25 **The Court:** Well, that's -- that's why I'm asking you.

1           **Mr. Carpenter:** Yes. Yes, attorney's fees. The statute  
2 calls for attorney's fees, and at this point they're  
3 relatively modest. I was hoping Mr. Kimpson would say, well,  
4 let's go ahead -- since it's such a narrow issue, let's go  
5 ahead and argue it today. I don't anticipate he's going to  
6 say that. If he does, that would be great. But like I said,  
7 we filed the motion with the complaint before we got the  
8 documents, and now we have the documents but this issue still  
9 remains.

10           **The Court:** All right. Thank you. Mr. Kimpson?

11           **Mr. Kimpson:** If it may please the Court? Your Honor,  
12 if I might, I'd like to introduce Ben Tripp who is also with  
13 me from the department.

14           **The Court:** All right.

15           **Mr. Kimpson:** And let me apologize in the beginning for  
16 my voice. Your Honor, the problem, as Mr. Carpenter has so  
17 articulated, is that this is a motion for a preliminary  
18 injunction. There are certain standards in this state for  
19 issuing a preliminary injunction. What he also said,  
20 however, is that what he really wants is a decision on the  
21 merits, a declaratory judgment, that the department's  
22 response was not adequate. Your Honor, we would submit to  
23 the Court that that would be a decision on the merits of this  
24 case. We are not here today for a decision on the merits.

25           Now, we've submitted the memorandum. There are other

1 reasons. This is not a justiciable controversy. The  
2 department has already provided the document. I understand  
3 the issue that Mr. Sloan would like heard, but, Your Honor,  
4 we would ask this Court to deny what's before it today, the  
5 issuance of a preliminary injunction. If we need to then go,  
6 to court on the merits of this case, that's fine with the  
7 department. We'll be prepared to do that, but we would  
8 submit to the Court that it's not appropriate on a motion for  
9 a preliminary injunction to hear the merits of this case.

10 Your Honor, I would point to one further -- one thing  
11 further. Rule 40(h) of the Rules of Civil Procedure  
12 essentially says that no cases could be scheduled for a  
13 contested hearing on the merits until 120 days after the  
14 filing of the complaint. We're at about day 41. My 30 days  
15 to answer this complaint runs out today.

16 Now, we did file an answer last night, but, Your Honor,  
17 we -- it would be -- we would submit that it's inappropriate  
18 to decide the merits of this issue and to -- according to Mr.  
19 Carpenter, I have no knowledge of this that other state  
20 agencies routinely do this. I don't have any knowledge of  
21 this. But to the extent this is a matter of public interest,  
22 we would ask the Court that it's not appropriate to decide  
23 this based on the motion before you today. Thank you, Your  
24 Honor.

25 **The Court:** All right. Mr. Carpenter?

1           **Mr. Carpenter:** One other thing that I'll briefly  
2 respond to: Opposing counsel's argument is that in the  
3 findings and purpose under the FOIA act, the general assembly  
4 said toward this end, the provision of this chapter must  
5 be---

6           **Court Reporter:** Whoa, whoa, wait. Slow down. I'm  
7 sorry. Just start over. You were reading very fast.

8           **Mr. Carpenter:** Oh, I'm sorry.

9           **Court Reporter:** That's okay.

10          **Mr. Carpenter:** What I'm reading from is 30-4-15,  
11 findings and purpose of the FOIA statute. "Toward this end,"  
12 it says, "provisions of this chapter must be construed so as  
13 to make it possible for citizens or their representatives to  
14 learn and report fully the activities of the public officials  
15 at a minimum cost or delay to the person seeking access to  
16 the public documents or meetings."

17           I think a number of courts have read this to require  
18 that FOIA actions are heard much more quickly than an  
19 ordinary action, and to that end we would -- we would cite  
20 this particular statute as the basis for encouraging the  
21 Court to go ahead and rule either today or set it for a  
22 hearing very quickly so that we can have this heard with a  
23 minimum of costs or delay.

24          **The Court:** It's an aside, but is there not some  
25 consideration being given to your position in the legislature

1 at the present time?

2 **Mr. Carpenter:** I think they routinely take this up and  
3 it routinely gets ignored.

4 **The Court:** All right. Well, that's anecdotal. All  
5 right. Other than -- have you submitted a memorandum or  
6 anything in addition to the motion?

7 **Mr. Carpenter:** No, Your Honor. I was prepared to hand  
8 up copies of the relevant sections of the statute.

9 **The Court:** Well, I've got the statute, so...

10 **Mr. Carpenter:** All right. But it's a fairly simple  
11 straightforward issue I think, Your Honor.

12 **The Court:** Well, what about his position that it's not  
13 appropriate to issue a declaratory judgment without some  
14 factual findings or some testimony or some other evidence in  
15 the record when your motion is for a preliminary injunction?

16 **Mr. Carpenter:** Well, Your Honor, we both -- both  
17 submitted in response to the -- in support of the complaint,  
18 I submitted exhibits that show Mr. Sloan's letter, their  
19 letter in response. Then I quoted the statute. In their --  
20 in their motion they submitted much the same thing.

21 **The Court:** Wait a minute. Hold it. Their memorandum?

22 **Mr. Carpenter:** Their memorandum, yes, Your Honor. I'm  
23 sorry.

24 **The Court:** Okay. Go ahead.

25 **Mr. Carpenter:** They submitted the same letter from Mr.

1 Sloan as Exhibit A. I think it's the same photocopy, if I  
2 look at my handwriting. Exhibit B. is their same letter, the  
3 same as ours. Then they added a few other things that show  
4 what happened later on. But there's no dispute that Mr.  
5 Sloan sent them the letter in November, and they sent the  
6 letter back December 10 and they said we'll tell you -- we'll  
7 make a decision and we'll tell you the reasons for it.

8 **The Court:** You say there's no other evidence to be---

9 **Mr. Carpenter:** I can't think of any, Your Honor. Maybe  
10 Mr. Kimpson can, but I can't think of any other. The sole  
11 issue is that paragraph in their response didn't meet the  
12 statute, and to me it's fairly clear that it didn't.

13 **The Court:** Okay. Mr. Kimpson?

14 **Mr. Kimpson:** Judge Cooper, I'd point out -- and we have  
15 recited a long provision from the 2006 Sloan case. This case  
16 is moot. We have provided the documents.

17 **The Court:** Which Sloan case?

18 **Mr. Kimpson:** This is---

19 **The Court:** There are numerous Sloan cases.

20 **Mr. Kimpson:** I'm sorry, Your Honor. Sloan versus  
21 Friends of the Hunley.

22 **The Court:** Hunley.

23 **Mr. Kimpson:** This is the first Supreme Court opinion,  
24 the 2006 decision, where in that case by the time the case  
25 wound its way through the court, the documents had been

1 provided. The Court essentially agreed with the trial Court  
2 that there was no longer a judicial, excuse me, a justiciable  
3 controversy.

4 **The Court:** Right.

5 **Mr. Kimpson:** And declared the case to be moot. So  
6 there are legal arguments that need to be made. There's some  
7 factual arguments, factual presentations, that we would  
8 certainly want to present to the Court with regard to an  
9 attorney's fee issue, but, Your Honor, even more so, there  
10 are legal reasons why the case can't go forward because it's  
11 moot.

12 **The Court:** All right.

13 **Mr. Kimpson:** And, Your Honor, we would again assert  
14 that based on the prevailing case law, this is just not  
15 appropriate at the stage of a preliminary injunction. That's  
16 what we're here for today. Mr. Sloan filed a preliminary  
17 motion for a preliminary injunction. He brought us here, and  
18 based on what he filed, Your Honor, we would urge the Court  
19 not to grant the preliminary injunction.

20 **The Court:** All right. Anything further?

21 **Mr. Carpenter:** I'm familiar with the Sloan versus  
22 Hunley case, Your Honor. I dealt with it for five years.  
23 This case is different in that they've got an explicit  
24 statement that is to me an explicit contradiction of the  
25 statutory requirement.

1           **The Court:** All right. I'll take a look at their  
2 memorandum, and I'll let you know.

3           **Mr. Kimpson:** Yes, Your Honor. Thank you.

4           **Mr. Carpenter:** Thank you, Your Honor.

5           (Whereupon, the proceedings were concluded. There were  
6 no exhibits introduced.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

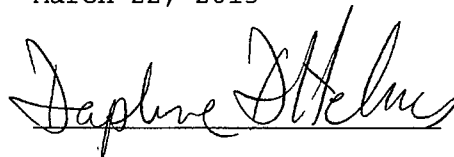
24

25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 6th of February, 2013.

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

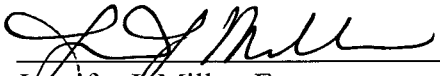
March 22, 2013

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above the typed name.

Daphne D. Helms, court reporter

Certificate of Counsel

Appellant/Respondent certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Jennifer V. Miller, Esq.  
S.C. Bar No. 13611  
Carpenter Law Firm, PC  
819 E. North St.  
Greenville, SC 29601  
(864) 235-1269  
Attorney for Appellant/Respondent

**RECEIVED**

AUG 19 2013

**SC Court of Appeals**