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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Daniel Coble

Circuit Court Case No. 2024-CP-40-03600

Appellate Case No. 2026-001276

Zillow, Inc., Respondent,

v.

Richland County, South Carolina, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. THE CIRCUIT COURT CORRECTLY HELD THAT ZILLOW HAS STANDING TO ENFORCE THE FREEDOM OF INFORMATION ACT.
2. THE COUNTY IMPROPERLY DENIED ZILLOW'S FREEDOM OF INFORMATION ACT REQUEST WHEN IT FAILED TO PROVIDE ZILLOW ANY ELECTRONIC DATA, INCLUDING THE ELECTRONIC DATA THE COUNTY ROUTINELY PROVIDES TO SPATIALEST EACH NIGHT, AND DISINGENUOUSLY DENIED THE REQUEST WHEN IT DELIBERATELY MISREAD ZILLOW'S FOIA REQUEST.
3. THE CIRCUIT COURT CORRECTLY HELD THAT THE COUNTY ACTED IN BAD FAITH WHEN IT FAILED TO PROVIDE ZILLOW ANY ELECTRONIC DATA, INCLUDING THE ELECTRONIC DATA THE COUNTY ROUTINELY PROVIDES TO SPATIALEST EACH NIGHT, AND CORRECTLY AWARDED ZILLOW ATTORNEY'S FEES AND COSTS, WITH THE AMOUNT TO BE DETERMINED, AS THE PREVAILING PARTY.

STATEMENT OF THE CASE

This is an action by Zillow, Inc. (“Zillow”) against Richland County, South Carolina (“Richland County” or the “County”) for certain “public records” under the South Carolina Freedom of Information Act, S.C. Code 30-4-10 et seq. (“FOIA”, or the “Act”). The County is a “public body” under FOIA and is required to provide public records under that statute upon request unless exempted by the statute itself. The specific request was for “an electronic copy (i.e. Excel, Text, CSV, etc.) of the 2023 Assessment Files, including property appraisal information, sometimes referred to as ‘CAMA Data’ for all parcels in Richland County.” It provided a list of fields that should be included, if available. Susan Noto, who requested the information for Zillow, testified about this at trial. The County denied the request. (R. p.) Mar. 31 Tr., P. 140, l. 24 – P. 144, l. 5; P. 144, l. 12 – P. 148, l. 21; P. 152, l. 23 – 153, l. 5; P. 153, l. 15 - P. 156, l. 6. (Complaint, Paragraphs 6 & 8, Exhibits A & C).

The first request was made on May 16, 2024. It was directed to the Richland County Assessor. (R.p.) (Plaintiff Ex. #3) (Complaint, Paragraph 6, Exhibit “A”). He responded that the request should be made to the Richland County Ombudsman Office. (R.p.) (Plaintiff Ex. #3) (Complaint, Paragraph 7, Exhibit B.). Zillow sent the request as instructed the next day. (R.p.) (Plaintiff Ex. #3) (Complaint, Paragraph 8, Exhibit C).

On May 22, 2024, the Richland County Ombudsman denied the FOIA Request, stating that “there are no responsive public records.” (R.p.) The same day, the Ombudsman later responded, again denying the FOIA request but this time stating that “[i]nformation related to assessment and ownership of Richland County property records are readily available public information and can be found through two different websites:

<https://property.spataleest.com/sc/richland#/> and

[https://www.richlandmaps.com/apps/dataviewer/.](https://www.richlandmaps.com/apps/dataviewer/)” (R.p.) (Plaintiff Ex. #3) (Complaint, Paragraph 9, Exhibits D and E).

On June 4, 2024, Zillow sent an email to the Richland County Ombudsman explaining that Richland County’s website does not contain all the public information requested and asked her to respond fully to its FOIA request. (R.p.) (Plaintiff Ex. #3) (Complaint, Paragraph 11, Exhibit F).

On June 10, 2024, the Richland County Ombudsman responded, stating that “a public body is not required to compile and create public records, in any form, to produce the type of data requested and Richland County, therefore, has no additional responsive records”, and offered no further explanation regarding the missing information. (R.p.) (Plaintiff Ex. #3) (Complaint, Paragraph 12, Exhibit G).

Zillow filed suit on June 12, 2024, seeking a court order for the requested public records, and attorneys’ fees and costs for enforcing its rights. (R.p.)

Richland County answered on July 22, 2024, and included a counterclaim and request for a declaratory judgment. (R.p.) (Answer to Complaint, Counterclaim and Request for Declaratory Judgment (“Answer”).

In its Answer, the County admitted that “Plaintiff is a ‘person’ under FOIA.” (R.p.) (Answer Paragraph 4). It also admitted that “it provided Plaintiff with an electronic copy of the Richland County Annual Assessment File prior to 2022.” (R.p.) (Answer, Paragraph 15).

Richland County set up a myriad of defenses. These included standing, privacy, prohibition, creation of electronic record, improper purpose, commercial solicitation and good faith. (R.p.)

Zillow replied to the County's counterclaim and request for declaratory judgment on September 18, 2024 with a denial and additional defenses. Among other things, it pointed out that production after redaction is the requirement under FOIA to handle proper statutory exemptions - - not wholesale withholding of everything. It asserted defenses under the South Carolina and United States Constitutions, and that it has standing. It also asserted estoppel and charged the County with bad faith. (R.p.)

A year later, on September 15, 2025, Richland County moved for summary judgment under Rule 56, SCRCPP. (R.p.) (Motion for Summary Judgment on the Complaint and on Richland County's Counterclaim, P.1).

On December 4, 2025, Zillow served the Plaintiff's Memorandum in Opposition to Motion for Summary Judgment. In response to the County's argument about standing, Zillow noted that Zillow is a "person" as defined in FOIA and quoted Article I, Section 9 of the South Carolina Constitution, which states, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." (R.p.)

Then Richland County moved to amend its Answer to withdraw its admission that Zillow is a "person" under FOIA. (R.p.) (Motion to Amend Answer to Complaint, Counterclaim and Request for Declaratory Judgment).

The Hon. Jocelyn Newman heard the County's motion for summary judgment on January 6, 2026, took it under advisement, and denied it two days later, January 8, 2026. (R.p.)

The Hon. Daniel Coble heard the County's motion to amend on February 3, 2026 and entered an order granting it on February 6, 2026. (R.p.)

A bench trial began before Judge Coble on March 31, 2026 and concluded on April 2, 2026. He then received proposed orders from both parties.

On May 8, 2026 Judge Coble entered an order granting Zillow the requested relief, including attorney's fees and costs in an amount to be later determined. (R.p.) On May 28, 2026, Richland County moved to alter or amend. (R.p.) On June 2, 2026, he denied that motion. (R.p.) Richland County served and filed its Notice of Appeal with the Court of Appeals on June 5, 2026, and with the Richland County Clerk of Court June 8, 2026. (R.p.)

STANDARD OF REVIEW

“A declaratory judgment action under the FOIA to determine whether certain information should be disclosed is an action at law.” *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165 (Ct. App. 2003) (citing *S.C. Tax Comm’n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994)). In an action at law tried without a jury, this Court reviews the lower court only to correct errors of law. *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998). The trial court's factual findings will not be disturbed on appeal unless there is no evidence in the record that would reasonably support the findings. *Harkins v. Greenville County*, 340 S.C. 606, 621, 533 S.E.2d 886, 893 (2000).” *Seago v. Horry County*, 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008).

“The decision on whether to award attorney's fees [under FOIA] is discretionary in nature.” *Campbell*, 354 S.C. at 289, 580 S.E.2d at 170. We will not disturb this decision unless the circuit court abused its discretion. *Sloan v. Friends of Hunley, Inc., (Friends II)*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” *Id.* (quoting *Kiriakides v. Sch. Dis. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009).” *Brawley v. Richland County, S.C.*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2025).

“The appellate court may affirm any ruling, order or judgment upon any ground appearing in the record on appeal. Rule 220(c), SCACR; *see Law v. S.C. Dept. of Corrs.*, 368 S.C. 424, 629 S.E.2d 642 (2006) (stating the Supreme Court may affirm the trial court based on any ground found in the record). A respondent may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling – regardless of whether those reasons were presented to or ruled upon by the lower court – and the court may rely on them or any other reason appearing in the record to affirm the lower court’s judgment. *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).” Appellate Practice in South Carolina, Jean Hoefer Toal, et al. (3rd Ed. 2016).

The qualification of an expert witness and the admissibility of an expert’s testimony are matters within the trial judge’s discretion. An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support. *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344, 345 (1995) (citations omitted).

COUNTER-STATEMENT OF FACTS

1. INTRODUCTION

Richland County’s “opt-out” program is the reason that it stonewalled Zillow’s request under the Freedom of Information Act, S.C. Code 30-4-10 et seq. The County does not mention it in its brief in hope that it will be overlooked because “opt-out” is illegal. It is a violation of FOIA. It was created out of thin air in 2002 by a Richland County administrator. Until recently, it was not applied by the County to deny FOIA requests. (R.p.) Apr. 1 Transcript, P. 28, l. 19 - P. 29, l. 7. That began when a new Director arrived in the County’s Information Technology Department. (R.p.) Apr. 1 Transcript, P. 49, ll. 20-23; P. 50, ll. 9 – P. 51, l. 17. It was not adopted

by County Council. It is not a County policy. (R.p.) Apr. 1 Transcript, P. 54, ll. 3-16; P. 38, l. 20 – P. 40, l. 20. It is a renegade violation of law.

Under “opt-out” a Richland County real property owner can elect to withhold “public records” concerning its property that are required to be disclosed under FOIA. The County then decides what information to withhold; the property owner does not. The owners of approximately 10,000 real property parcels in Richland County have elected to “opt-out”, out of a total of approximately 180,000 real property parcels in the County. (R.p.) Apr. 1 Transcript, P. 36, l. 1 – P. 38, l. 19.

It would be bad enough if Richland County had limited its refusal to the approximately 10,000 parcels that were “opted out”. It did not. Instead, it used “opt-out” to deny Zillow’s request for anything.

Aware that “opt-out” cannot serve as a defense, Richland County resorted to a host of other excuses. Its arguments concerning the law were rejected by the Hon. Jocelyn Newman on the County’s motion for summary judgment. (R.p.) Of course, the County’s arguments on the law were also rejected by the Hon. Daniel M. Coble in his order after trial, now on appeal. (R.p.) Both judges were presented lengthy briefs by the County, and both rejected its arguments. Judge Coble also rejected the County’s distorted version of the facts. (R.p.)

Judge Coble’s order on appeal, which spans 12 pages, correctly addresses the law and facts in detail, thereby making a lengthy brief by Zillow unnecessary.¹ (R.p.) There are, however, a few matters that deserve mention.

¹ Zillow adopts the Court’s Order on appeal as to the facts and law stated therein.

2. ZILLOW’S EXPERT AND SUMMARY OF EVIDENCE

The testimony of Zillow’s expert, Christopher Dunn, is not essential. It is, however, useful to summarize the case. Richland County’s own witnesses, the Assessor Fred Descy and I.T. Director Brian Fitzgerald, provided the evidence in their depositions and at trial to support Zillow’s case and Judge Coble’s order. (R.p.) Mr. Dunn was qualified by the court as an expert. His credentials covered 24 pages of direct testimony, 17 pages of cross-examination, 7 pages of questioning by the court, two affidavits and his C.V. (R.p.) (Mar. 31 Transcript P.5, l .18 - P.51, l. 16; Pre-trial Exhibits #1, #2 and #3). In brief, he is trained as a lawyer and for decades has worked regularly with CAMA data and GIS systems. His credibility is above reproach. While in the military he had a top-secret security clearance, a critical nuclear weapons design information security clearance, and was assigned to protect the President of the United States. (R.p.)

THE COURT: What is your ultimate opinion or your ultimate - - the reason you were you’re hired to do this, to say was.

A. Well, I was hired to investigate, and I was allowed to find my own conclusions. And my conclusion is, they have the data set that matches Zillow’s request, and it would be a 10-minute thing to make a copy of it.

THE COURT: So they, Richland County, have the data set request, as done pre-2020 or they had turned it over before.

THE WITNESS: Yes, sir. Yes, sir.”

Mar. 31 Transcript P. 45, l. 25 – P. 46 – l. 10.

Mr. Dunn then explained to the court how he knew that. Mar. 31 Transcript P. 46, l. 11 - P. 51, l. 8. He finished with a summary.

“THE COURT: And so, the information that you have used starting in your - - beginning of your career, to this day, even though it might be in Missouri or nationwide, is it still translatable or transferable, your knowledge, to this type of data for Richland County.

THE WITNESS: Absolutely, sir.

THE COURT: Based on all of your experience at (crosstalk)?

THE WITNESS: Yes, sir. I wouldn't be here if it wasn't."

(R.p.) Mar. 31 Transcript, P. 49, ll. 13-22.

The Court then qualified him as an expert on the ultimate issue. (R.p.) March 31 Transcript P. 52, l. 14 – P. 54, l. 23.

"THE COURT: I'm going to deny the motion in limine to exclude him as an expert. I find he's qualified in the field of Geographic Information Systems and geospatial technology. Number one, it will assist the trier of fact as to a layperson understanding the ultimate issue opinion that he is going to state, which is about this data set. If the County could turn over the data set in that - - in its form, without having to create or prepare anything, and I think that's well within his knowledge as an expert.

I find he is qualified in these fields."

(R.p.) Mar. 31 Transcript P. 52, ll. 14-23; P. 28, ll. 10-19; P. 66, l. 25 - P. 67, l. 20.

The court allowed all Mr. Dunn's pretrial testimony and arguments to be incorporated into the trial itself. (R.p.) Mar. 31 Transcript P. 64, l. 4 – P. 65, l. 12; P. 65, l. 24 – P. 67, l. 20.

The first opinion that Mr. Dunn offered at trial was that Richland County would not have to create an electronic record to fulfill Zillow's FOIA request.

"Q: Mr. Dunn, Counsel for Richland County just presented in her opening statement to the Court Richland County's contention that it will have to create an electronic record where one does not exist in order to comply with Richland County's Freedom of Information Act request. Did you hear her say that?

A. I did, sir.

Q. In your work as an expert witness in this case, did you undertake to examine that issue?

A. I did, sir.

Q. And do you have an opinion about that?

A. I did. I believe the record that Zillow requested exists in multiple different places and formats and would meet your needs. And I believe - - I'm sure I found those documents.

Q. And so, would Richland County have to create an electronic record where one does not exist in order to (crosstalk)?

A. No. Not at all."

(R.p.) Mar. 31 Transcript P. 70, l. 24 – P. 71, l. 14.

Mr. Dunn followed by explaining his conclusions and the evidence that he gathered in support of his conclusions. (R.p.) Mar. 31 Transcript P. 71, l. 15 – P. 102, l. 19; P. 103, l. 17 – P. 104, l. 23.

What Mr. Dunn found was that Richland County deliberately restricts access to its CAMA data, which is what Zillow requested. (R.p.) Mar. 31 Transcript, P. 93, l. 6 – P. 94, l. 12.

Q: You mentioned that there are roughly 200,000 parcels.

A: I saw that in one of the depositions, (indiscernible).

Q: In Richland County.

A: Yes, sir.

Q: And when you look at the data in Richland County that's on their website, it shows what kind of data is available for each parcel. Except for CAMA data, all the data is shown for the 200,000 parcels. Is that right?

A: Could you rephrase that, sir?

Q: Let me do it the other way, then, You said that, on the Richland County website, you're only able to access 50 parcels, if you want CAMA data.

A: In the GeoServer, you can only access 50 parcels. You can access every parcel in Richland County, if you go through the Spatialist website, but you can only get it one record at a time.²

Q: Right.

A: And Zillow was requesting, basically, a data dump with all of the CAMA data in a file.

Q: But if you want other data from Richland County, as opposed to CAMA data, you don't have to get it one parcel at a time, do you?

A: You are correct, sir. It's - - they make everything available that I could tell. I didn't look at every single layer, but I did open multiple layers just to see if there were full layers. Like, school district, did it cover all of Richland County? Did sewer districts, did it cover all of Richland County? They did. And so all of those data sets appear to be fully functional and have not been edited down.

Q: So it's only the CAMA data that Richland County has restricted access to. Is that right?

A: That's correct.

Q: And if you go on the website, you also have the problem of the fact that some of it is not even there because it's been quote, "opted out," end quote.

A: I did find one of the opted-out record. I was looking last night, just randomly clicking on parcels in Spatialist, and I did find one opted out parcel."

(R.p.) Mar. 31 Transcript, P. 93, l. 6 – P. 94, l. 18

A: ... "You can ask that data set sophisticated questions and do analysis on it. But if you only can get it one parcel at a time, that's hindering the usefulness of the data set."

(R.p.) Mar. 31 Transcript, P. 115, ll. 21-24

² Spatialist is sometimes incorrectly spelled in the transcripts as Spatialist. For ease of reading, Zillow has left Spatialist spelled as it is in the transcripts.

Fred Descy, the Richland County Assessor, and Brian Fitzgerald, Richland County's Chief Information Officer, confirmed for Mr. Dunn that Spatialist scrubs the data under the County's "opt out" program before placing it on the Internet. (R.p.) Mar. 31 Transcript, P. 96, l. 12 - P. 104, l. 23.

"Q: Now the Richland County assessor is a gentleman named Fred Descy. Is that correct?

A. I believe so, yes, sir.

Q: And did you have the occasion to read his deposition?

A. I've read it twice.

Q: Does his deposition testimony support your opinion?

A: Well, there's one place in there where he says that, yes, this data set exists, but it contains information Richland County would prefer not be disclosed because it's opted out. So the full data set is confirmed to exist as one file, as Mr. Descy says in the deposition. But then they get hung up on the opt out."

(R.p.) Mar. 31 Transcript, P. 96, ll. 12-23.

"Q: Did Mr. Descy say that their - - the Richland County, through their Harris Govern system exports the entire data set to Spatialist?

A: Yes, sir.

Q: Did he say they could also export it to you?

A: Yes.

Q: And Spatialist does the opted out information - - -

A: Right - - -

Q: Opts it out?

A: Apparently, Richland County sends a daily update of those Richland County citizens who've exercised the opt out option through their portal and their webmail. And so, somehow Spatialist redacts that record or does some

kind of program. I mean, it's not like they're sitting there programming. It's – I'm sure it's an automated action.

Q: And did he say the Harris could send it to us the same as they send it to Spatialist?

A: Yes.

Q: Unopted out?

A: Unopted out.

Q: The full data set.

A: Yes.”

(R.p.) Mar. 31 Transcript, P. 97, l. 12 – P. 98, l. 8.

Fred Descy's deposition was read at trial. It confirmed Mr. Dunn's description. Mr. Descy testified that the information requested by Zillow was available and could be sent to Zillow. Nothing was private. It was withheld only because of the County's "opt out" cloak.

(R.p.) April 1 Transcript, P. 16, l.8 – P. 27, l. 16.

“Q: Yeah. Let me give you the list. Here's the list. And just so we can be clear about it, it's Exhibit A to the complaint.

A: So the - - a report would have the parcel number, account numbers, owner name, address, mailing address, property location, tax district, a use code, a subdivision code, the most recent deed book and page - - not all - - a market value, an assessed value for the land improvements, a taxable value for the land and improvements, which is not on this list. The lot size, year built, living area - - those would be fields off the top of my head that definitely a report would have.

Q: Would it have a total assessed value?

A: Yes. Yes. Sorry, I meant to say that. I said the two parts, but total assessed value and also a total taxable value, which is not on your list.

Q: Okay. Anything else that comes to mind?

A: No.

Q: So could Zillow get a report for that from the assessor's office?

A: That report would exist.

Q: And it would exist for all the parcels in Richland County.

A: Correct. All the taxable parcels in Richland County.”

(R.p.) April 1, 2026 Transcript, P. 25, ll. 1-22

Brian Fitzgerald, Richland County’s Chief Information Officer was in accord.

“Q: When you say both of those depositions, did you also read another deposition besides Mr. Descy’s?

A: Mr. Fitzgerald, yes, sir.

Q: I’m sorry, who?

A: Mr. Fitzgerald’s deposition.

Q: Brian Fitzgerald?

A: Yes, sir.

Q: And he is who?

A: He’s the Deputy CIO, I think.

Q: Did he also confirm that they could provide - - that the County could provide Zillow the same data?

A: They both confirmed that the - - the file you requested existed, but their contention was, because it had opt out people in it, that they couldn’t provide it.

Q: Did he say that they could provide us the same Harris Govern file that they provided to Spatialist?

A: Yes, they did.

Q: Without the opt out data? Before - - before the (crosstalk) - - -

A: Yes, before - - before editing, yes.”

(R.p.) Mar. 31 Transcript, P. 104, ll. 4-23.

Mr. Fitzgerald's deposition, which was read at trial, confirmed this.

“Q: Can the County provide any information to Zillow on a bulk basis concerning property tax records - - I'm sorry, property assessor records.

A: We could provide what we send Spatialist.

Q: And how many fields does that include for each property?

A: I don't know offhand, but I know it's not 37.

Q: Do you have a rough idea of how many it is?

A: Not offhand.

Q: But can it be done?

A: We could provide the file that we provide Spatialist, files that we provide Spatialist.”

(R.p.) April 1, 2026 Transcript, P. 87, ll. 5-15.

The full record is sent by the County to Spatialist, along with a list of what is to be “opted out”. Spatialist then removes the “opted out” data and puts the rest on a website for the County.

(R.p.) That data is accessible only one parcel at a time for the entire set of almost 200,000 parcels; and the County has not even bothered to ask Spatialist if the data on the website could be provided in bulk form. (R.p.)

“Q: So Spatialist - - so the County sends over to Spatialist property information that is unredacted.

A: That's right.

Q: And it also sends to Spatialist a list of people who have said they want their information opted out.

A: That's right.

Q: And then Spatialist takes those two lists and creates what?

A: The public viewer.

Q: Which is what?

A: The website where people can view assessor records.

Q: So they can - - Spatialist takes those records and creates the ability for people to go online and look at records one by one to see records that have not been opted out and records that have been opted out. Is that right?

A: Yes. they provided records for opted out and no-opted out record, some fields of which have been redacted for opted out records.

Q: So has anyone asked Spatialist if they can provide this information in bulk form so people don't have to go to property - - by property online and look for it?

A: Not that I'm aware of."

(R.p.) April 1, 2026 Transcript, P. 86, ll. 2-23.

Mr. Dunn testified that providing Zillow a copy of the complete file would have been simple. Mar. 31 Transcript P. 98, l. 9 – P. 102, l. 14.

"Q: So, let me ask you this. I've got in my hand a document that's in paper form.

A: Yes, sir.

Q: If I want to get a copy of it, I go over to a Xerox machine, and I lay it on a Xerox machine, and I press the button, and a copy comes out, another piece of paper.

A: Mm-hmm (affirmative).

Q: When Zillow wants an electronic copy of the camera (sic) [CAMA] data that requested in its Freedom of Information Act request, what does the County have to do in order to provide that copy in an electronic form?

A: Okay. It just depends upon where the copy they want to copy is located and the format it's located in. It could be in the Harris software, and they would go - - there's - - nobody makes data base software that doesn't allow you to export a copy of the database. So there's got to be a procedure for that. It could be in the Esri (sic) [ESRI] software.

Q: Can you continue your answer?

A: Sure. So this data exists. More than likely there's a code on that data that says when it was last updated, when it was last created, you know, various attributes that you'd find on any Windows file. And these are all Windows software packages. And so, that you just decide on the set you were going to share. And you know this set exists several different places.

And so you would go, and it could be as simple as right clicking on it, and a little button box pops up that says send to email recipient, or store on a thumb drive or store in OneDrive, store in Dropbox. There are multiple different ways to just make a copy of that data set and share it.

A: And it's just that simple. I had a case in Iowa one time, where I was asked to figure out how long it would take me to copy, basically, the exact same CAMA data set and transfer it to a thumb drive.

And it was a really large file, a couple of gigs, and I think it took like three minutes. And we weren't creating a new file; we were just making a copy of the existing file."

(R.p.) Mar. 31 Transcript, P. 99, l. 17 – P. 102, l. 14

The information that Zillow requested was readily available. It could have been easily copied and sent. Instead, the County deliberately chose to withhold it because of its "opt-out" program, in complete disregard of FOIA.

3. HARRIS EXCUSE EXPLODED

Mr. Descy's deposition exploded the County's excuse that the Harris system prevented compliance with Zillow's request.

"Q: So how does Spatialist interact with Harris, or does it?

A: Spatialist doesn't interact with Harris. We send a file from our system, nightly. We send multiple files nightly to Spatialist, and they merge them all together and then opt out the fields that need to be opted out.

(R.p.) April 1 Transcript, P. 44, l. 25 – P. 45, l. 4

At trial, on cross-examination, Mr. Descy confirmed that the County's switch to the Harris software in 2022 had nothing to do with the County's decision to deny Zillow's FOIA request.

“Q: Did Richland County, anywhere in its response to Zillow say or write that the reason they're responding the way they are is because of something involved in its relationship with Harris Govern?

A: No.

Q: Nothing about Harris Govern in the response by Richland County, is there?

A: Correct.

Q: So Richland County is not here today to tell the Court that the reason that Zillow got the response it did is on account of Harris Govern. Is that right?

A: Correct.”

(R.p.) April 2 Transcript, P. 60, ll. 12-23

ARGUMENTS

1. THE CIRCUIT COURT CORRECTLY HELD THAT ZILLOW HAS STANDING TO ENFORCE THE FREEDOM OF INFORMATION ACT

A. ZILLOW IS A “PERSON”

In Paragraph 4 of its Answer, Richland County admitted that Zillow is a “person”. That was in response to Paragraph 3 of the Complaint, where Zillow alleged that it is a Washington corporation and a “person” under FOIA. S.C. Code 30-4-20(b). (R.p.) It was only after receiving Zillow's brief in opposition to the County's motion for summary judgment – a year and a half after the Complaint was filed, and a week before argument on the motion – that the County moved to amend its Answer to deny that Zillow is a “person.” (R.p.) Clearly, it knew that its

arguments for summary judgment were going to fail and it was grasping at anything for an argument. For the reasons recited in Judge Coble's order, Zillow is a "person" both under FOIA and the United States and South Carolina Constitutions, especially Article I, Section 9 of the South Carolina Constitution. (R.p.)

B. CONSTITUTIONS AND STATUTES

Richland County ignores the plain language of Zillow's fourth defense in its reply to the County's counterclaim. It reads "The Counterclaim violates the United States Constitution, including but not limited to the provisions guaranteeing equal protection, due process and privileges and immunities." (R.p.) That language is all inclusive. Richland County could have replied under Rule 8(c), SCRCP and filed a motion for a more definite statement under Rule 12(e), SCRCP. It did neither. It knew that its counterclaim was constitutionally infirm.

The Privileges and Immunities Clause of Article IV, Section 2 of the United States Constitution is important to give historical perspective to the principle that access to the courts is a fundamental constitutional right in America.

That was articulated over 200 years ago by Mr. Justice Bushrod Washington in the landmark case *Corfield v. Coryell*, 6 Fed. Cas. 546 (1823). He described that provision as protecting "those privileges and immunities which are, in their nature fundamental; which belong, of right, to the citizens of all free governments ..."; and then among them specifically listed the right "to institute and maintain actions of any kind in the courts of the state."

The right of access to the courts is so fundamental that it is protected by the Fourteenth Amendment, and the First Amendment, which are applicable to corporations. That is the importance of the language from *Missouri Pacific R. Co. v. Clarendon Boat Oar Co., Inc.*, 257 U.S. 533, 535 (1922). Also, the South Carolina Constitution, Article 1, Section 3, mandates, "The

privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” This includes the same access to the courts for South Carolina citizens and United States citizens, regardless of legislation, or interpretation of legislation, that may conflict.

McBurney v. Young, 569 U.S. 221 (2013) is of no help to Richland County. Virginia’s Freedom of Information Act, which was at issue in that case, did not extend any rights to non-Virginians. That is different from South Carolina’s FOIA, which extends to “persons” and specifically includes “corporations” within the definition of “person.” S.C. Code 30-4-20(a) and 30(A)(1). In fact, *McBurney* relied on *Corfield* in its discussion of fundamental rights.

Zillow welcomes Richland County’s concession that it has standing under South Carolina’s Uniform Declaratory Judgment Act to sue for violation of FOIA. S.C. Code 15-53-10, et seq., Appellant Brief, page 20. That supports standing for Zillow under FOIA. It would make no sense for South Carolina to give standing with one hand but take it away with the other. Additionally, neither the United States Constitution nor the South Carolina Constitution allow for unequal treatment, as discussed in this Brief and the Order on appeal. Providing a right to sue that does not include a right to attorney’s fees is demonstrably unequal to a right to sue that does include attorney’s fees. The United States Constitution and the South Carolina Constitution forbid relegating Zillow to the South Carolina Uniform Declaratory Judgment Act. It has standing under FOIA.

Furthermore, the section of FOIA that provides for attorney’s fees and costs is not restricted to citizens. S.C. Code 30-4-100(B). It refers to “a person or entity seeking relief” under FOIA. It states that if that “person or entity seeking relief under this section prevails”, the

court may then award fees and costs. The only way that “a person or entity” can prevail is if it files suit. FOIA allows suits by a “person”; and under the plain language of FOIA, Zillow is a “person.” It has standing under the statute. S. C. Code 30-4-20(b).

**C. THE COUNTY SUED ZILLOW WHEN IT FILED COUNTERCLAIMS
AGAINST ZILLOW PURSUANT TO S.C. CODE 30-4-110(A), WHICH
ALSO PROVIDES ZILLOW STANDING**

Zillow also acquired standing in this lawsuit when the County sued Zillow in its Answer and Counterclaims and in its Amended Answer and Counterclaims (paragraph 50 et. seq. in both) pursuant to S.C. Code 30-4-110(A). (R.p.) When a public body, like the County, files an action pursuant to S.C. Code 30-4-110(A) in an attempt to not provide public records via a FOIA request, the FOIA requester is necessarily a party to the lawsuit with standing to seek the files requested in the FOIA request. Zillow is that FOIA requester with a specific interest in the underlying records or information with a right to request a hearing with the court or to intervene in an action previously filed. S.C. Code 30-4-110(B). The statute provides Zillow with remedies, including equitable relief, S.C. Code 30-4-110(C)(1), actual or compensatory damages, S.C. Code 30-4-110(C)(2), or “reasonable attorney’s fees and other costs of litigation specific to the request, unless there is a finding of good faith” on the part of the public body. S.C. Code 30-4-110(C)(3). Not only was the County not found to have acted in “good faith”, it was affirmatively declared to have acted in bad faith by the circuit court. The County cannot on the one hand assert counterclaims against Zillow while simultaneously asserting that Zillow has no standing as the requester of the FOIA request on the other hand. That is non-sensical. Additional evidence that the County intended and consented to Zillow being a party to the action is that the County asserted the counterclaims against Zillow specifically and that it seeks attorney’s fees and costs

from Zillow specifically, pursuant to S.C. Code 30-4-110. (R.p.) (Prayer for Relief p. 16). The County is the master of its own complaint.

Zillow had standing when it filed its action, and also acquired it by virtue of the County's counterclaims. Because the Appeals Court may affirm upon any ground, standing should be affirmed pursuant to S. C. Code 30-4-100, S. C. Code 30-4-110(B), or both.

D. WHY THIS CASE IS IMPORTANT TO SOUTH CAROLINIANS AND SUPPORTS ZILLOW'S STANDING.

If Richland County is allowed to deny Zillow's request, FOIA for all South Carolinians will be gutted. For that reason, Zillow is doing exactly what the General Assembly intended and the appellate courts in South Carolina have upheld. By this lawsuit, it is opening the door for everyone. Otherwise, that door would remain closed because Richland County has shown that it will spend limitless amounts of taxpayers' money to keep it shut. Even if the court awards fees and costs, as it has done in this case, few individuals can advance large sums of money for legal fees and expenses, especially for the years involved in this type of litigation.

Additionally, the County admitted it could have easily sent to Zillow 85% of Zillow's FOIA request. The County Assessor testified that the Spatialtest files included roughly 85% of Zillow's FOIA request. Appellant Brief, page 10; (R.p.). Instead of sending the roughly 85%, the County sent none. It continues to justify its denial by wrongly stating that, "because the County does not have a public record – neither a hardcopy nor an electronic version – containing or compiling all the existing information Zillow asked for, it properly denied the FOIA request." Appellant's Brief, page 11. All or nothing was the County's response when it denied the FOIA request and is the County's current standard for denying FOIA requests. All or nothing. This is bad faith and elevates Zillow's public importance lawsuit as a clear benefit to all FOIA requesters because the level of precision the County required belies the fact that the public does

not always know the exact documents the public body has or does not have – with FOIA requests and responses providing that information and clarification to the public.³

Zillow is providing a huge service to the people of South Carolina, and for free. Not only does it provide market data, which is valuable to purchasers and sellers alike, it is dismantling spurious defenses to providing public records under FOIA and thereby opening the door to all.

(R.p.) Apr. 1 Transcript P. 131, ll. 18-25; P. 110, ll. 9-16; P. 112, l. 3 – P. 113, l. 3; P. 113, l. 20 - P. 114, l. 21; P. 123, ll. 2-11; P. 132, l. 21- P. 133, l. 20; P. 135, l. 16- P. 136, l. 13; P. 137, l. 13 – P. 138, l. 7; Mar. 31 Transcript P. 140, l. 20 - P. 143, l. 24; P. 168, l. 24 – P. 171, l. 8.

2. THE COUNTY IMPROPERLY DENIED ZILLOW’S FREEDOM OF INFORMATION ACT REQUEST WHEN IT FAILED TO PROVIDE ZILLOW ANY ELECTRONIC DATA, INCLUDING THE ELECTRONIC DATA THE COUNTY ROUTINELY PROVIDES TO SPATIALEST EACH NIGHT, AND DISINGENUOUSLY DENIED THE REQUEST WHEN IT DELIBERATELY MISREAD ZILLOW’S FOIA REQUEST.

The County did not provide any data in response to Zillow’s FOIA request for the spurious reasons discussed in the circuit court’s Order on appeal. (R.p.) Another example of Richland County’s grasping at straws is its deliberate misreading of Zillow’s FOIA request. The request was for “the 2023 Assessment Files.” (R.p.) It included “property appraisal information, sometimes referred to as ‘CAMA’, data for all parcels in Richland County.” (R.p.) This was followed by a list that “includes but is not limited to” various types of information. Zillow was

³ Moreover, the County itself now agrees that the records need not be in one consolidated version or record. Appellant Brief, page 2, fn. 1 (“The County does not contend that the requested public records, i.e., the individual data points, must exist in one consolidated version or record.”).

not asking for a creation of that list. (R.p.) Susan Noto, who made the request for Zillow, was clear about this at trial.

“Q: And did you ask Richland County to create files, or did you just ask them to send you what they had.

A: I asked for just an electronic copy, and then I listed out just various fields. You know. They’re not unique. They’re just average fields to any and all of the following fields, to the extent that they existed.

Q: To the extent that they exist.

A: Mm-hmm (affirmative).

Q: So were you asking Richland County to create any fields that did not exist?

A: No, I did not.

Q: Was there any minimum requirement that you were imposing on Richland County?

A: No.”

(R.p.) Mar. 31 Transcript, P. 146, ll. 9-22.

“Q: Was this the same type of information that you had requested of Richland County and received from Richland County in the past from Exhibit 2 that we just went through, covering three or four years?

A: Yes. Yes.

Q: Is it the same as the type of information you had received from other counties in South Carolina?

A: Similar information, yes.”

(R.p.) Mar. 31 Transcript, P. 156, ll. 8-15.

Zillow’s request was a garden variety and for what the County had on hand. Nothing new was to be created.

The request did not ask the County to do anything except provide the public records that exist. That is clear from the wording of the request. (R.p.) [Plaintiff's Exhibit #3]. (Exhibits A through G to Complaint). Mar. 31 Transcript, P. 140, l. 18 - P. 148, l. 24; Transcript, P. 149, l. 11, - P. 150, l. 16; P. 150, l. 25 - P. 153, l. 5. [Plaintiff's Exhibit #2] [Plaintiff's Exhibit #4]; Mar. 31 Transcript, P. 153, l. 15 - P. 157, l. 9; P. 158, l. 7 - P. 159, l. 7; P. 159, l. 24 - P. 160, l. 4; P. 160, l. 18 - P. 161, l. 2; P. 161, ll. 21- 24; P. 162, l. 23 - P. 164, l. 15; P. 165, l. 4 - P. 165, l. 20; P. 166, l. 6 - P. 167, l. 6; P. 167, l. 14 - P. 169, l. 6; P. 169, l. 14 - P. 171, p. 18; P. 193, l. 4 - P. 194, l. 4; Defense Exhibit #9, Cover Page and 1, 3, 4, 6, 7, and 12.

Yet, the County has stubbornly and incorrectly claimed that Zillow's request was for a custom list. It did this in order to justify its refusal to comply. According to Brian Fitzgerald, Richland County's Chief Information Officer, Zillow requested 37 specific fields.

“Q: What exactly is [sic] Zillow asked for?

A: A file of all assessor - - of the 37 fields from the assessor's database, plus the auditor's tax information.”

(R.p.) April 1, 2026 Transcript, P. 87, ll. 2-4.

He repeated the 37 again and again. That was his story and he was sticking to it. (R.p.) April 1, 2026 Transcript, P. 93, l. 20, P. 94, l. 18. The discussion in the argument section below further discusses the County's deliberate misconstruing of Zillow's FOIA request, and is incorporated into this argument section as well.

3. THE CIRCUIT COURT CORRECTLY HELD THAT THE COUNTY ACTED IN BAD FAITH WHEN IT FAILED TO PROVIDE ZILLOW ANY ELECTRONIC DATA, INCLUDING THE ELECTRONIC DATA THE COUNTY ROUTINELY PROVIDES TO SPATIALEST EACH NIGHT, AND CORRECTLY AWARDED ZILLOW ATTORNEY’S FEES AND COSTS, WITH THE AMOUNT TO BE DETERMINED, AS THE PREVAILING PARTY.

The circuit court correctly found that the County acted in bad faith. After Richland County denied Zillow’s request, and after this lawsuit was filed, the County put together a report that purported to outline what would be required to respond to Zillow’s FOIA request. (R.p.) It did not, however, address Zillow’s request, but instead was based on Mr. Fitzgerald’s 37 specific examples to create an argument to justify its wholesale denial. (R.p.) April 1, 2026 Transcript, P. 181, l. 1 – P. 185, l. 24. The fields were selected by the County for the report to suit its purpose.

Also, the report is based on “opt out.” It specifically states that its purpose is “the design and identification of data fields to be transferred from the Assessor’s application to Zillow’s data system” and that “successful implementation of this plan will enable the Assessor’s Office to streamline data sharing with Zillow.” (R.p.) Zillow did not want custom creation of the 37 fields; it wanted the data in the form the County maintained the information before that data was manipulated or scrubbed by Spatialest – which the County required Spatialest do in accordance with the County’s “opt-out plan.” (R.p.) April 1 Transcript P. 163, l. 14 – P. 165, l. 20; P. 166, ll. 1- 4; P. 167, ll. 5-18; P. 179, l. 1 – P. 180, l. 15; P. 181, l. 1 - P. 182, l. 25; P. 183, l. 7 – P. 184, l. 15. [Defendant’s Exhibit 1(a)], April 1 Transcript P. 184, l. 16 – P. 186, l. 13 Zillow requested an electronic copy of all of the

“2023 Assessment Files, including property appraisal information sometimes referred to as ‘CAMA Data’ for all parcels in Richland County. The requested information includes but is not limited to any and all of the following fields for each parcel, to the extent that such fields exist”.

(R.p.) (Complaint Exhibit A) Zillow asked for all the 2023 Assessment Files in whatever format the County maintained the data – not just 37 fields if there were more fields available – and only to the extent a field existed. (R.p.) (Complaint Exhibit A)

In fact, as Mr. Fitzgerald admitted on cross-examination at trial, Richland County could easily send Zillow the information that it requested.

“Q: Let’s assume you’re wrong about your interpretation of that FOIA request. Richland County can send Zillow the exact same files that it sends to Spataleest every night, can’t it?

A: We can technically send you those files.

Q: And you can do that by pushing a button, can’t you?

A: More than pushing a button, but it’s fairly easy process to deliver those files, yes.

Q: It’s basically like copying the file and sending it electronically, correct?

A: Right.”

(R.p.) April 1 Transcript, P. 185, ll. 15-24.; P. 187, l. 1 – P. 189, l. 25; P. 190, l. 8 – P. 193, l. 22

“Q: The report that the County sends over to Spataleest doesn’t have information opted out, does it?

A: No, it includes all information.”

(R.p.) April 1 Transcript, P. 193, ll. 20-22.; Descy deposition/April 1 Transcript P. 8, ll. 18-19; P. 9, ll. 16-17; P. 11, l. 7 – P. 13, l. 4; P. 13, l. 23 – P. 54, l. 15; P. 61, l. 3 – P. 63, l. 10; P. 65, l. 13 – P. 67, l. 23; [Plaintiff’s Exhibit 5 – Exhibits 1 – 7 to Descy deposition admitted into evidence, April 1 Transcript P. 74 l. 25 – P. 75, l. 5.; P. 78, ll. 22-25.

Additionally, the County admitted it could have easily sent to Zillow 85% of Zillow’s FOIA request. The County Assessor testified that the Spataleest files included roughly 85% of

Zillow's FOIA request. Appellant Brief, page 10; (R.p.). Instead of sending the roughly 85%, the County sent none. It continues to justify its denial by wrongly stating that, "because the County does not have a public record – neither a hardcopy nor an electronic version – containing or compiling all the existing information Zillow asked for, it properly denied the FOIA request." Appellant's Brief, page 11. All or nothing was the County's response when it denied the FOIA request and is the County's current standard for denying FOIA requests. All or nothing. This is bad faith.

Finally, Zillow is eligible for attorney's fees and costs as the prevailing party, regardless of whether Appellant acted in bad faith. S.C. Code 30-4-100(B), S.C. Code 30-4-110(C), and S.C. Code 30-4-110(E).

CONCLUSION

Zillow respectfully asks the Court of Appeals to affirm Judge Coble's order, to award it costs and an attorney's fees pursuant to Rule 222(b), SCACR and to remand the case to Judge Coble for costs and an attorney's fee in specific amounts under FOIA for proceedings in the Court of Common Pleas, and in the Court of Appeals to the extent not awarded under Rule 222(b), SCACR.

September 29, 2026

RESPECTFULLY SUBMITTED,

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