

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

Honorable Daniel Coble

Appellate Case No. 2024-001296

George S. Glassmeyer.....Appellant,

v.

South Carolina Lottery Commission.....Respondent.

RECORD ON APPEAL

Taylor M. Smith IV
S.C. Bar No. 101584
Meriwether Law
923 Calhoun Street
Columbia, South Carolina 29201
(803) 779-2211
taylor@meriwetherfirm.com
Attorney for Appellant

Vordman Carlisle Traywick, III
S.C. Bar No. 102123
Sarah C. Frierson
S. C. Bar No. 104643
Robinson Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com
Attorneys for Respondent

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
George S. Glassmeyer,	)	CASE NO.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S
vs.	)	MOTION FOR RECONSIDERATION
	)	PURSUANT TO RULE 59(e), SCRCP
South Carolina Lottery Commission,	)	
	)	
Defendants.	)	
	)	
	)	

This matter is before the Court upon Plaintiff's Motion for Reconsideration Pursuant to Rule 59(e), SCRCP ("the Motion"), which was timely filed on May 16, 2024. The Motion asks this Court to alter, amend, or reconsider its Order Granting Defendant's Motion for Summary Judgment dated May 6, 2024.

After reviewing the applicable law and considering the arguments raised in the Motion and Defendant's Response, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court's reasoning or conclusions. As such, Plaintiff's Motion for Reconsideration is hereby **DENIED**.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2024-07-19 12:02:44 page 2 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4004854

George S Glassmeyer
PLAINTIFF(S)

South Carolina Lottery Commission
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's Motion to Reconsider has been taken under advisement.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/09/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>ORDER</u>
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

Plaintiff George S. Glassmeyer filed this action, alleging several purported violations of the Freedom of Information Act (FOIA) and a breach of contract claim against Defendant South Carolina Lottery Commission (the Lottery) relating to 18 FOIA requests he served on the Lottery in June 2023. The Lottery answered the complaint and counterclaimed under section 30-4-110(A) of the South Carolina Code for relief from several individual requests. This matter comes before the Court on the parties' cross-motions for summary judgment pursuant to Rule 56, SCRCF. For the reasons below, the Court grants summary judgment in favor of the Lottery on all claims.

BACKGROUND

The parties have a long and sorted history, which involves several lawsuits related to FOIA. In 2013 and 2014, Glassmeyer sent FOIA requests to the Lottery, seeking information about winners of lottery prizes equal to or greater than \$1 million. *S.C. Lottery Comm'n v. Glassmeyer*, 433 S.C. 244, 248, 857 S.E.2d 889, 891 (2021). The Lottery determined some information responsive to those requests—lottery winners' names, addresses, telephone numbers, and forms of identification—was exempt under the unreasonable-invasion-of-privacy exemption in section 30-4-40(a)(2) of the South Carolina Code, and the Lottery sought a declaratory judgment to that effect. *Id.* After the circuit court granted judgment on the pleadings to the Lottery, which the court of

appeals upheld, the Supreme Court of South Carolina reversed and remanded for a new trial stating, “[w]ithout a trial on the issues to develop a factual record, there is no evidence on which the circuit court could base its judgment.” *Id.* at 252, 857 S.E.2d at 893.

On remand, the parties settled in a February 15, 2022 agreement. As relevant here, Glassmeyer agreed not to submit FOIA requests to the Lottery seeking information about claimants or prize winners, and the Lottery’s policy not to disclose personal information under section 30-4-40(a)(2) would remain in “full force until May 31, 2023.” The agreement also provided that “[i]f the South Carolina General Assembly [did] not enact legislation addressing this specific issue by such date, then the South Carolina Lottery Commission [would] provide the full names, cities, and states of lottery prize claimants in response to FOIA requests after that date.” *Id.*

Two months after the settlement agreement, on April 4, 2022, Glassmeyer sued the Lottery, arguing it violated FOIA by not posting a fee schedule to its website. Ultimately, the Court granted summary judgment in favor of the Lottery, finding it did not have to post a fee schedule because it does not charge fees for the review, retrieval, redaction, and production of public records in response to FOIA requests. *See* Order Gr. Summ. J. to Def., No. 2022-CP-40-01769, at 1–6 (S.C. Ct. Comm. Pl. Mar. 31, 2023).

The Lottery then received the instant FOIA request from Glassmeyer on June 21, 2023, which included 18 individual requests. Dolly Garfield, the Lottery’s general counsel, responded to Glassmeyer’s request with the Lottery’s determination under section 30-4-30(C) of the South Carolina Code on July 5, 2023. The Lottery determined that Proviso 3.5 of the 2023–2024 Annual Appropriations Act—which took effect July 1, 2023—prohibited it from disclosing lottery winners’ names in response to Request 1, among others, and that Requests 5, 12, and 18 were unduly burdensome, overly broad, and otherwise improper. As for the remaining requests, the

Lottery determined it would provide responsive documents but redact documents responsive to some requests, including Requests 4 and 11.

Over the next month, Garfield and Glassmeyer exchanged over 20 emails about Glassmeyer's FOIA request and the responsive documents that were produced on a rolling basis. On August 16, 2023, the Lottery sent a letter to Glassmeyer, conveying it had provided all responsive records subject to disclosure in response to his FOIA request. In this letter, the Lottery again asked Glassmeyer if he would narrow Requests 5, 12, and 18. Glassmeyer did not respond.

Instead, Glassmeyer filed this lawsuit on September 15, 2023, alleging the Lottery breached the settlement agreement with him because it would not disclose lottery winners' names in response to his FOIA request. He also alleges the Lottery violated FOIA in other respects explained below, including by not supplying documents to all his requests and by redacting certain information. The Lottery filed an answer and counterclaim to Glassmeyer's verified complaint—which was verified by its general counsel and supported by expert John Nichols—seeking relief from three of Glassmeyer's requests as “unduly burdensome, overly broad,” and “otherwise improper” under section 30-4-110(A).

Additionally, the Lottery moved for partial dismissal, arguing Proviso 3.5 prohibited it from disclosing lottery winners' names and personal information. Glassmeyer opposed the motion and, for his part, moved to dismiss the Lottery's counterclaim. Following a hearing on October 13, 2023, the Court denied both parties' motions via Form 4 Orders. After the Chief Administrative Judge for Common Pleas in Richland County assigned the case to the undersigned, the Court entered a scheduling order at the parties' request.

The parties filed and briefed cross-motions for summary judgment, and the Court held a hearing at the Richland County Courthouse on January 5, 2024. At the end of the hearing, counsel

for both parties agreed to submit cross-motions for summary judgment—without the necessity of another hearing—to brief a claim relating to Request 4 that was not addressed in their initial motions. Both parties also conceded during the hearing there are no genuine issues of material fact, and the Court can decide the questions presented as a matter of law. Accordingly, this matter is ripe for disposition.

STANDARD

Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). When “cross motions for summary judgment are filed, the parties concede the issue[s] . . . should be decided as a matter of law.” *Wiegand v. U.S. Auto. Ass’n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

ANALYSIS

To begin, the Court is mindful of and guided by the FOIA context in which this case arises. In the legislative findings accompanying FOIA, the General Assembly recognized “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 formation of public policy.” S.C. Code Ann. § 30-4-15 (2007). To that end, the General Assembly has advised courts to construe FOIA “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.” *Id.*

At its core, “FOIA’s basic premise is ‘any person has a right to inspect or copy any public record of a public body.’” *Evening Post Publ’g Co. v. Berkeley Cnty. Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011) (quoting S.C. Code Ann. § 30-4-30(a)). And its fundamental purpose “is to protect the public from secret government activity.” *Perry v. Bullock*, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014) (quoting *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991)). “FOIA is remedial in nature and should be liberally construed to carry out its purpose.” *Evening Post Publ’g Co.*, 392 S.C. at 82, 708 S.E.2d at 748 (quoting *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001)). But the right to public records is not unqualified. As relevant here, FOIA has exemptions and exceptions, and it provides an avenue for public bodies to obtain relief under certain circumstances. See S.C. Code Ann. §§ 30-4-20, -40, & -110.

With these principles in mind, the Court turns to the issues in the parties’ cross-motions for summary judgment. These issues relate to nine of Glassmeyer’s eighteen FOIA requests.

I. Claim for Relief Under Section 30-4-110(A) in Response to Requests 5, 12, and 18

In 2017, the General Assembly “rewrote” section 30-4-110 to “provid[e] rights and remedies of public bodies from whom requests are made.” S.C. Code Ann. § 30-4-110 rptr. note (citing 2017 S.C. Act No. 67, § 5). Now, “[a] public body,” in relevant part, “may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, . . . or otherwise improper requests.” S.C. Code Ann. § 30-4-110(A). The Lottery seeks relief under this statute from three requests. Request 5 sought “[c]opies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023.” Request 12 sought “[a] copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15,

2023, inclusive.” And Request 18 sought “[c]opies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive.”

A few initial points. The Court is unaware of any other case interpreting a claim for relief under this fairly new statutory provision. Accordingly, this is a matter of first impression. But these terms—overly broad, unduly burdensome, and otherwise improper—are quite familiar to the Court, particularly as they arise in the context of discovery disputes under Rule 26, SCRCP. *Cf. Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989) (“Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation.”); *Carolina All. for Fair Emp. v. S.C. Dep’t of Lab., Licensing, & Regul.*, 337 S.C. 476, 489, 523 S.E.2d 795, 802 (Ct. App. 1999) (“Where the [General Assembly] elects not to define the term in the statute, the court will interpret the term in accord with its usual and customary meaning.”).

The Court thus draws on its experience handling discovery issues in analyzing Requests 5, 12, and 18, while keeping in mind the purpose of FOIA and the liberal construction afforded its provisions. *See* Rule 26(a), SCRCP (stating discovery “shall be limited by the court if it determines that . . . the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation”); Rule 26(b)(6)(A), SCRCP (“A party need not provide discovery of electronically stored information from sources that the party identifies to the requesting party as not reasonably accessible because of undue burden or cost.”); Rule 26(c), SCRCP (allowing protective order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense”); *Evening Post Publ’g Co.*, 392 S.C. at 82, 708 S.E.2d at 748 (asserting right to public records and liberal construction of FOIA).

On one side of the ledger, the Lottery's claim for relief is supported by the unrebutted expert affidavit of John Nichols as well as facts verified by Garfield in the Lottery's counterclaim. Garfield attested to the universe of documents that may be responsive to Requests 5, 12, and 18. Nichols opined on the capital and human resources, time, and effort that would be required to retrieve, review, redact, and produce responsive records. Glassmeyer does not contest any opinions or facts as stated by Nichols or Garfield. In fact, Glassmeyer's counsel "stipulate[ed] to this entire record, including [what] John Nichols said about how long this would take." Tr. at 46:21–23. On the other side of the ledger, Glassmeyer's motion is supported by his own affidavit, which avers his FOIA request stemmed from "concern[s] about potential mismanagement of lottery revenue, to include embezzlement and employee misconduct, whereby portions of these amounts are siphoned off and stay with the Commission of its employees, similar to situations involving other lotteries around the nation."

Both parties make valid points. The question, however, is when the line is crossed. On the stipulated record here, the Court finds the Lottery is entitled to relief under section 30-4-110(A). *Cf. Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control*, 387 S.C. 380, 388, 692 S.E.2d 920, 924 (2010) ("Generally, the scope of discovery is within the trial court's discretion." (quoting *In re CSX Corp.*, 124 S.W.2d 149, 152 (Tex. 2003))).

Based on the undisputed facts, Request 5 covers about 120,000 checks or wire transfers; Request 12 covers over 8,000 documents; and Request 18 covers about 3 million emails from the Lottery's 125 employees at the time. As expert John Nichols explained, at least nine exemptions may apply to the records sought in Requests 5, 12, and 18. Considering the sheer volume of documents Glassmeyer sought and the potential exemptions and prohibitions that could apply, the Court finds the Lottery made a good-faith determination that Requests 5, 12, and 18 are unduly

burdensome. According to Nichols, it would take 2,000 hours to review and redact 120,000 checks and wire transfers responsive to Request 5 at a cost of \$300,000 to \$400,000. As for Request 12, it would take 134 hours, to the tune of \$20,100 to \$26,800. And it would take around 50,000 hours to review and redact the roughly 3 million emails received, sent, or forwarded by the Lottery's employees under Request 18, which would cost around \$7,500,000 to \$10,000,000.

Glassmeyer, for his part, argues the Lottery cannot claim a FOIA request is unduly burdensome when it does not charge fees under section 30-4-30(B). If it could, Glassmeyer argues, public bodies would simply sit back, not charge fees, and then claim "unduly burdensome" if they do not like the request. Nevertheless, he concedes the Lottery "should be lauded for not charging for FOIA requests" because "[t]hat makes it more transparent." Tr. at 46, at 19–20. Yet in the next breath, he argues it would be more transparent to charge fees rather than invoke this lawful avenue for relief. The Court is not convinced.

For one thing, judicial review precludes agencies from self-imposing Glassmeyer's feared rudderless standard, and courts are more than capable of determining—on a case-by-case basis—whether a FOIA request runs afoul of a statute. For another, section 30-4-110(A) has to mean something. See *Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008) ("The Court must presume the [General Assembly] intended its statutes to accomplish something and did not intend a futile act."). Glassmeyer's interpretation would neuter this statutorily created avenue for relief. Cf. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137, 143 (1999) ("Statutes should not be construed so as to lead to an absurd result."). Also, his feared worst-case scenario—a "trend" as he called it—did not happen. The Lottery sought relief only from 3 of Glassmeyer's 18 FOIA requests and still spent over 100 hours retrieving, reviewing, redacting, and otherwise responding to Glassmeyer's remaining 15 requests in addition to fielding new follow-up ones.

And nothing suggests the General Assembly intended to tether a public body's ability to pursue relief under section 30-4-110(A) solely to its decision whether to charge fees under section 30-4-30(B). *See Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (noting a court "cannot rewrite the statute and inject matters into it which are not in the legislature's language"); *see also Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) ("It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result.").

Even so, the cost of responding is but one consideration. An unduly burdensome objection necessarily requires an evaluation of the time and effort a party must expend responding to the request too. On that note, the Lottery essentially faces two options if forced to respond to these three requests. First, it could retrieve, review, redact, and produce documents in-house, using only Lottery employees. Because the Lottery does not have enough resources within the agency to engage in this 50,000-hour task, doing so would require the Lottery to halt its operations in the meantime.¹ But the Lottery was created to fund scholarships for South Carolinians to pursue their dreams in higher education, *see, e.g.*, S.C. Code Ann. § 59-150-355, and the General Assembly has delineated a number of responsibilities in the South Carolina Education Lottery Act. *See* S.C. Code Ann. §§ 59-150-10 through -410. Requiring its employees to spend 50,000 hours responding to a FOIA request would thwart its mission. Second, the Lottery could outsource these tasks to a

¹ Although Glassmeyer complains the Lottery did not approach him about a reasonable extension for production, *see* S.C. Code Ann. § 30-4-30(C), this argument misses the mark. To be sure, that statute provides the statutory deadlines "are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld." *Id.* But as the Lottery notes, an extension would not alleviate the problem of spending 50,000 hours responding to his voluminous requests. And it's worth noting that Glassmeyer called time on the Lottery in other respects, even when he received the requested information. *See infra* Section V. Still, had Glassmeyer narrowed his requests, the parties could have engaged in what would have been a necessary discussion about deadlines. Glassmeyer, however, failed to engage.

law firm. As Nichols concluded, however, it would cost approximately \$7,820,100 to \$10,426,800 for a law firm to review, redact, and produce all records responsive to Requests 5, 12, and 18.

Section 30-4-110(A) exists to relieve state agencies from having to endure such undue hardships under either option. If these requests do not qualify as unduly burdensome, particularly the blockbuster request demanding every agency email over a two-year period, it is tough to imagine what would. *Cf. Oncology & Hematology Assocs. of S.C., LLC*, 387 S.C. at 389, 692 S.E.2d at 925 (noting the party's discovery requests were "oppressive" and finding it "abused the discovery process with its scorched-earth approach"). The Court finds Requests 5, 12, and 18 are unduly burdensome, and the Lottery is entitled to relief from responding to them.

As to breadth of Requests 5, 12, and 18, the parties agreed it would be appropriate for the Court to consider the reason for seeking the information as compared to the specific request. This analysis is akin to what the Court conducts when considering whether a discovery request is overly broad. *See* Rule 26(b)(1), SCRPC (allowing a party to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action"). When submitting his FOIA request, Glassmeyer stated he was requesting the information "in part because [he is] concerned about possible continuing embezzlement of public funds within" the Lottery. He has since expounded upon that concern, stating he has "concern[s] about potential mismanagement of lottery revenue, to include embezzlement and employee misconduct, whereby portions of these amounts are siphoned off and stay with the Commission of its employees, similar to situations involving other lotteries around the nation."

Starting with Request 5, the Court finds it overly broad in view of Glassmeyer's concerns. Glassmeyer sought "[c]opies of all checks (front and back) and wire transfers issued by SCEL" for two years. While some of the 120,000 checks and wire transfers could potentially be relevant

to Glassmeyer's embezzlement concerns, a more narrowly tailored request aimed at a department with which he had concerns would be more appropriate. Take, for instance, Request 4: Glassmeyer sought checks and wire transfers issued to million-dollar winners. This request is not overly broad and, in fact, is tethered to Glassmeyer's purpose. But Request 5 includes no narrowing or limiting language. It just asks the Lottery to go track down every check and wire transfer. Garfield invited Glassmeyer to narrow the request, but he refused. He still has not offered to limit the request. Based on the uncontroverted evidence in the record, the Court finds Request 5 was unreasonable.

Request 12 is also overly broad. It sought "[a] copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL" for two years. Again, some of these records may very well be tailored to Glassmeyer's concern of purported embezzlement within the Lottery. But most will have nothing to do with it. Without any limitation, this request too is unreasonable and appears to be a fishing expedition.

Finishing with Request 18, the Court finds it is unquestionably overbroad. It sought "[c]opies of all emails received, sent, or forwarded by any and all SCEL employees" for two years. In garden-variety discovery disputes, the Court often sees requests seeking electronically stored information like emails. When a request yields over 3 million responsive emails for 125 employees, though, the parties almost always discuss placing limitations on the search terms, the control group, the timeframe sought, or all three. Glassmeyer's refusal to limit Request 18 at all is simply not reasonable.²

That brings the Court to an important point: the Lottery twice asked Glassmeyer to narrow Requests 5, 12, and 18. It first asked Glassmeyer whether he "was willing to withdraw or revise

² If this were a discovery dispute, Glassmeyer's refusal to budge an inch on this cumbersome request would not sit well with the Court. *Cf.* Rule 26(c), SCRCP; Rule 37(a)(4), SCRCP. This case, however, arises under FOIA.

the objectionable requests” because, as drafted, the requests “would require the Lottery to divert unnecessary and significant agency and outside resources to review, redact, and produce documents *that are not related to the stated purpose underlying the request.*” Glassmeyer rejected this invitation as to Requests 5, 12, and 18 but accepted it for a different request. The second invitation came in the Lottery’s August 16, 2023 final production letter, in which Garfield stated, “If you would like to modify, specify, or narrow your requests in Items 5, 12, or, 18, the Lottery will reconsider its position and will make reasonable efforts to accommodate your requests.” But Glassmeyer did not respond. Thus, Glassmeyer’s argument that the Lottery did not ask him to narrow the requests finds no support in the record.

Even when liberally construing FOIA in favor of the public’s access to records, the Court finds that—on balance—Glassmeyer’s unparticularized hunch about potential embezzlement is insufficient to justify the unwieldy production he demands. *See* Rule 56(e), SCRCPP (“When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”); *cf. Jeffers v. LaFarge N. Am., Inc.*, 622 F. Supp. 2d 303, 314 (D.S.C. 2008) (“The non-moving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment.”). That is especially so where, as here, Glassmeyer still declines to tailor these wind-ranging requests at all to that concern. Balancing the interests, the Court concludes Requests 5, 12, and 18 are both overly broad and unduly burdensome. So the Lottery is entitled to relief under section 30-4-110(A).

II. *Refusal to Provide Lottery Winners’ Names in Response to Request 1 and Other Redactions*

Next, Glassmeyer argues the Lottery breached its settlement agreement and violated FOIA by refusing to disclose and redacting lottery winners' names in response to Request 1 and Request 4. The Lottery claims it was prohibited from disclosing this information under Proviso 3.5 of the 2023–2024 Annual Appropriations Act (the Proviso). After carefully reviewing the agreement and pertinent law, the Court agrees the Lottery could not disclose lottery winners' names.

Every year, the General Assembly is required to provide “for all expenditures in a general appropriations act . . . to fund the ordinary expenses of state government and to direct the expenditure of these funds.” *Amisub of S.C., Inc. v. S.C. Dep’t of Health & Env’t Control*, 407 S.C. 583, 592, 757 S.E.2d 408, 413 (2014). As part of the General Assembly’s “duty and authority to appropriate money as necessary for the operation of the agencies of government,” it “has the right to specify the conditions under which the appropriated monies shall be spent.” *Edwards v. State*, 383 S.C. 82, 90, 678 S.E.2d 412, 416 (2009). Those conditions are enacted as law through budget provisos of the Appropriations Act. “An appropriation act, though generally in duration temporary, has equal force and effect as a permanent statute for the time being.” *State ex rel. McLeod v. Mills*, 256 S.C. 21, 27, 180 S.E.2d 638, 641 (1971). And “[e]xecutive agencies are required to comply with the General Assembly’s enactment of a law until it has been otherwise declared invalid.” *Id.* at 91, 678 S.E.2d at 417.

The settlement agreement provides that, if the General Assembly does not enact legislation on the issue, the Lottery will provide lottery winners' names “in response to FOIA requests after” May 31, 2023. On June 14, 2023, the General Assembly ratified the 2023–2024 Annual Appropriations Act, including a proviso specifically addressing the issue of disclosure of lottery winners' names. The Proviso directs as follows:

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited

from disclosing a winner's name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

2023 S.C. Act No. 84, Part I.B, § 3, Proviso 3.5. It took effect on July 1, 2023.

Although the Proviso was in full force and effect on July 5 when the Lottery provided its final determination and when the Lottery later provided responsive records, Glassmeyer argues the Lottery breached its settlement agreement with him and violated FOIA by not disclosing lottery winners' names. Glassmeyer contends the "duty" for the Lottery to provide this information—under either the settlement agreement or FOIA—arose when the Lottery received Glassmeyer's request on June 21, 2023, which was before the Proviso's effective date on July 1, 2023. The Court respectfully disagrees.

The Court finds the response date, not the date of receipt, is the appropriate date to consider here, especially given the language in the Proviso stating what a public body may disclose "[i]n response to a request." 2023 S.C. Act No. 84, Part I.B, § 3, Proviso 3.5. To the extent Glassmeyer believes FOIA says otherwise, the Proviso controls. *See Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010) ("Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.").

When the Lottery received Glassmeyer's FOIA request on June 21, 2023, it had "ten days (excepting Saturdays, Sundays, and legal public holidays)" to respond with its final determination "as to the public availability of the requested public record." S.C. Code Ann. § 30-4-30(C). The

Lottery’s final determination thus came due on July 5, 2023.³ That required the Lottery to consider and make its final determination on 18 voluminous requests. Despite Glassmeyer’s argument to the contrary, the only duty that arose upon receipt of Glassmeyer’s FOIA request was the duty to issue a timely final determination. In the intervening days, however, the Proviso became effective. Thus, when the final determination came due, and later when the Lottery’s production had to “be furnished or made available for inspection or copying no later than” August 4, 2023, the Proviso was in full force and effect. And it prevented the Lottery from disclosing lottery winners’ names.⁴

If “a contract is originally legal, but performance becomes illegal due to a change in the law, any subsequent performance is against public policy and the party who has agreed to perform is excused from doing so.” *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004). Some courts deem this an “impossibility of performance, although performance is not literally ‘impossible’ because it could be done if it were legal. Other courts simply conclude that the duty to perform is excused or discharged because performance would violate public policy as expressed in constitutional provisions, statutes, or judicial decisions.” *Id.*

Here, the Court finds the Proviso makes this situation—which involves a contract and FOIA—fall under both categories: an impossibility of performance by law and a violation of public

³ In Glassmeyer’s motion, he indicated the Lottery “willfully chose to wait” until the Proviso was in effect to issue its final determination. During the hearing, however, Glassmeyer’s counsel conceded that intent does not matter, and there was no evidence of intentional delay. In any event, FOIA gives a public body 10 business days to issue a final determination. The Lottery used all 10 business days, over the Fourth of July Holiday, to issue its final determination on 18 voluminous requests. On this record, the Court finds nothing improper about that.

⁴ The Lottery alternatively contends it was good policy to be aware of the impending enactment of new law. Although not dispositive here, the Court agrees. Its position is hardly novel under the law. *E.g., Sherman v. Reavis*, 273 S.C. 542, 545, 257 S.E.2d 735, 737 (1979) (finding “pending ordinance doctrine” prohibited owners from trying to compel city to allow billboards on property when zoning regulation forbidding intended use was pending at the time and then enacted).

policy. The Lottery would violate state law and the public policy as expressed by the General Assembly by disclosing lottery winners' names in response to Glassmeyer's FOIA request and to comply with the disclosure agreed to in the settlement agreement.⁵ Therefore, the Court finds the Lottery is entitled to judgment as a matter of law that it did not breach the settlement agreement or violate FOIA by declining to provide lottery winners' names as required by the Proviso.

III. Redaction of Check Drawers' Signatures in Response to Request 4

At the hearing, the parties informed the Court they had inadvertently overlooked an issue relating to Request 4 in their respective motions. Thus, the Court allowed additional briefing on the issue after the hearing. The parties concede the issue can be considered by the Court now as a matter of law.

Request 4 sought "[c]opies of all checks (front and back) and/or wire transfers issued to all persons identified in Item #1 above." Request 1, of course, sought "[t]he first and last name, and city and state of residence, of all persons who submitted bona fide claims for gross lottery winnings (i.e., before any tax withholding or setoff(s)) equal to or exceeding one million dollars from June 30, 2021 through June 15, 2023, inclusive." The Lottery provided the responsive records but redacted the check drawers' signatures, citing the Family Privacy Protection Act. *See* S.C. Code Ann. § 30-2-10 *et seq.* Glassmeyer claims this redaction violated FOIA. The Court disagrees.

The Lottery produced the redacted records on the same day it made its final determination: July 5, 2023. On July 18, 2023, Glassmeyer emailed Garfield, asking for unredacted copies of the responsive checks "with the respective drawer(s) signature(s) clearly visible." In response, Garfield stated that "signatures are not subject to disclosure and are considered private information

⁵ Under Rule 201(b), SCRE, the Court notes the prohibition on disclosing lottery winners' names is now permanent law. The General Assembly unanimously passed H.3872, and the Governor signed it into law on February 5, 2024. H.3872, 125th Gen. Assemb., 2d Sess. (S.C. 2024).

under the Family Privacy Protection Act, S.C. Code Ann. § 30-2-10 *et seq.*, which requires public officials to redact records that contain such personal information.” She did, however, explain that “[t]he respective drawers of the checks were completed by the SCEL’s CFO and the CFO that preceded him.” She also provided a chart of the CFOs’ names with each corresponding check they signed. Glassmeyer responded the same day, stating “[t]hanks for your prompt and comprehensive response” and asking whether “disbursement checks payable to lottery winners only require one drawer signature (i.e., the Lottery CFO)?” Garfield responded in the affirmative several days later. The Lottery did not hear any further from Glassmeyer regarding the drawers’ signatures.

Under these circumstances, the Court finds Glassmeyer already received the information he was after—the names of the Lottery’s employees who wrote checks to million-dollar winners—in response to Request 4 well before he filed this lawsuit. And Garfield has sworn in an affidavit that the names in the chart are in fact the persons who signed the respective checks produced to Glassmeyer. While the form may have been different—printed instead of a cursive signature—Glassmeyer received the information. And he posits no argument as to why he needs to see a signature. As Glassmeyer’s counsel argued in relation to another issue, it is the information that matters under FOIA. Tr. at 41:8–20. Because he received that information before filing suit, the Court finds Glassmeyer’s claim as to this issue is moot. *See Mathis v. S.C. State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.”).

The Court further finds the Lottery’s production of this information in chart format satisfied the purpose of FOIA because Glassmeyer is fully able “to learn and report fully,” S.C. Code Ann. § 30-4-15, on the Lottery’s fulfillment of claims. It is unclear to the Court what more Glassmeyer could learn by seeing the cursive signatures of the Lottery’s CFOs rather than the typed names.

Providing their cursive signatures will not increase transparency to the public. Nor would it protect the public from secret government activity. *See Perry*, 409 S.C. at 141, 761 S.E.2d at 253 (stating “FOIA’s essential purpose is to protect the public from secret government activity”).

Accordingly, the Court finds no justiciable controversy remains on this issue. *See Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (stating “once the requested documents are produced, a justiciable controversy no longer exists”). Under these circumstances, the Lottery did not violate FOIA by producing the information Glassmeyer sought—check drawers’ signatures—in a different format than he requested. Consequently, the Court finds it unnecessary to determine whether redaction of the check drawers’ signatures was proper under FOIA and the Family Privacy Protection Act of 2002.⁶

⁶ In all events, the Court finds the Lottery properly redacted its CFOs’ signatures on the responsive checks under FOIA and the Family Privacy Protection Act of 2002. Under section 30-4-40(a)(4), a public body may exempt from disclosure “[m]atters specifically exempted from disclosure by statute or law.” Section 30-2-310(A)(1)(e) says a public body may not “intentionally communicate or otherwise make available to the general public an individual’s . . . personal identifying information.” To have any effect, section 30-2-310(A)(1)(e) must apply equally to intentional disclosure through a FOIA response as it does to intentional disclosure through another avenue like the media. *Cf. Duvall*, 377 S.C. at 42, 659 S.E.2d at 128 (“The Court must presume the [General Assembly] intended its statutes to accomplish something and did not intend a futile act.”). Further, the Court finds it makes no difference that disclosure through a FOIA request may be only to one member of the general public instead of the public at large. FOIA makes no such distinction. *See, e.g., Evening Post Publ’g Co.*, 363 S.C. at 457, 611 S.E.2d at 499 (stating the purpose of FOIA is “to guarantee the public reasonable access to certain activities of the government” (emphasis added) (citation omitted)). The disclosure prohibition in subsection 30-2-310(e) refers to section 16-13-510—the Personal Financial Security Act—to define “personal identifying information,” which in turn states, “‘personal identifying information’ includes, but is not limited to: . . . digital signatures.” S.C. Code Ann. § 16-13-510(D)(9). While section 16-13-510(D) does not specifically mention handwritten signatures, the list is not exhaustive. *See* S.C. Code Ann. 16-13-510(D) (stating “personal identifying information” “includes, but is not limited to” (emphasis added)). After all, the Family Privacy Protection Act provides that “personal information” includes an individual’s “signature.” S.C. Code Ann. § 30-2-30(1). Reading these statutes together, as it must, the Court alternatively finds the Lottery properly exempted its CFOs’ signatures from the checks produced to Glassmeyer. *E.g., Rivas*, 342 S.C. at 109, 536 S.E.2d at 375 (“It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result.”).

IV. *Redaction of Security Plan in Response to Request 11*

In Request 11, Glassmeyer sought “[a] complete copy of all current SCEL policies and any and all amendments to same issued between June 30, 2021 and June 15, 2023, not otherwise provided in response to Item #10 above.” The Lottery, in response, produced redacted records and stated that “[c]ertain information relating to security plans and devices proposed, adopted, installed, or utilized by SCEL is confidential and required to be closed to the public, as defined in S.C. Code Ann. § 30-4-20 (FOIA).” Glassmeyer claims the Lottery produced redacted records with one page full redacted “under no lawful claim of authority.”

Prior to the hearing, the Lottery provided the record in redacted and unredacted form to the Court for *in camera* review. While counsel for Glassmeyer argued he needed to see headings and punctuation marks to make an argument on this issue before the Court could decide whether the record was properly redacted, the Court respectfully disagrees. The document is titled “Reconstruction and Damaged Tickets Procedures.” And the Lottery provided the record to Glassmeyer with the “Introduction” and the “Reasons to Request Reconstructs” sections unredacted. Glassmeyer and his counsel had more than enough information to argue whether the record qualified as a security plan under section 30-4-20(c). The Court finds no need for the Lottery to provide a less redacted record to Glassmeyer—showing every punctuation, article, or conjunction—as Glassmeyer requests. Nor does the Court see how disclosure of those things would make a difference.

The Court has reviewed the document—the Lottery’s security policy for damaged tickets—and finds the Lottery properly redacted the record as a security plan. Under section 30-4-20(c), “[i]nformation relating to security plans . . . adopted . . . or utilized by a public body . . . is required to be closed to the public and is not considered to be made open to the public under the

provisions of this act.” The Lottery’s procedure on when, why, and how to reconstruct damaged tickets is important to the integrity of the Lottery and the claims process. See S.C. Code Ann. § 59-150-230(C)(3)(a)–(c). And the record is exactly what the Lottery claimed it to be. The Lottery therefore was not required to produce the record at all. But to be transparent, it did produce the record, and the Court finds it properly redacted information that was “required to be closed to the public.” S.C. Code Ann. § 30-4-20(c).

Consequently, the Lottery is entitled to judgment as a matter of law that it did not violate FOIA by redacting the record at issue in response to Request 11.

V. *Timeliness of Document Production Responsive to Requests 8, 13, and 14*

Last, Glassmeyer claims the Lottery violated FOIA by not timely producing responsive documents to Requests 8, 13, and 14. The productions were six, twelve, and twelve days late, respectively. For its part, the Lottery admits it produced responsive records to Requests 8, 13, and 14 several days late based on a mix-up regarding two provisions of FOIA.⁷

“Before a court may render a declaratory judgment, an actual, justiciable controversy must exist.” *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Here, the Lottery admitted its calendaring error and agrees section 30-4-30(C) says what it says. Thus, there is no “*uncertainty* and insecurity with respect to rights, status[,] and other legal relations.” S.C. Code Ann. § 15-53-130 (emphasis added). What is more, Glassmeyer conceded he already received the documents to which he was entitled in response to Requests 8,

⁷ Subsection 30-4-30(C) provides the final determination of availability of records must be made within “ten days (*excepting* Saturdays, Sundays, and legal public holidays)” of receipt of the FOIA request. (emphasis added). The records, however, must be produced “no later than thirty *calendar days* from the date on which the final determination was provided.” *Id.* (emphasis added).

13, and 14 well before he filed this lawsuit. It is unclear why he seeks a declaration from the Court on something the Lottery has already admitted and relating to documents he had already received.

The Court finds Glassmeyer's claim is moot. *See Sloan*, 369 S.C. at 26, 630 S.E.2d at 477 (stating "once the requested documents are produced, a justiciable controversy no longer exists"); *see also Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy."). Glassmeyer did not need to seek judicial relief, especially when he received the documents responsive to Requests 8, 13, and 14 nearly a month before he filed suit. *Cf. Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011) ("When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed."). A declaratory judgment would be "purely academic," *Sloan*, 369 S.C. at 26, 630 S.E.2d at 478, and an injunction would "accomplish nothing," *S.C. Lottery Comm'n*, 433 S.C. at 250, 857 S.E.2d at 892.

Exercising its discretion under section 30-4-100(B), the Court therefore finds Glassmeyer is not entitled to attorney's fees on this issue. *See S.C. Code Ann. § 30-4-100(B)* ("If a person or entity seeking relief under this section prevails, he *may* be awarded reasonable attorney's fees and other costs of litigation specific to the request." (emphasis added)); *see also Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981) ("Ordinarily, 'may' signifies permission and generally means the action spoken of is optional or discretionary."); *Litchfield Plantation Co. v. Georgetown Cnty. Water & Sewer Dist.*, 314 S.C. 30, 33, 443 S.E.2d 574, 576 (1994) (emphasizing statute's use of the word may and finding "the special referee did not abuse his discretion" by declining to award fees despite finding untimely response did not comply with FOIA). The Lottery

did not frustrate his request, and he experienced no prejudice from a “minimum . . . delay,” S.C. Code Ann. § 30-4-15, in receiving these documents.

CONCLUSION

In sum, the Court finds the Lottery properly responded to Requests 1, 4, 5, 11, 12, and 18. The Proviso prevented—and still prevents—the Lottery from providing winners’ names in response to Requests 1 and 4, and Glassmeyer already received the check drawers’ names in response to Request 4. Further, redacting a security policy that does not fall within the definition of a public record in response to Request 11 was appropriate. Given Glassmeyer’s refusal to narrow three overly broad and unduly burdensome requests, the Court also grants the Lottery relief from responding to Requests 5, 12, and 18 under section 30-4-110(A). Last, although the Lottery admits its production of documents in response to Requests 8, 13, and 14 was slightly tardy, Glassmeyer received the responsive records before filing suit and included only one conclusory sentence in his complaint on this moot issue. Exercising its discretion, the Court therefore declines to award Glassmeyer fees.

The Lottery’s motion for summary judgment is **GRANTED**, Glassmeyer’s motion for summary judgment is **DENIED**, and the complaint is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

Columbia, South Carolina
May ____, 2024

Honorable Daniel M. Coble
Richland County Court of Common Pleas
Fifth Judicial Circuit of South Carolina



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Summary Judgment

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2024-05-03 12:57:49 page 23 of 23

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>CONFIDENTIALITY ORDER</u>
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court on Defendant South Carolina Lottery Commission's (the Lottery) motion for entry of a Confidentiality Order to protect and prevent disclosure of lottery claimants' names pending the resolution of this case. For good cause shown, the Court finds all documents containing lottery claimants' names may be redacted under this Order pending final disposition. The Lottery also requests permission to replace a document it previously filed that inadvertently disclosed lottery claimants' names. The Court grants this request for good cause shown, as well, and directs the Clerk's Office to replace Exhibit E attached to the Lottery's Verified Counterclaim with the redacted version attached as Exhibit B to the Lottery's motion for entry of this Confidentiality Order.

The Lottery may designate documents containing lottery claimants' names as confidential by redacting such information under this Order, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain lottery claimants' names the Lottery contends are protected from disclosure pursuant to Proviso 3.5 of the 2023–2024 South Carolina Appropriations Act (the Proviso). The Proviso provides as follows:

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner's name, address, telephone number, date

of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

The parties and counsel for the parties shall not disclose or permit the disclosure of lottery claimants' names under the terms of this Order to any other person or entity pending resolution of this case. No counsel shall in any manner, directly or indirectly, transfer any unredacted document containing lottery claimants' names, or copies of the same, or communicate orally or in writing any lottery claimant's name contained in the same to any person pending resolution of this case.

All copies, duplicates, extracts, summaries, descriptions, or portions of unredacted documents containing lottery claimants' names which are protected as Confidential under this Order in the possession of Plaintiff George S. Glassmeyer or his counsel shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All lottery claimants' names in such copies shall be afforded the full protection of this Order. Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of unredacted documents containing lottery claimants' names which are protected as CONFIDENTIAL under the terms of this Order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to such documents.

If either party seeks to file any document containing lottery claimants' names subject to protection under this Order with the Court, that party shall take appropriate action to ensure that the documents receive proper protection from public disclosure including: (1) filing a redacted version of the document; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to such

rule or procedure as may apply. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document to be filed under seal. Documents may be filed under seal only with the permission of the Court after proper motion.

Pending the outcome of this case, including any appeal, Plaintiff George S. Glassmeyer and his counsel shall destroy any unredacted document containing lottery claimants' names. Counsel shall affirmatively state in writing full compliance with this provision if requested by opposing counsel in writing. Sanctions, including discipline of counsel by this Court, may be warranted should this Court find any party in breach of the terms of this Order.

Nothing in this Order shall be deemed to preclude the parties from seeking and obtaining additional protection or modification with respect to the confidentiality of documents or other material. Inadvertent or unintentional production of unredacted documents containing lottery claimants' names shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential and redact lottery claimants' names as otherwise allowed by this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that lottery claimants' names shall remain confidential during the pendency of this litigation, including any appeal; the Clerk's Office shall replace Exhibit E attached to the Lottery's Verified Counterclaim with a redacted version which is attached as Exhibit B to the Lottery's motion for entry of this Confidentiality Order; and unredacted documents containing lottery claimants' names shall be destroyed or returned to counsel for the Lottery pending resolution of the case.

AND IT IS SO ORDERED.

Columbia, South Carolina
January ____, 2024

Honorable Daniel M. Coble
Richland County Court of Common Pleas
Fifth Judicial Circuit of South Carolina



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2024-01-05 11:33:54 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>SCHEDULING ORDER</u>
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

The Chief Judge for Administrative Purposes designated the above-captioned case as complex and assigned it to the undersigned on November 28, 2023. Pursuant to that Order, the Court held a status conference on December 6, 2023, to discuss an appropriate scheduling order to conclude this action within six months of filing pursuant to section 30-4-100(A) of the South Carolina Code. The following Scheduling Order is established in this case:

1. The parties intend to file cross-motions for summary judgment, and they have agreed to coordinate on a general briefing schedule to ensure the Court has sufficient time to review the parties' briefs before a hearing on the motions is held. In all events, the parties shall file any final memoranda on the forthcoming motions no later than January 3, 2024.
2. A hearing on the forthcoming motions will be held in person on January 5, 2024.
3. The case is subject to being called for bench trial, if necessary, on March 8, 2024.

AND IT IS SO ORDERED.

Honorable Daniel M. Coble
Richland County Court of Common Pleas
Fifth Judicial Circuit of South Carolina



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Scheduling Order

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2023-12-15 13:39:26 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
v.	)	<u>COMPLEX CASE DESIGNATION</u>
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court on the parties' joint consent motion to assign the above-captioned case to the Honorable Daniel M. Coble. For the reasons that follow, the parties' motion is **GRANTED**.

As the parties note, Judge Coble already presided over a hearing on their initial dispositive motions and, thus, is familiar with the issues in this case arising under the Freedom of Information Act. Given that the parties anticipate additional hearings that will necessitate a scheduling order to conclude this case within six months as required, S.C. Code Ann. § 30-4-100, the Court finds that assigning this case, in full, to a single judge would promote judicial economy and give effect to the General Assembly's intent. The Court has the authority to enter this Order in its capacity as Chief Administrative Judge. *E.g., In re Duties of Circuit Court Chief Judges for Administrative Purposes*, Order No. 2019-06-28-02 (S.C. Sup. Ct. filed June 29, 2019); Rule 40(h), SCRCP.

Therefore, consistent with the above law, for good cause shown, in the interest of judicial economy, and to facilitate compliance with the General Assembly's directive to conclude the case within six months, the Court hereby assigns this case, in full, to the Honorable Daniel M. Coble. Judge Coble shall have exclusive jurisdiction over all issues in the case and may issue a scheduling order to facilitate resolving this case within six months.

AND IT IS SO ORDERED.

Honorable Jocelyn Newman
Chief Administrative Judge
Richland County Court of Common Pleas
Fifth Judicial Circuit of South Carolina

October __, 2023
Columbia, South Carolina



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Other

IT IS SO ORDERED.

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit

Electronically signed on 2023-11-27 12:03:43 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4004854

George S Glassmeyer
PLAINTIFF(S)

South Carolina Lottery Commission
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion to Dismiss is DENIED. The Plaintiff has stated facts sufficient to constitute a cause of action.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/20/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2023-10-20 09:27:46 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4004854

George S Glassmeyer
PLAINTIFF(S)

South Carolina Lottery Commission
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's Motion to Dismiss Counterclaim is DENIED. The court finds that the counterclaim is procedurally proper.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/20/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2023-10-20 09:27:26 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4004854

George S Glassmeyer
PLAINTIFF(S)

South Carolina Lottery Commission
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter has been taken under advisement.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2023CP4004854

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2023-10-13 10:58:26 page 3 of 3

WSTATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2023-CP-40-_____

George S. Glassmeyer,

Plaintiff,

vs.

South Carolina Lottery Commission,

Defendant.

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, P. O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

s/Taylor Smith

Taylor M. Smith IV
S.C. Bar No. 101584
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@harrisonfirm.com (email)
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
September 15, 2023

STATE OF SOUTH CAROLINA**IN THE COURT OF COMMON PLEAS****COUNTY OF RICHLAND****CASE NO. 2023-CP-40-_____****George S. Glassmeyer,****Plaintiff,****vs.****South Carolina Lottery Commission,****Defendant.****VERIFIED COMPLAINT**

The Plaintiff, complaining of the Defendant herein, alleges:

1. Plaintiff George S. Glassmeyer is a citizen and resident of South Carolina for purposes of the South Carolina Freedom of Information Act, S.C Code Ann § 30-4-10 et. seq. (hereinafter “FOIA”).
2. Defendant South Carolina Lottery Commission (hereinafter “Lottery Commission”) located in Columbia, is a part of the government of South Carolina.
3. Defendant is a “public body” for purposes of FOIA.
4. This Court possesses jurisdiction under S.C. Code Ann. § 30-4-100, the South Carolina Freedom of Information Act, to adjudicate this matter and provide relief to the Plaintiff.
5. In addition to having an interest in how the Lottery Commission manages the South Carolina Education Lottery, Plaintiff also has an interest, like other citizens and residents of South Carolina, in making sure Defendant operates in an open and public manner.
6. The purpose of FOIA is described in S.C. Code Ann. § 30-4-15:

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.

7. “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (S.C. 2001) (citing South. Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978)).

8. FOIA provides that “[a] person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body.” S.C. Code Ann. § 30-4-30(A). However, a public body “may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records.” S.C. Code Ann. § 30-4-30(B).

9. If the request is granted, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the final determination was provided. S.C. Code Ann. § 30-4-30(C).

10. This matter concerns a violation of FOIA regarding Defendant’s failure to lawfully provide responsive information to Plaintiff’s FOIA request, thus impairing Plaintiff’s right to learn the activities of the Lottery Commission at minimum cost or delay.

11. In March and April 2014, Plaintiff submitted a series of FOIA requests to Defendant for information concerning lottery winnings over the previous year.

12. The Lottery Commission responded to Plaintiff’s requests by suing him. See South Carolina Lottery Commission v. George S. Glassmeyer (Case No. 2014-CP-40-2926; filed May 7, 2014).

13. The Lottery Commission and Plaintiff settled that lawsuit by agreement on February 15, 2022. Plaintiff agreed to not seek information concerning “claimants and/or prize winners” through May 31, 2023, in exchange for the payment of money and dismissal of the lawsuit.

14. In turn, the settlement agreement also provided that the Lottery Commission would keep in force its policy of refusing to disclose lottery winner personal information as an unreasonable invasion of personal privacy “until May 31, 2023. If the South Carolina General Assembly does not enact legislation addressing this specific issue by such date, then the South Carolina Lottery Commission will provide the full names, cities, and states, of lottery prize claimants in response to FOIA requests after that date.”

15. On June 16, 2023, Plaintiff mailed a FOIA request to the Lottery Commission. The request, which included 18 items being sought, included as its first: “The first and last name, and city and state of residence, of all persons who submitted bona fide claims for gross lottery winnings (i.e., before any tax withholding or setoff(s)) equal to or exceeding one million dollars from June 30, 2021 through June 15, 2023, inclusive.” A copy of this FOIA request is attached as Exhibit A.

16. On July 5, 2023, the Lottery Commission provided its written determination where it responded in kind to Plaintiff’s 18 items and, in part, said to Plaintiff’s request for claimant names that “consistent with the law and policy expressed by the legislative and judicial branches of the government, [the Lottery Commission] shall provide the city and state of residence of all persons who submitted bona fide claims for gross lottery winnings (i.e. before tax withholding or set-off) equal to or exceeding one million dollars from June 30, 2021 through June 15, 2023.” A copy of the Lottery Commission’s determination is attached as Exhibit B.

17. On August 16, 2023, the Lottery Commission sent a letter to Plaintiff indicating it “has provided all records subject to disclosure in response” to his request for information.

18. Although the Lottery Commission did indicate compliance with some items in Plaintiff's FOIA request would be unduly burdensome, as some requests were overly broad and otherwise improper, the Commission at no point asked Plaintiff to pay for fees associated with his June 16 request.

19. Of the 18 items sought in Plaintiff's FOIA request, the Lottery Commission has fully complied with eight (8), including items numbered 3, 6, 7, 9, 10, 15, 16 and 17. Plaintiff appreciates the Lottery Commission's cooperation, and this limited view into their activities.

20. Item 2 of Plaintiff's FOIA request concerned winners/claimant names, yet Defendant failed to provide that information under no lawful claim of exemption, in breach of FOIA.

21. Item 8 of Plaintiff's attached FOIA request sought materials acquired by Defendant pursuant to searches conducted to fill employment vacancies. Defendant did not seek an extension to provide responsive information after the statutory deadline of August 4, 2023, and its production of such information by letter dated August 10, 2023, is a violation of FOIA.

22. Items 13 and 14 of Plaintiffs attached FOIA request sought records concerning alleged misconduct by Defendant employees and disciplinary action taken against those employees (respectively). Defendant did not seek an extension to provide responsive information after the statutory deadline of August 4, 2023, and its production of such information by letter dated August 16, 2023, is a violation of FOIA.

23. Items 5, 12, 18 of Plaintiff's attached FOIA request sought records that contain at least partially (in items 5 and 12) information specifically deemed "public information" by S.C. Code § 30-4-50(6), and information routinely provided in response to FOIA requests (email communication in item 18), yet Defendant failed to supply any of it.

24. Defendant did respond with some records pursuant to Item 4; however failed to provide unredacted information concerning drawers' signatures or winners names in violation of FOIA.

25. Defendant also responded with some records pursuant to Item 11; however entirely redacted at least one page in response under no lawful claim of authority, violating FOIA's mandate to exempt information – not records – from disclosure.

26. Defendant Lottery Commission's failure to supply all responsive information, pursuant to FOIA, to Plaintiff's request is also a violation of FOIA.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

27. That each and every paragraph herein is repeated as if fully set forth.

28. Per the language of the aforementioned 2022 settlement agreement between Plaintiff and Defendant, if the South Carolina General Assembly did not enact legislation specifically addressing Section 30-4-40(a)(2) of the S.C. Code on or prior to May 31, 2023, the Defendant agreed to provide the "full names" of "lottery prize claimants" upon receipt of a FOIA request submitted after that date. The South Carolina General Assembly did not enact any such legislation on or prior to said date and Plaintiff submitted a FOIA request to Defendant for the names of lottery prize claimants on June 16, 2023. Upon receipt by Defendant of Plaintiff's FOIA request on June 21, 2023, Defendant's contractual duty to perform (i.e., provide Plaintiff with prize claimants' full names) was immediately triggered. Defendant has failed to perform this duty and thus breached the settlement agreement.

29. The parties previously agreed how the Lottery Commission would continue to follow their existing policy regarding disclosure of lottery winner/claimant information until May 31, 2023, unless legislation addressing this specific issue was enacted on or prior to that date.

30. Defendant received the attached FOIA request after Plaintiff's proscribed period of requesting the information under the 2022 settlement agreement.

31. Defendant Lottery Commission's refusal to disclose "the full names" of "lottery prize claimants" upon Plaintiff's FOIA request is a failure to perform and breach of the settlement agreement.

32. Plaintiff seeks a finding that Defendant has breached the settlement agreement and further asks for specific performance requiring Defendant to disclose the requested information.

FOR A SECOND CAUSE OF ACTION
(Freedom of Information Act)

33. That each and every paragraph herein is repeated as if fully set forth.

34. The Lottery Commission's failure to supply all responsive information to Plaintiff's attached request and its failure to provide records within thirty calendar days (from the written determination deadline), pursuant to S.C. Code Ann. § 30-4-30(C), are violations of FOIA.

35. Plaintiff seeks a declaration that Defendant violated FOIA in this regard and that an injunction is ordered to supply all responsive information, pursuant to the Act.

REQUESTED RELIEF

36. That each and every paragraph herein is repeated as if fully set forth.

37. Plaintiff specifically requests this matter be heard on the expedited timeline identified in S.C. Code Ann § 30-4-100(A); whereby this matter be scheduled for an initial hearing within ten days of service on all the parties and a scheduling order be established to conclude this matter within six months of filing.

38. Plaintiff specifically reserves the opportunity to request an in-camera review of allegedly over-redacted or improperly redacted information provided to him in this controversy.

39. In addition to seeking declaratory judgments regarding the above-designated violations, Plaintiff also seeks an injunction, pursuant to S.C. Code Ann § 30-4-100(A), for Defendant to provide the responsive information.

40. Plaintiff also seeks specific performance requiring Defendant to disclose the full names of lottery prize claimants, as Plaintiff lawfully requested.

41. Plaintiff also requests the Court grant it his reasonable attorneys' fees and costs associated with this matter, pursuant to S.C. Code Ann. § 30-4-100(B).

WHEREFORE, the Plaintiff prays:

- (a) For an order of this Court declaring Defendant violated FOIA when it committed the above-designated violations;
- (b) To issue an injunction requiring Defendant to supply all responsive information to Plaintiff's request;
- (c) To require specific performance of Defendant to disclose the information identified in the 2022 settlement agreement concerning lottery winners/claimants that Plaintiff requested;
- (d) To grant Plaintiff his costs and attorneys' fees under S.C. Code Ann. § 30-4-100; and
- (e) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/Taylor Smith
Taylor M. Smith IV
S.C. Bar No. 101584
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@harrisonfirm.com (email)
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
September 15, 2023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2023-CP-40-_____

George S. Glassmeyer,

Plaintiff,

vs.

South Carolina Lottery Commission,

Defendant.

VERIFICATION

I, George S. Glassmeyer, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.



Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME on
this 15th day of September, 2023 to certify
which witness my hand and seal.



Notary Public
State of South Carolina

My commission expires June 10, 2024

EXHIBIT A


June 16, 2023

Mr. William Hogan Brown
Executive Director
South Carolina Education Lottery
P.O. Box 11949
Columbia, SC 29211-1949

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Dear Mr. Brown:

Pursuant to the South Carolina Freedom of Information Act I am requesting the following information and documents from the South Carolina Education Lottery (SCEL).

Wherever possible, I am requesting that all of the requested information and documents be provided in a hard copy (i.e., paper) format.

I am not requesting any of this information or documentation for purposes of commercial solicitation.

I am requesting this information and documentation, in part, because I am concerned about possible continuing embezzlement of public funds within your agency.

1. The first and last name, and city and state of residence, of all persons who submitted bona fide claims for gross lottery winnings (i.e., before any tax withholding or setoff(s)) equal to or exceeding one million dollars from June 30, 2021 through June 15, 2023, inclusive.
2. A copy of the SCEL claim form submitted by all persons identified in response to Item #1 above.
3. The name of the SCEL game, date of drawing, and winning numbers associated with the claims submitted by persons identified in response to Item #1 above.
4. Copies of all checks (front and back) and/or wire transfers issued to all persons identified in Item #1 above.

Page 2
June 16, 2023

5. Copies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023 (inclusive) not otherwise provided in response to Item #4 above.
6. The name, sex, race, date of employment, position title, annual salary, and any bonuses of all SCEL employees (full time and part time) as of the first business day of every month beginning in July, 2021 and continuing through June, 2023.
7. Copies of all SCEL employment position vacancy announcements published (internally or externally) from June 30, 2021 through June 15, 2023, inclusive.
8. All materials, regardless of form, gathered by SCEL during all searches conducted to fill all position vacancies identified in response to Item #7 above.
9. Copies of all audit reports, rather generated internally or externally, dated between June 30, 2021 and June 15, 2023, inclusive.
10. A complete copy of all current SCEL personnel policies and any and all amendments to same issued between June 30, 2021 and June 15, 2023, inclusive.
11. A complete copy of all current SCEL policies and any and all amendments to same issued between June 30, 2021 and June 15, 2023, not otherwise provided in response to Item #10 above.
12. A copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15, 2023, inclusive.
13. Copies of any and all documents, recordings, maps, or diagrams, relating to any alleged misconduct by any current or past SCEL employee, regardless of whether the allegations were determined to be founded or unfounded, received or generated by SCEL from June 30, 2021 through June 15, 2023, inclusive.
14. Copies of any and all documents relating to any and all disciplinary action imposed upon any SCEL employee between June 30, 2021 and June 15, 2023, inclusive.
15. Copies of all contracts executed by SCEL between June 30, 2021 and June 15, 2023, inclusive.
16. Copies of all documents and materials distributed to, or reviewed by, any and all members of the SCEL Board of Commissioners and committees thereof during a public meeting from June 30, 2021 through June 15, 2023.

Page 3
June 16, 2023

17. Copies of any and all financial statements and/or reports of any and all types and description received from any and all financial institutions by SCEL from June 30, 2021 through June 15, 2023, inclusive.

18. Copies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive.

I look forward to receiving your timely response.

Sincerely,

George S. Glassmeyer

EXHIBIT B



VIA CERTIFIED MAIL AND ELECTRONIC MAIL, RETURN RECEIPT REQUESTED

July 5, 2023

Mr. George S. Glassmeyer
[REDACTED]
[REDACTED]

RE: Request for Information Pursuant to the South Carolina Freedom of Information Act

Dear Mr. Glassmeyer:

Thank you for your request to the South Carolina Education Lottery (SCEL), received through certified mail on Wednesday, June 21, 2023, requesting information under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* (FOIA). Specifically, you submitted a request for eighteen (18) items, and requested "that all of the requested information and documents be provided in a hard copy (i.e. paper) format." The 18 requests are enumerated below, and a response from SCEL is subsequently provided.

Item 1.

The first and last name, and city and state of residence, of all persons who submitted bona fide claims for gross lottery winnings (i.e., before tax withholding or setoff(s)) equal to or exceeding one million dollars from June 30, 2021 through June 15, 2023, inclusive.

SCEL determines your request is subject to FOIA in part and denied in part in accordance with S.C. Code Ann. § 30-4-40(a)(4). Specifically, Proviso 3.5 in Part 1B of the 2023-2024 South Carolina Annual Appropriations Act (Budget Proviso) provides that "Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner's name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and hometown of the winner."

Further, the Family Privacy Protection Act, S.C. Code Ann. § 30-2-10 *et seq.*, requires public officials to redact public records that contain personal information. "Personal information" means information that identifies or describes an individual including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone

Mr. George Glassmeyer
July 5, 2023

number, medical or disability information, education level, financial status, bank account numbers, account or identification number issued by or used, or both, by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit records or reports.”

Among other things, “personal identifying information” includes, but is not limited to, driver's license numbers; social security numbers; dates of birth; current names, when combined with, and linked to, other identifying information; current addresses, when combined with, and linked to, other identifying information. S.C. Code Ann. § 16-13-510(D) (Personal Financial Security Act).

Consistent with these laws, the Supreme Court of South Carolina revised a 2007 Order further clarifying that personal identifying information should be redacted in appellate court filings and amended Rule 41.2, S.C.R.C.P., to require redaction of personal identifying information in court filings. See *In re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, App. No. 2013-002681, Order No. 4-04-15-02, at 1-2 (S.C. Sup. Ct. filed Apr. 15, 2014).

SCEL cannot intentionally communicate or otherwise make available to the general public, an individual's personal information or personal identifying information. Thus, consistent with the law and policy expressed by the legislative and judicial branches of government, SCEL shall provide the city and state of residence of all persons who submitted bona fide claims for gross lottery winnings (i.e. before tax withholding or set-off) equal to or exceeding one million dollars from June 30, 2021 through June 15, 2023.

Item 2.

A copy of the SCEL claim form submitted by all persons identified in response to Item #1.

SCEL determines your request is subject to FOIA with exception. In conjunction with the Budget Proviso, SCEL determines the claimant ID, first name, middle name, last name, street address, both individually and when used in combination with each other, is specifically exempted from disclosure. As stated in SCEL's response to Item 1, SCEL cannot intentionally communicate, or otherwise make available to the general public, an individual's personal information or personal identifying information. In accordance with the law, this exempted information will be redacted.

Item 3.

The name of the SCEL game, date of drawing, and winning numbers associated with the claims submitted by persons identified to Item #1 above.

SCEL interprets your request in Item 3 as one made pursuant to FOIA and determines the information you seek is subject to review.

Mr. George Glassmeyer
July 5, 2023

Item 4.

Copies of all checks (front and back) and/or wire transfers issued to all persons identified in Item #1.

Please see SCEL's response to Items 1 and 2.

Item 5.

Copies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023

SCEL determines the requested information in Item #5 is unduly burdensome, overly broad, and is an otherwise improper request. SCEL estimates that 120,000 checks or wire transfers were executed within the requested period. All checks would require a thorough review for redaction of personal information and personal identifying information, such as names, bank account numbers, account or identification numbers issued or used, or both, by any private financial institution, and/or signatures.

Item 6.

The name, sex, race, date of employment, position title, annual salary, and any bonuses of all SCEL employees (full time and part time) as of the first business day of every month beginning in July 2021 and continuing through June, 2023.

SCEL determines your requested information is subject to disclosure as provided in FOIA, with clarification. Salaries of employees will be provided in accordance with S.C. Code Ann. § 30-4-40(a)(6).

Item 7.

Copies of all SCEL employment position vacancy announcements published (internally or externally) from June 30, 2021 through June 15, 2021, inclusive.

SCEL determines your requested information is subject to disclosure as provided in FOIA.

Item 8.

All materials, regardless of form, gathered by SCEL during all searches conducted to fill all position vacancies identified in response to item #7 above.

SCEL determines the requested information in Item #8 is unduly burdensome, overly broad, and is an otherwise improper request. SCEL has posted solicitations for employment for over 30 positions and has received approximately 2,500 employment applications, including resumes and application addendums that contain personal information and personal identifying information as defined above in Item 1. This request would require a cautious and extensive review to redact any personal information and personal identifying

Mr. George Glassmeyer
July 5, 2023

information of these applicants such as photographs, social security numbers, dates of birth, driver's identification numbers, names, home addresses, home telephone numbers, education level information, employment history information, race, signatures, and credit reports. Lastly, there appears to be no relevance of this requested information in support of the concern about "possible continuing embezzlement of public funds" within SCEL.

Item 9.

Copies of all audit reports, generated internally or externally, dated between June 30, 2021 and June 15, 2023, inclusive.

SCEL determines your requested information is subject to disclosure as provided in FOIA, with exception. Certain audit reports contain proprietary information of SCEL's vendors and confidential information relating to security plans and devices proposed, adopted, installed, or utilized by SCEL, and is required to be closed to the public. This confidential information is not considered to be made open to the public under the provisions of FOIA as defined in § 30-4-20 and will be redacted or not disclosed. Internal audit reports will be provided in SCEL's response to Item 16.

Item 10.

A complete copy of all current SCEL personnel policies and any and all amendments to same issued between June 30, 2021 and June 15, 2023, inclusive.

SCEL determines your requested information is subject to disclosure as provided in FOIA, with exception to any policy related to security plans. This confidential information is not considered to be made open to the public under the provisions of FOIA as defined in § 30-4-20 and will be redacted or not disclosed.

Item 11

A complete copy of all current SCEL policies and any and all amendments to same issued between June 30, 2021 and June 15, 2023, not otherwise provided in response to Item #10 above.

SCEL determines your requested information is subject to disclosure as provided in FOIA.

Item 12.

A copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15, 2023, inclusive.

SCEL determines the requested information in Item #12 is unduly burdensome, overly broad, and is an otherwise improper request. Responding to this request would include copying over 8,000 documents of bills, invoices, and statements, and would require a significant review to redact all personal information and

Mr. George Glassmeyer
July 5, 2023

personal identifying information as defined in SCEL's response to Item 1. Protected information could include, but not be limited to, bank account numbers, account or identification numbers issued by private financial institutions, signatures, and current names when combined with, and linked to, other identifying information.

Item 13.

Copies of any and all documents, recordings, maps, or diagrams relating to any alleged misconduct by any current or past SCEL employee, regardless of whether the allegations were determined to be founded or unfounded, received or generated by SCEL from June 30, 2021 through June 15, 2023, inclusive.

SCEL determines your requested information is subject to disclosure as provided in FOIA.

Item 14.

Copies of any and all documents relating to any and all disciplinary action imposed upon an SCEL employee between June 30, 2021 and June 15, 2023, inclusive.

SCEL determines your requested information is subject to disclosure as provided in FOIA.

Item 15.

Copies of all contracts executed by SCEL between June 30, 2021 and June 15, 2023, inclusive.

SCEL determines your requested information is subject to disclosure as provided in FOIA, in part. All personal information and personal identifying information, as defined in SCEL's response to Item 1, will be redacted. Contracts executed by the SC Division of Procurement Services and the Office of the State Auditor should be requested through those respective agencies. A list of those contracts will be provided upon request. SCEL enters into contracts with vendors, who often execute incidental contracts to perform the services agreed upon in their contracts with SCEL, but SCEL is not in possession of those incidental contracts. Thus, they will not be provided. SCEL will provide all contracts for goods and services executed by SCEL pursuant to the authority granted to SCEL in accordance with the SC Procurement Code and Regulations for the requested period. However, SCEL determines all other contracts executed by SCEL, such as with licensed lottery retailers (over 4,000 yearly), signed lottery tickets (an average of 60,000 tickets yearly), and/or contractual items included in requested Item 12, are unduly burdensome, overly broad, and is an otherwise an improper request.

Item 16.

Copies of all documents and materials distributed to, or reviewed by, any and all members of the SCEL Board of Commissioners and committees thereof during a public meeting from June 30, 2021 through June 15, 2023.

Mr. George Glassmeyer
July 5, 2023

SCEL determines your requested information is subject to disclosure as provided in FOIA.

Item 17.

Copies of any and all financial statements and/or reports of any and all types and description received from any and all financial institutions by SCEL from June 30, 2021 through June 15, 2023.

SCEL determines your requested information is subject to disclosure as provided in FOIA, subject to redaction of all personal information and personal identifying information, specifically banking account numbers and/or account or identification numbers issued by any federal or state governmental agency or private institution.

Item 18.

Copies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive.

SCEL determines the requested information in Item #18 is unduly burdensome, overly broad, and is an otherwise improper request. Including part-time employees, SCEL currently has a total of 125 employees, and the response would surpass 3 million email messages. SCEL would need to conduct an extremely comprehensive review of millions of emails to redact, where necessary, all personal identifying information, personal information, information regarding lottery prize winners prohibited from disclosure in accordance with the Budget Proviso and as discussed in SCEL's response to Item 1, privileged communications with outside legal counsel, exempted information pursuant to FOIA such as trade secrets, information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy (approximately 45 of SCEL's employees work outside of the SCEL business office and rely on email to relay sensitive information to supervisors and/or human resources that would be inappropriate to disclose), records compiled for law enforcement purposes that may interfere with a prospective law enforcement proceeding, information that may endanger the life or physical safety of any individual (specifically lottery prize winners), documents incidental to proposed contractual arrangements, and correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

* * * *

Please let us know by no later than July 7, 2023, if you are willing to withdraw or revise the objectionable requests. We certainly want to work together to provide responsive information. As drafted, however, several requests would require SCEL to divert unnecessary and significant agency and outside resources to review, redact, and produce documents that are not related to the stated purpose underlying the requests.

Mr. George Glassmeyer
July 5, 2023

While we will try our best to produce all responsive documents within 30 days, we may need to request a reasonable extension on some given the volume of information requested. In the meantime, we will begin producing responsive documents to you on a rolling basis.

If you have any questions or concerns, please feel free to contact me. My direct phone line is 803-737-3941 and my email address is dolly.garfield@sclot.com.

Sincerely,



Dolly J. Garfield
General Counsel

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2023-CP-40-04854

George S. Glassmeyer,

Plaintiff,

vs.

South Carolina Lottery Commission,

Defendant.

REQUEST FOR HEARING

Plaintiff humbly requests this matter be heard on the expedited timeline identified in S.C. Code Ann § 30-4-100(A); whereby this matter be scheduled for an initial hearing within ten days of service on all the parties and a scheduling order be established to conclude this matter within six months of filing. Defendant has accepted service of the Complaint. Consequently, Plaintiff humbly requests a hearing be set for purposes of establishing a scheduling order and/or hearing any motions in this matter.

Respectfully submitted,

s/Taylor Smith

Taylor M. Smith IV
S.C. Bar No. 101584
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@harrisonfirm.com (email)
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
September 26, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>PARTIAL MOTION TO DISMISS</u>
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Lottery Commission (SCEL), by and through the undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for Richland County, in the Fifth Judicial Circuit of South Carolina, ten days after service hereof, or as soon as counsel may be heard, for an Order partially dismissing the complaint filed by Plaintiff George S. Glassmeyer (Plaintiff) pursuant to Rule 12(b)(6), SCRCF.

INTRODUCTION

On April 4, 2022, Plaintiff sued SCEL, arguing it violated the Freedom of Information Act (FOIA) by not posting a fee schedule to its website. Almost a year later, the Court granted SCEL's motion for summary judgment, holding SCEL was not obligated to post a fee schedule because it does not charge—and never has charged—fees for the review, retrieval, redaction, and production of public records in response to FOIA requests. *See* Order Gr. Summ. J. to Def., No. 2022-CP-40-01769, at 1–6 (S.C. Ct. Comm. Pl. Mar. 31, 2023). The Court dismissed Plaintiff's complaint with prejudice. Plaintiff did not appeal the Court's ruling.

SCEL declines to charge fees in an effort to be transparent and to make its records more accessible to the public. Plaintiff sought to take advantage of that decision here by serving 18 voluminous requests on SCEL. For instance, he sought two years' worth of emails to and from

every SCEL employee, every check in SCEL's possession spanning that same period, and all bills and invoices too. And for each response, he wanted hard copy (paper) records. As relevant to this motion, Plaintiff also sought all information on lottery prize winners, even though he was made aware that SCEL is prohibited by law from providing certain identifying information. *See* Ex. B to Pl.'s Compl. at 1. SCEL is filing an answer and counterclaim responding to Plaintiff's complaint. In conjunction with that pleading, this matter comes before the Court on SCEL's partial motion to dismiss because Proviso 3.5 of the 2023–2024 Annual Appropriations Act prohibits it from disclosing lottery winners' names and personal information.

BACKGROUND

In 2013 and 2014, Plaintiff sent several FOIA requests to SCEL, seeking information on winners of lottery prizes equal to or greater than \$1 million. *S.C. Lottery Comm'n v. Glassmeyer*, 433 S.C. 244, 248, 857 S.E.2d 889, 891 (2021). SCEL determined some information responsive to those requests—namely lottery winners' names, addresses, telephone numbers, and forms of identification—was exempt under the unreasonable invasion of privacy exemption in section 30-4-40(a)(2) of the South Carolina Code and declined to disclose it. *Id.* at 248, 857 S.E.2d at 891–92. SCEL then sought a declaratory judgment that the information was exempt after Plaintiff expressed dissatisfaction with SCEL's determination. *Id.* The circuit court granted judgment on the pleadings, which the court of appeals upheld. But our supreme court reversed and remanded for a new trial because, “[w]ithout a trial on the issues to develop a factual record, there is no evidence on which the circuit court could base its judgment.” *Id.* at 252, 857 S.E.2d at 893.

On remand, the parties settled that lawsuit by agreement on February 15, 2022. Pl.'s Compl. at ¶ 13. Among other things, Plaintiff agreed not to submit FOIA requests seeking information about claimants or prize winners to SCEL through May 31, 2023. In exchange, SCEL

agreed its policy not to disclose personal information under section 30-4-40(a)(2) would remain in “full force until May 31, 2023.” The agreement also provided that “[i]f the South Carolina General Assembly does not enact legislation addressing this specific issue by such date, then the South Carolina Lottery Commission will provide the full names, cities, and states of lottery prize claimants in response to FOIA requests after that date.” *See* Ex. 1, 2022 Settlement Agreement.

On June 21, 2023, only several weeks after the date through which Plaintiff agreed not to request lottery winners’ names, SCEL received yet another FOIA request from Plaintiff dated June 16, 2023, seeking exactly that information and much more. Ex. A to Pl.’s Compl. SCEL responded to Plaintiff’s request with its determination that numerous laws provided SCEL could redact “winners/claimant names,” and Proviso 3.5 of the 2023–2024 South Carolina Annual Appropriations Act (Proviso 3.5) actually prohibits disclosure of such information. Thus, SCEL redacted all records produced as responsive to Plaintiff’s 18 requests to prevent disclosure of information protected by Proviso 3.5. Again dissatisfied with SCEL’s determination, Plaintiff filed this lawsuit, alleging SCEL breached the settlement agreement with Plaintiff because it would not disclose “the full names” of “lottery prize claimants.” Pl.’s Compl. at ¶¶ 27–32. Plaintiff also alleges SCEL violated FOIA by “fail[ing] to supply all responsive information to Plaintiff’s attached request.” Pl.’s Compl. at ¶ 34. This partial motion to dismiss follows.

STANDARD

“Under Rule 12(b)(6), SCRCPL, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). While a court must generally limit itself to “the allegations contained within the four corners of the complaint” in considering a Rule 12(b)(6) motion to dismiss, *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011), a

court may take judicial notice of other matters of public record. *See Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007) (holding a court can “consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular . . . matters of which a court may take judicial notice”). And “[a] copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.” Rule 10(c), SCRCP.

Further, when a party explicitly relies on documents to form the basis of the complaint, the Court can consider those documents in deciding a motion to dismiss. *See Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.3d 824, 826 (2009) (“[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.”). “Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” *Brown v. Theos*, 338 S.C. 305, 309–10, 526 S.E.2d 232, 235 (Ct. App. 1999) (quoting *Jarrell v. Petoseed Co., Inc.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998)).

ARGUMENT

Every year, the General Assembly is required to provide “for all expenditures in a general appropriations act . . . to fund the ordinary expenses of state government and to direct the expenditure of these funds.” *Amisub of S.C., Inc. v. S.C. Dep’t of Health & Env’t Control*, 407 S.C. 583, 592, 757 S.E.2d 408, 413 (2014).

As part of the General Assembly’s “duty and authority to appropriate money as necessary for the operation of the agencies of government,” it “has the right to specify the conditions under

which the appropriated monies shall be spent.” *Edwards v. State*, 383 S.C. 82, 90, 678 S.E.2d 412, 416 (2009). Those conditions are enacted as law through budget provisos of the Appropriations Act. And “[e]xecutive agencies are required to comply with the General Assembly’s enactment of a law until it has been otherwise declared invalid.” *Id.* at 91, 678 S.E.2d at 417.

On June 14, 2023, the General Assembly ratified the 2023–2024 Annual Appropriations Act, including a proviso specifically addressing the issue of disclosure of lottery winner information. Proviso 3.5 provides,

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner’s name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

This Proviso—indeed the entire Appropriations Act and its provisions not vetoed by the Governor on June 20, 2023—took effect on July 1, 2023.

Although Proviso 3.5 was in full force and effect on July 5 when SCEL provided its final determination and when SCEL provided responsive records thereafter, Plaintiff complains that SCEL breached its settlement agreement with Plaintiff by not disclosing “the full names” of “lottery prize claimants.” Pl.’s Compl. at ¶ 31. But case law and public policy say otherwise. While Proviso 3.5 became effective July 1, it was original to the first draft of the Appropriations Act introduced by the House of Representatives Ways and Means Committee on March 7, 2023. It remained in the later drafts of the Act, and the General Assembly ratified it in the final 2023–2024 Appropriations Act on June 14. Thus, by the time SCEL received Plaintiff’s FOIA request

on June 21, the General Assembly had clearly expressed its intent that lottery winners' names and other personal information shall not be disclosed by enacting legislation to that effect.

Nevertheless, the language of the settlement agreement provides that, if the General Assembly does not enact legislation on the issue, SCEL will provide lottery winners' names "*in response* to FOIA requests after" May 31, 2023. (emphasis added). Despite Plaintiff's allegation to the contrary, SCEL's "duty to perform (i.e., provide Plaintiff with prize claimants' full names)" was not triggered "upon receipt" of Plaintiff's FOIA request. *See* Pl.'s Compl. at ¶ 28. Rather, any "duty" did not arise until SCEL's "response" to Plaintiff's FOIA request. When the time came to respond to Plaintiff's FOIA request, Proviso 3.5 was in full force and effect and prevented SCEL from disclosing lottery winners' names and personal information.

It is well-settled that "[w]hen a contract is originally legal, but performance becomes illegal due to a change in the law, any subsequent performance is against public policy and the party who has agreed to perform is excused from doing so." *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004). Some courts consider this situation as "impossibility of performance, although performance is not literally 'impossible' because it could be done if it were legal. Other courts simply conclude that the duty to perform is excused or discharged because performance would violate public policy as expressed in constitutional provisions, statutes, or judicial decisions." *Id.*

Whether the Court considers disclosure impossible or against public policy makes no difference. The bottom line is SCEL would have to violate state law to comply with the disclosure agreed to in the settlement agreement in 2022. Yet "[a]n appropriation act, though generally in duration temporary, has equal force and effect as a permanent statute for the time being." *State ex rel. McLeod v. Mills*, 256 S.C. 21, 27, 180 S.E.2d 638, 641 (1971). After July 1, SCEL was thus

excused from any “duty” to disclose lottery winners’ names in response to Plaintiff’s latest FOIA request because South Carolina law—Proviso 3.5—prohibits such disclosure.

CONCLUSION

The Court should dismiss Plaintiff’s breach of contract claim because Proviso 3.5 of the 2023–2024 South Carolina Annual Appropriations Act prohibits SCEL from disclosing lottery winners’ names and personal information in response to Plaintiff’s latest FOIA request. Further, to the extent Plaintiff’s claim for a violation of FOIA is based in part on SCEL’s refusal to disclose such information, the Court should also limit the scope of that claim appropriately.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
October 2, 2023

Exhibit 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
South Carolina Lottery Commission,	)	Civil Action No. 2014-CP-40-02926
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>FULL AND FINAL</u>
George S. Glassmeyer,	)	<u>SETTLEMENT AGREEMENT</u>
	)	
Defendant.	)	
	)	

FOR AND IN CONSIDERATION of the payment to George S. Glassmeyer, or his designee, of the total sum of Eighty-One Thousand, Six Hundred Ninety-Three and 87/100 Dollars (\$81,693.87) by February 25, 2022, on behalf of Plaintiff South Carolina Lottery Commission, the receipt and sufficiency of which is herewith acknowledged, Defendant George S. Glassmeyer hereby releases, acquits, and forever discharges the South Carolina Lottery Commission, the South Carolina Education Lottery, its commissioners, agents, apparent agents, servants, employees, related entities, former employees, officers, former officers, board members, former board members, and their heirs, successors, and assigns and all other persons, firms, entities, insurers of and from any claim, suits, debts, rights, actions, demands, damages, costs, causes of action, or counterclaims, including but not limited to those arising under the South Carolina Freedom of Information Act (FOIA) and those sounding in abuse of process, actual and punitive damages, or otherwise, known or unknown, which George S. Glassmeyer has or may in the future be entitled to have, arising out of or as a result of the Complaint filed in the Court of Common Pleas for Richland County, South Carolina, under Civil Action No. 2014-CP-40-02926.

The South Carolina Lottery Commission further agrees, as a condition of this settlement, to pay mediation costs to Karl A. Folkens for the February 15, 2022 mediation.

NC7. Koen GSG AGR

As a further condition of settlement, the South Carolina Lottery Commission will disclose to George S. Glassmeyer by February 25, 2022 only the full names, cities, and states of the claimants identified in Exhibit A, attached hereto, but such list will specifically exclude the names of any claimants who obtained injunctive relief against the South Carolina Lottery Commission as of February 25, 2022.

As a further condition of settlement, the parties agree that the South Carolina Lottery Commission's current FOIA policy governing the disclosure of personal information under the unreasonable invasion of privacy exemption to FOIA, S.C. Code Ann. § 30-4-40(a)(2), shall remain in full force until May 31, 2023. If the South Carolina General Assembly does not enact legislation addressing this specific issue by such date, then the South Carolina Lottery Commission will provide the full names, cities, and states of lottery prize claimants in response to FOIA requests after that date.

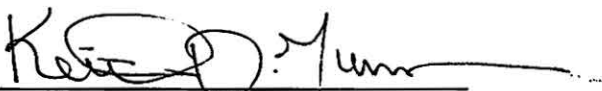
George S. Glassmeyer agrees not to submit, directly or indirectly, any FOIA requests to the South Carolina Lottery Commission through May 31, 2023 seeking information regarding claimants and/or prize winners through that date.

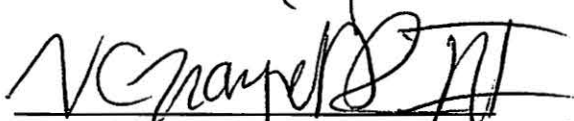
In consideration of the above payment, George S. Glassmeyer agrees that this settlement is the compromise of disputed claims—arising under FOIA and sounding in abuse of process—and that the payment made in settlement thereof is not, and is not to be construed as, an admission of liability on the part of the party or parties hereby released, or their agents, officers, or employees, and the party or parties hereby released, as well as their agents, officers, or employees, deny liability of any nature or kind to the undersigned.

The attorneys for the undersigned are hereby granted full and complete authority to enter into a stipulation of dismissal, with prejudice, to forever end the above-titled action and shall do

so no later than February 25, 2022. Further, the undersigned have read and fully understand the foregoing General Release.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal at Columbia, South Carolina, this 15th day of February, 2022.


For South Carolina Lottery Commission


Counsel for South Carolina Lottery Commission


George S. Glassmeyer

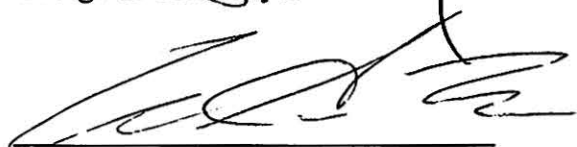

Counsel for George S. Glassmeyer

EXHIBIT A

Exhibit A

City	State	Date	Claim Total	Game info
Myrtle Beach	SC	3/12/2013	\$2,000,000.00	PowerBall
Cottageville	SC	3/25/2013	\$1,000,000.00	PowerBall
Travelers Rest	SC	4/4/2013	\$1,000,000.00	Money Money Millionaire
Jonesville	SC	4/16/2013	\$1,000,000.00	Money Money Millionaire
Columbia	SC	4/22/2013	\$1,000,000.00	MegaMillions
Statesville	NC	5/1/2013	\$500,000.00	MegaMillions
Hamer	SC	5/1/2013	\$500,000.00	MegaMillions
Kannapolis	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Mint Hill	NC	5/21/2013	\$83,333.33	PowerBall
Gastonia	NC	5/21/2013	\$83,333.33	PowerBall
Fort Mill	SC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Pineville	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.36	PowerBall
Concord	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Monroe	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Clover	SC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Fayetteville	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Bethune	SC	7/29/2013	\$1,000,000.00	PowerBall
Spartanburg	SC	8/21/2013	\$1,000,000.00	PowerBall
N Charleston	SC	10/15/2013	\$1,000,000.00	PowerBall
Eutawville	SC	1/8/2014	\$1,000,000.00	Money Money Millionaire
Hickory Grove	SC	2/11/2014	\$2,000,000.00	PowerBall
Taylors	SC	2/21/2014	\$1,000,000.00	PowerBall
Irmo	SC	3/14/2014	\$1,000,000.00	Millionaire Madness

* Successive claims of \$83,333.33 represent a \$2 million prize split among 23 claimants

Kay NG GSG ASR

Exhibit A

City	State	Date	Claim Total	Game info
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Irmo	SC	9/16/2013	\$1,000,000.00	PowerBall
W Columbia	SC	11/7/2013	\$1,000,004.00	PowerBall

copy NC7 GGG ASR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	DEFENDANT'S ANSWER TO
vs.	)	VERIFIED COMPLAINT AND
	)	VERIFIED COUNTERCLAIM
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

Defendant South Carolina Lottery Commission (Defendant or SCEL), responding to the Complaint of Plaintiff George S. Glassmeyer (Plaintiff or Glassmeyer), by and through the undersigned attorneys, answers and alleges, while reserving and without waiving its right to be heard on its Partial Motion to Dismiss Plaintiff's Complaint, as follows:

1. Each and every Paragraph of the Complaint that is not specifically admitted, qualified, or explained is denied.
2. Responding to Paragraph 1 of the Complaint, Defendant admits, upon information and belief, the allegations that Plaintiff is a citizen and resident of South Carolina. The remaining allegations in Paragraph 1 call for a legal conclusion to which no response is required. To the extent a response is required, each allegation not specifically admitted is hereby expressly denied.
3. Defendant admits the allegations in Paragraphs 2 and 3 of the Complaint.
4. Responding to Paragraph 4 of the Complaint, Defendant admits this Court has jurisdiction over this matter. Defendant denies Plaintiff is entitled to any relief. Defendant denies any remaining allegations in Paragraph 4 of the Complaint and demands proof of the allegations.
5. Responding to Paragraph 5 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's

“interest in how the Lottery Commission manages the South Carolina Education Lottery” and, therefore, denies and demands proof of those allegations. Further responding to Paragraph 5 of the Complaint, Defendant admits that South Carolinians have an interest in ensuring Defendant operates in an open and public manner, which it does.

6. Responding to Paragraphs 6, 7, 8, and 9 of the Complaint, Defendant craves reference to the legal authorities cited in those Paragraphs and denies any allegations inconsistent therewith.

7. Responding to the allegations in Paragraph 10 of the Complaint, Defendant asserts no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendant admits Plaintiff submitted a Freedom of Information Act (FOIA) request to Defendant. Defendant denies the remaining allegations in Paragraph 10 of the Complaint.

8. Defendant admits the allegations in Paragraph 11 of the Complaint.

9. Responding to the allegations in Paragraph 12 of the Complaint, Defendant admits that, after responding to Plaintiff’s numerous FOIA requests in 2013 and 2014 and disclosing certain information that it could, Defendant filed a declaratory judgment action against Plaintiff—as allowed by law—seeking guidance on its ability to withhold certain private information. See *S.C. Lottery Comm’n v. Glassmeyer*, 433 S.C. 244, 857 S.E.2d 889 (2021). Plaintiff answered that complaint and filed counterclaims for violation of FOIA and abuse of process. The Supreme Court of South Carolina held Defendant “had the right to bring a declaratory judgment action asking the circuit court to determine whether the exemption applied.” *Id.* at 250, 857 S.E.2d at 893. Defendant denies any remaining allegations in Paragraph 12 of the Complaint.

10. Responding to the allegations in Paragraph 13 of the Complaint, Defendant admits the parties settled that previous lawsuit by agreement on February 15, 2022. Defendant craves reference to that settlement agreement, asserts the terms of the agreement speak for themselves, and denies any misstatements or mischaracterizations of the agreement.

11. Responding to the allegations in Paragraph 14 of the Complaint, Defendant craves reference to the settlement agreement, asserts the terms of the agreement speak for themselves, and denies any misstatements or mischaracterizations of the agreement.

12. Responding to the allegations in Paragraph 15 of the Complaint, Defendant admits Plaintiff's FOIA request to Defendant was dated June 16, 2023, but Defendant did not receive it through certified mail until June 21, 2023. Defendant craves reference to that request seeking records and information in 18 broad categories, which was attached as Exhibit A to Plaintiff's Complaint, asserts the request speaks for itself, and denies any misstatements or mischaracterizations of the request.

13. Responding to the allegations in Paragraph 16 of the Complaint, Defendant admits it responded to Plaintiff's FOIA request on July 5, 2023. Defendant craves reference to its response, which was attached as Exhibit B to Plaintiff's Complaint, asserts the response speaks for itself, and denies any misstatements or mischaracterizations of the request.

14. Responding to the allegations in Paragraph 17 of the Complaint, Defendant admits it sent a letter to Plaintiff on August 16, 2023. Defendant craves reference to its letter, asserts the letter speaks for itself, and denies any misstatements or mischaracterizations of the letter.

15. Responding to Paragraph 18 of the Complaint, Defendant admits multiple categories of records sought in Plaintiff's FOIA request were unduly burdensome, overly broad, and otherwise improper requests. Defendant also admits it did not require Plaintiff to pay fees

associated with his FOIA request because Defendant does not charge fees associated with responding to FOIA requests. Plaintiff knows this because he previously filed a lawsuit against Defendant on the subject, did not prevail, and did not appeal. *See* Order Gr. Summ. J. to Def., No. 2022-CP-40-01769, at 1–6 (S.C. Ct. Comm. Pl. Mar. 31, 2023).

16. Responding to the allegations in the first sentence of Paragraph 19 of the Complaint, Defendant denies it has not fully complied with its legal obligations under FOIA. As to the second sentence of Paragraph 19 of the Complaint, Defendant asserts no response is required given that the allegations consist of editorial comments and generalizations about nonjusticiable issues rather than factual allegations.

17. Responding to the allegations in Paragraph 20 of the Complaint, Defendant admits Request 2 in Plaintiff’s FOIA request sought “A copy of the SCEL claim form submitted by all persons identified in response to” the first Request. Defendant admits it did not provide all information responsive to this request because it sought information specifically exempted from disclosure. Defendant denies the nondisclosure was a breach of FOIA. As Defendant explained in response to Plaintiff’s request, numerous laws provide Defendant can redact “winners/claimant names,” and Proviso 3.5 of the 2023–2024 South Carolina Annual Appropriations Act specifically “prohibit[s]” Defendant from disclosing them. This adverse authority was omitted from the Complaint. Defendant denies any remaining allegations in Paragraph 20 of the Complaint.

18. Responding to the allegations in Paragraph 21 of the Complaint, Defendant admits Request 8 in Plaintiff’s FOIA request sought “All materials, regardless of form, gathered by SCEL during all searches conducted to fill all position vacancies identified in response to” Request 7. Defendant admits it unintentionally miscalculated the deadline to furnish records in response to Plaintiff’s FOIA request as August 16, 2023, excepting Saturdays, Sundays, and legal public

holidays as provided for the final determination—but not the production of records—as set forth in section 30-4-30(C) of the South Carolina Code. While Defendant now recognizes its error, Defendant asserts Plaintiff is not harmed by a 6-day delay in receiving records responsive to Request 8. In its final determination letter on July 5, 2023, Defendant stated “[w]hile we will try our best to produce all responsive documents within 30 days, we may need to request a reasonable extension on some given the volume of information requested. In the meantime, we will begin producing responsive documents to you on a rolling basis.” Defendant then furnished responsive records on a rolling basis and provided records responsive to Request 8 on August 10, 2023. Further, Plaintiff and Defendant communicated via email no less than 20 times after the final determination and before the final document production. Plaintiff followed up on Defendant’s responses regarding at least 4 other categories and could have easily requested a status of records responsive to Request 8. Plaintiff even revised his Request 8 after Defendant’s final determination, and Defendant accommodated the request. Plaintiff’s allegations in Paragraph 21 of the Complaint merely serve as a “gotcha” to bring Defendant into court on requests to which Defendant has already supplied responsive records. Plaintiff has suffered no harm and is not entitled to fees, costs, or damages related to this one sentence he included in his Complaint.

19. Responding to the allegations in Paragraph 22 of the Complaint, Defendant admits Request 13 in Plaintiff’s FOIA request sought “Copies of any and all documents, recordings, maps, or diagrams, relating to any alleged misconduct by any current or past SCEL employee, regardless of whether the allegations were determined to be founded or unfounded, received or generated by SCEL from June 30, 2021 through June 15, 2023, inclusive.” Defendant further admits Request 14 in Plaintiff’s FOIA request sought “Copies of any and all documents relating to any and all disciplinary action imposed upon any SCEL employee between June 30, 2021 and June 15, 2023,

inclusive.” Defendant admits it unintentionally miscalculated the deadline to furnish records in response to Plaintiff’s FOIA request as August 16, 2023, excepting Saturdays, Sundays, and legal public holidays as provided for the final determination—but not the production of records—as set forth in section 30-4-30(C) of the South Carolina Code. While Defendant now recognizes its error, Defendant asserts Plaintiff is not harmed by the less than two-week delay in receiving records responsive to Requests 13 and 14. In its final determination letter on July 5, 2023, Defendant stated “[w]hile we will try our best to produce all responsive documents within 30 days, we may need to request a reasonable extension on some given the volume of information requested. In the meantime, we will begin producing responsive documents to you on a rolling basis.” Defendant provided responsive records on a rolling basis and produced records responsive to Requests 13 and 14 on August 16, 2023. Further, Plaintiff and Defendant communicated via email no less than 20 times after the final determination and before the final document production. Plaintiff followed up on Defendant’s responses to at least 5 other categories and could have easily requested a status of records responsive to Requests 13 and 14. Plaintiff’s allegations in Paragraph 22 of the Complaint merely serve as a “gotcha” to bring Defendant into court on requests to which Defendant has already supplied responsive records. Plaintiff has suffered no harm and is not entitled to fees, costs, or damages related to this one sentence he included in his Complaint.

20. Responding to the allegations in Paragraph 23 of the Complaint, Defendant admits Request 5 in Plaintiff’s FOIA request sought “Copies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023 (inclusive) not otherwise provided in response to” Request 4. Defendant admits Request 12 in Plaintiff’s FOIA request sought “A copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15,

2023, inclusive.” Defendant admits Request 18 in Plaintiff’s FOIA request sought “Copies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive.” While Defendant admits that some of the information sought in categories 5, 12, and 18 may be considered public information under FOIA, such requests are unduly burdensome, overly broad, and otherwise improper. Defendant denies any remaining allegations in Paragraph 23 of the Complaint.

21. Responding to the allegations in Paragraph 24 of the Complaint, Defendant admits it produced redacted records responsive to Request 4 in Plaintiff’s FOIA request. As Defendant explained in its response to Plaintiff’s FOIA request, numerous laws provide Defendant can redact “drawers’ signatures or winners names,” and Proviso 3.5 of the 2023–2024 South Carolina Annual Appropriations Act specifically “prohibit[s]” Defendant from providing them. Defendant denies such redaction violated FOIA. Defendant denies any remaining allegations in Paragraph 24 of the Complaint.

22. Responding to the allegations in Paragraph 25 of the Complaint, Defendant admits it produced redacted records, pursuant to section 30-4-40 of the South Carolina Code, that were responsive to Request 11 of Plaintiff’s FOIA request. Defendant denies the remaining allegations in Paragraph 25 of the Complaint.

23. Defendant denies the allegations in Paragraph 26 of the Complaint.

FOR A FIRST DEFENSE
TO A FIRST CAUSE OF ACTION
(Breach of Contract)

24. Responding to Paragraph 27 of the Complaint, Defendant incorporates its answers to the preceding paragraphs as if fully set forth here.

25. Responding to the allegations in Paragraph 28 of the Complaint, Defendant craves reference to the settlement agreement, asserts the terms of the agreement speak for themselves, and denies Plaintiff's misstatements and mischaracterizations of the agreement. The South Carolina General Assembly ratified the 2023–2024 South Carolina Annual Appropriations Act on June 14, 2023, and those provisions of the Act not vetoed by the Governor took effect on July 1, 2023. Defendant denies it had any "contractual duty to perform" in a manner that violated state law, specifically Proviso 3.5, merely because Plaintiff submitted a FOIA request prior to the effective date of the Appropriations Act. The General Assembly had "enact[ed] legislation addressing this specific issue," as contemplated by the settlement agreement, and nowhere in the settlement agreement are the words "upon receipt." When Defendant's determination regarding Plaintiff's 18 voluminous FOIA requests was due, it was illegal for Defendant to provide the requested information. Defendant denies it breached the settlement agreement with Plaintiff, and in any event, performance of the contract is excused. See *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("When a contract is originally legal, but performance becomes illegal due to a change in the law, any subsequent performance is against public policy and the party who has agreed to perform is excused from doing so."). Defendant denies any remaining allegations in Paragraph 28 of the Complaint.

26. Responding to the allegations in Paragraph 29 of the Complaint, Defendant craves reference to the settlement agreement, asserts the terms of the agreement speak for themselves, and denies any misstatements or mischaracterizations of the agreement.

27. Responding to the allegations in Paragraph 30 of the Complaint, Defendant admits it received Plaintiff's FOIA request on June 21, 2023. As to any remaining allegations in Paragraph 30 of the Complaint, Defendant craves reference to the settlement agreement, asserts

the terms of the agreement speak for themselves, and denies any misstatements or mischaracterizations of the agreement.

28. Defendant denies the allegations in Paragraph 31 of the Complaint. Defendant is prohibited from disclosing “the full names” of “lottery prize claimants” under Proviso 3.5 of the 2023–2024 South Carolina Annual Appropriations Act, which provides:

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner’s name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

29. Defendant denies the allegations in Paragraph 32 of the Complaint and denies Plaintiff is entitled to any relief.

**FOR A FIRST DEFENSE
TO A SECOND CAUSE OF ACTION**

30. Responding to Paragraph 33 of the Complaint, Defendant incorporates its answers to the preceding paragraphs as if fully set forth here.

31. Except as specifically admitted in Paragraphs 18 and 19 above, Defendant denies the allegations in Paragraph 34 of the Complaint.

32. Responding to the allegations in Paragraph 35 of the Complaint, Defendant denies Plaintiff is entitled to any relief.

**FOR A FIRST DEFENSE
TO PLAINTIFF’S REQUESTED RELIEF**

33. Responding to Paragraph 36 of the Complaint, Defendant incorporates its answers to the preceding paragraphs as if fully set forth here.

34. Responding to the allegations in Paragraph 37 of the Complaint, Defendant asserts no response is required because the allegations call for legal conclusions. To the extent a response is required, Defendant has no objection to this matter being heard on an expedited basis. Any remaining allegations in Paragraph 37 of the Complaint are denied.

35. Responding to the allegations in Paragraph 38 of the Complaint, Defendant asserts no response is required because the allegations call for legal conclusions. To the extent a response is required, Defendant denies the allegations in Paragraph 38 of the Complaint and denies Plaintiff is entitled to any relief.

36. Defendant denies the allegations in Paragraph 39 of the Complaint. As Plaintiff knows, an injunction is not necessary if he obtains a declaratory judgment. *See S.C. Lottery Comm'n*, 433 S.C. at 249–50, 857 S.E.2d at 892. Further, Plaintiff failed to plead the necessary elements—or allege any facts supporting those elements—for injunctive relief to issue. Defendant also denies Plaintiff is entitled to any relief.

37. Defendant denies the allegations in Paragraph 40 of the Complaint and denies Plaintiff is entitled to any relief. Further, Plaintiff failed to plead the necessary elements of specific performance, and his inequitable conduct precludes him from pursuing equitable remedies.

38. Defendant denies the allegations in Paragraph 41 of the Complaint and denies Plaintiff is entitled to any relief.

39. Responding to the WHEREFORE Paragraph of the Complaint, including subparagraphs (a) through (e), Defendant denies Plaintiff is entitled to any relief and demands strict proof of the allegations.

FOR A SECOND DEFENSE

40. Plaintiff failed to state facts sufficient to constitute a cause of action under any theory of the case and, therefore, the Court should dismiss the Complaint, with prejudice, under Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

41. Plaintiff failed to plead the elements necessary for injunctive relief to issue and, in any event, is not entitled to injunctive relief in this action because an adequate remedy at law exists. *See S.C. Lottery Comm'n*, 433 S.C. at 249–50 857 S.E.2d at 892.

FOR A FOURTH DEFENSE

42. Defendant pleads the equitable doctrines of waiver, estoppel, laches, and/or unclean hands as a defense to Plaintiff's claims.

FOR A FIFTH DEFENSE

43. Proviso 3.5 of the 2023–2024 South Carolina Annual Appropriations Act provides:

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner's name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

Pursuant to Proviso 3.5, Defendant is prohibited by law from disclosing certain information Plaintiff sought in his FOIA request. Defendant therefore has not violated FOIA by redacting information prohibited from disclosure, such as lottery winners' and/or claimants' names and signatures, and Plaintiff's claims must fail as a matter of law.

FOR A SIXTH DEFENSE

44. Section 30-4-40(a)(2) of the South Carolina Code states that a public body “may . . . exempt from disclosure . . . [i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy.” FOIA defines information of a personal nature but indicates its definition is not limited to those enumerated types of information.

45. Section 30-2-10 *et seq.* of the South Carolina Code requires public officials to redact public records that contain personal information, which is defined as

information that identifies or describes an individual including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, education level, financial status, bank account numbers, account or identification number issued by or used, or both, by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit records or reports.

46. Further, “personal identifying information” has been defined in the Personal Financial Security Act as including, social security numbers; driver's license numbers; dates of birth; “current or former names, including first and last names, middle and last names, or first, middle, and last names, but only when the names are used in combination with, and linked to, other identifying information;” and “current or former addresses, but only when the addresses are used in combination with, and linked to, other identifying information provided.” S.C. Code Ann. § 16-13-510(D).

47. Pursuant to and consistent with these laws, Defendant cannot intentionally communicate or otherwise make available to the general public, an individual's personal

information or personal identifying information. Defendant therefore has not violated FOIA by redacting such information from disclosure, and Plaintiff's claims fail as a matter of law.

FOR A SEVENTH DEFENSE

48. Plaintiff is not entitled to an award of attorney's fees and costs because Defendant has acted in good faith in its FOIA determination. *See* S.C. Code Ann. § 30-4-110(D).

FOR AN EIGHTH DEFENSE

49. Plaintiff's claims are barred—in whole or in part—by failure to mitigate damages, if any.

FOR A NINTH DEFENSE

50. Plaintiff failed to plead the elements necessary for specific performance. In any event, Plaintiff is not entitled to specific performance in this action because to the extent performance is illegal and against public policy. *See White*, 360 S.C. at 371, 601 S.E.2d at 345.

FOR A TENTH DEFENSE

51. Defendant would show that Plaintiff's claims for breach of contract seeking a finding of breach of contract and specific performance arise from the set same set of allegations and, therefore, the doctrine of election of remedies prohibits Plaintiff from recovering under both theories.

FOR AN ELEVENTH DEFENSE

52. To the extent Plaintiff seeks equitable relief, Defendant would show that Plaintiff is not entitled to such relief under the equitable maxim "He who seeks equity must do equity."

FOR A TWELFTH DEFENSE

53. Defendant reserves the right to raise any additional and further defenses that may be revealed by information obtained during investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

AS A FURTHER DEFENSE AND BY WAY OF COUNTERCLAIMS

Defendant/Counterclaim Plaintiff South Carolina Lottery Commission (SCEL), by and through its undersigned attorneys, alleges the following against Plaintiff/Counterclaim Defendant George S. Glassmeyer (Glassmeyer):

54. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

55. On June 21, 2023, SCEL received a FOIA request from Glassmeyer, seeking voluminous records and information falling under 18 different categories. Ex. A to Pl.'s Compl. On July 5, 2023, SCEL responded to Glassmeyer's FOIA request with its final determination as to the public availability of the requested public records. Ex. B to Pl.'s Compl.

56. Request 5 of the FOIA request sought "[c]opies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023."

57. As to Request 5, SCEL determined the request was unduly burdensome, overly broad, and an otherwise improper request. SCEL explained that the request covered approximately 120,000 checks or wire transfers, which would "require a thorough review for redaction of personal information and personal identifying information."

58. Request 8 sought "[a]ll materials, regardless of form, gathered by SCEL during all searches conducted to fill all position vacancies identified in response to" Request 7.

59. SCEL responded to Request 8, determining the request was unduly burdensome, overly broad, and an otherwise improper request because SCEL has received approximately 2,500

employment applications during the relevant timeframe, which included résumés and application addenda containing personal information. Responding to such a request, SCEL stated, would “require a cautious and extensive review to redact any personal information and personal identifying information.”

60. Request 12 sought “[a] copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15, 2023, inclusive.”

61. SCEL responded to Request 12 with its determination the request was unduly burdensome, overly broad, and an otherwise improper request as it would require SCEL to copy and review over 8,000 documents to redact all personal information and personal identifying information.

62. Request 18 sought “[c]opies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive.”

63. Responding to Request 18, SCEL determined the request was unduly burdensome, overly broad, and an otherwise improper request. SCEL explained that it has 125 current employees and estimated that responsive emails would surpass 3 million. Requiring such a disclosure is unduly burdensome, overly broad, and improper.

64. To be sure, as to Request 18, SCEL responded to Glassmeyer stating,

SCEL would need to conduct an extremely comprehensive review of millions of emails to redact, where necessary, all personal identifying information, personal information, information regarding lottery prize winners prohibited from disclosure in accordance with the Budget Proviso [3.5 of the 2023–2024 South Carolina Annual Appropriations Act] . . . , privileged communications with outside legal counsel, exempted information pursuant to FOIA such as trade secrets, information of a personal nature where the disclosure thereof would constitute unreasonable invasion of personal privacy (approximately 45 of SCEL’s

employees work outside of the SCEL business office and rely on email to relay sensitive information to supervisors and/or human resources that would be inappropriate to disclose), records compiled for law enforcement purposes that may interfere with a prospective law enforcement proceeding, information that may endanger the life or physical safety of any individual (specifically lottery prize winners), documents incidental to proposed contractual arrangements, and correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationship.

65. SCEL did not arbitrarily determine these requests were unduly burdensome, overly broad, and improper.

66. Rather, SCEL gathered information to determine the capital and human resources and time that would be required to retrieve, review, redact, and produce responsive records.

67. Considering responsive records ranged from approximately 8,000 to 3 million, SCEL made a good-faith determination the requests were overly broad and improper and responding to them would be unduly burdensome on SCEL and its employees.

68. SCEL nevertheless invited Glassmeyer to revise Requests 5, 8, 12, and 18 in its July 5 determination letter.

69. Specifically, SCEL asked Glassmeyer to let it know by July 7, 2023, “if [he] was willing to withdraw or revise the objectionable requests.” SCEL continued, “[w]e certainly want to work together to provide responsive information. As drafted, however, several requests would require SCEL to divert unnecessary and significant agency and outside resources to review, redact, and produce documents that are not related to the statute purpose underlying the request.”

70. On July 6, 2023, Glassmeyer responded to SCEL’s final determination letter via email, stating he was “not willing to withdraw any of [his] requests.” **Exhibit A.**

71. Glassmeyer did, however, opt to revise Request 8 to “include only the documentation received from the final three applicants under consideration for each of the

approximate 30 positions that you refer to in your response, as well as the total number of applicants considered for each position vacancy.” *Id.* SCEL subsequently responded on July 7, informing Glassmeyer that it did not rank candidates but could produce records for those candidates for employment positions that conducted an interview with SCEL. *Id.* Glassmeyer agreed to the revision, and SCEL provided records responsive to that revision.

72. Glassmeyer declined the invitation to narrow or revise Requests 5, 12, or 18.

73. Between SCEL’s final determination letter on July 5 and its final record production on August 16, 2023, SCEL and Glassmeyer exchanged over 20 emails regarding Glassmeyer’s FOIA Request and the responsive documents produced to Glassmeyer on a rolling basis. *See Exhibits B, C, D, E, F, G, & H.*

74. On August 16, 2023, SCEL sent a letter to Glassmeyer, indicating it had provided all responsive records subject to disclosure in response to his FOIA request. **Exhibit I.**¹

75. SCEL repeated its explanation of its good-faith determination that Requests 5, 12, and 18 were overly broad, unduly burdensome, and otherwise improper as follows:

As initially explained, responding to these requests would include a significant and comprehensive review of responsive documents to redact all personal information (including but not limited to bank account numbers, account or identification numbers issued by private financial institutions, signatures, and current names when combined with, and linked to, other identifying information); personal identifying information; information regarding lottery prize winners prohibited from disclosure in accordance with Proviso 3.5 in Part 1B of the 2023–2024 South Carolina Annual Appropriations Act; information protected by Health Insurance Portability and Accountability Act of 1996; privileged communications with outside legal counsel; information exempted from disclosure pursuant to FOIA, such as trade secrets, information of a personal nature where the public disclosure thereof would

¹ Attached as **Exhibit K** to this Verified Counterclaim is an Affidavit from Dolly Garfield, General Counsel of SCEL attesting that the exhibits attached to this Verified Counterclaim are true and correct copies of what they purport to be.

constitute unreasonable invasion of personal privacy, records compiled for law enforcement purposes that may interfere with a prospective law enforcement proceeding, information that may endanger the life or physical safety of any individual (specifically lottery prize winners), documents incidental to proposed contractual arrangements, information prohibited from disclosure as required by law, and correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

76. Again, in that letter, SCEL invited Glassmeyer to modify or narrow Requests 5, 12, or 18, stating “[i]f you would like to modify, specify, or narrow your requests in Items 5, 12, or, 18, SCEL will reconsider its position and will make reasonable efforts to accommodate your requests.” *Id.*

77. Glassmeyer never responded to SCEL’s final letter and instead filed this lawsuit seeking, in part, a declaratory judgment that SCEL violated FOIA by not providing information in response to Requests 5, 12, and 18.

FOR A FIRST CAUSE OF ACTION
(Request for Hearing and Relief Pursuant to S.C. Code Ann. § 3-4-110(A))

78. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

79. SCEL’s staff dedicated over 100 hours to reviewing, redacting, producing, and corresponding with Glassmeyer regarding public records responsive to his request.

80. SCEL has made a good-faith determination that Requests 5, 12, and 18 of Glassmeyer’s FOIA Request are overly broad, unduly burdensome, and otherwise improper.

81. SCEL contacted Glassmeyer twice in good faith in an attempt to agree to revised, modified, or narrowed requests that are not overly broad, unduly burdensome, and otherwise improper.

82. Glassmeyer declined SCEL’s first invitation and never responded to SCEL’s second invitation.

83. Pursuant to section 30-4-110(A) of the South Carolina Code, SCEL hereby requests a hearing with this Court “to seek relief from unduly burdensome, overly broad, . . . [and] otherwise improper requests” made by Glassmeyer in his FOIA Requests 5, 12, and 18.

84. SCEL would show that Request 5 is overly broad as it covers approximately 120,000 checks or wire transfers, which would “require a thorough review for redaction of personal information and personal identifying information” of lottery winners and prize claimants and would be unduly burdensome to SCEL. This would take approximately 2,000 hours and cost SCEL \$300,000 to \$400,000. **Exhibit J** at ¶ 28.

85. SCEL would show that Request 12 is overly broad and would require SCEL to copy and review over 8,000 documents and redact all personal information and personal identifying information of lottery winners and prize claimants. Such a feat would be unduly burdensome to SCEL. This would take approximately 134 hours and cost SCEL \$20,100 to \$26,800. *Id.* at ¶ 29.

86. Finally, SCEL would show that Request 18 is extremely overly broad as it covers approximately 3 million emails to and from 125 current employees without any limiting terms or apparent purpose. SCEL would have to devote significant human and capital resources and time to retrieving, reviewing, redacting, and producing the emails which would be unduly burdensome for SCEL to accomplish. As a result, SCEL would likely have to retain outside resources to perform this exhaustive and extensive legal review. Retrieving, reviewing for all applicable privileges, and redacting 3 million emails would take approximately 50,000 hours and cost SCEL \$7,500,000 to \$10,000,000. *Id.* at ¶ 30.

87. SCEL is entitled to relief from the Court in the form of an order finding Requests 5, 12, and 18 are overly broad, unduly burdensome, and otherwise improper, and SCEL, as a result, is not obligated to furnish records responsive to such requests.

WHEREFORE, having fully answered the Complaint of Plaintiff George S. Glassmeyer and having asserted the Verified Counterclaim against Plaintiff for a request for hearing, Defendant South Carolina Lottery Commission prays that the Court (1) dismiss Plaintiff's Complaint with prejudice or otherwise deny the relief sought; (2) find that Defendant has acted in good faith, its request for hearing was made in good faith, and these findings of good faith bar an award of attorney's fees and costs to Plaintiff; (3) find Defendant is entitled to relief from Plaintiff's FOIA Requests 5, 12, and 18 because they are overly broad, unduly burdensome, and otherwise improper; and (4) award Defendant any further relief the Court deems just and proper.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
October 2, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>VERIFICATION OF</u>
	)	<u>COUNTERCLAIMS</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME the undersigned who, who being first duly sworn, deposes and says: That she is the General Counsel for the South Carolina Education Lottery, which is governed by Defendant South Carolina Lottery Commission; that she has read the foregoing Counterclaims; and that the matters and things therein stated are true to her own knowledge, except those matters and things therein stated on information and belief, and those she believes to be true.

Dolly Garfield
Dolly Garfield

SWORN TO AND SUBSCRIBED BEFORE ME

This 2 day of October, 2023

[Signature] (L.S.)

Notary Public for Richland

My Commission expires 12/5/2027

EXHIBIT A

From: [George Glassmeyer](#)
To: [Garfield, Dolly](#)
Subject: Re: FOIA Response
Date: Friday, July 7, 2023 12:31:06 PM

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Hi Dolly,

Thank you for your prompt response.

It would be most satisfactory if you would provide the applications, in addition to any and all materials (regardless of form) acquired by SCEL that relate to each individual who conducted an interview with SCEL, as well as the number of applicants considered for each position identified in response to my request #7. Provision of these materials and data will fulfill my request #8.

I wish you an enjoyable weekend as well.

All the best,

George

On Friday, July 7, 2023 at 11:13:31 AM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

Good morning George,

I am in receipt of your message. I have spoken with my HR Director. She has informed me that we do not "rank" our candidates for employment positions, but rather narrow the pool to a group to interview. Would it be satisfactory to provide you the applications for those that conducted an interview with SCEL? Please let me know and have a good weekend.

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Thursday, July 6, 2023 1:10 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Re: FOIA Response

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

July 6, 2023

Dear Ms. Garfield:

Late yesterday afternoon I received your emailed response to my FOIA request of June 16,2023.

In your response you ask that I advise you no later than tomorrow if I am willing to withdraw or revise any of my "objectionable" requests. Due to your limited time frame, I have opted to respond via email.

I am not willing to withdraw any of my requests.

I am however, willing to revise my request #8 which relates to materials acquired by SCEL pursuant to searches conducted to fill employment vacancies identified in response to my request #7. I refer you to Section 30-4-40(a)(13) of the South Carolina Code of Laws (FOIA). Therein, the statute provides that public bodies are required to provide the materials relating to not fewer than the final three applicants under consideration for each position as well as the number of applicants considered for a position. Please revise my request to include only the documentation received from the final three applicants under consideration for each of the approximate 30 positions that you refer to in your response, as well as the total number of applicants considered for each position vacancy. This revision will serve to dramatically reduce your "burden" in that you will only be required to produce documentation from approximately 90 applicants rather than the approximately 2,500 which you cite. Finally, please note from my original request that I stated that I was requesting this information "in part" because I was concerned about possible continuing embezzlement. Rest assured that I am requesting this information for other reasons as well.

Please provide a revised determination of my revised request #8 promptly.

Also, kindly acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

On Wednesday, July 5, 2023 at 04:51:23 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

Good afternoon,

Attached is the response to your request you submitted pursuant to the SC Freedom of Information Act (FOIA). As requested, a hard copy has been mailed.

Please do not hesitate to reach out me for further discussion.

Thank you,

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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EXHIBIT B

From: [Garfield, Dolly](#)
To: [George Glassmeyer](#)
Subject: RE: FOIA Request, Item #1

Dear George,

As indicated in SCEL's initial response dated July 5, 2023, Proviso 3.5 in Part 1B of the 2023-2024 South Carolina Annual Appropriations Act (Budget Proviso) provides that "Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing winner's name. Therefore, in accordance with the law, SCEL will not provide the first and last names of the respective prize claimants.

Best,

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>

Sent: Tuesday, July 18, 2023 10:25 PM

To: Garfield, Dolly <Dolly.Garfield@sclot.com>

Subject: FOIA Request, Item #1

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Dear Ms. Garfield:

I am in receipt of your response to Item #1 of my FOIA request dated June 16, 2023.

Your response does not satisfy my respective request in that it fails to identify the first and last names of the respective prize claimants. Please provide this data.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

EXHIBIT C

From: [Garfield, Dolly](#)
To: [George Glassmeyer](#)
Subject: RE: FOIA Request, Items #2 and #4
Attachments: [2-17-23 Columbia, SC.pdf](#)

Hello George,

The Greenville claim form dated 8-27-21 was processed by Ann Cromer. She provided her signature in the "printed" section and therefore her signature appears twice on the form, thus it being redacted.

The lottery official information on the Columbia claim form dated 2-17-23 was redacted inadvertently. Please see attached.

Finally, disbursement checks payable to lottery winners only require one drawer signature (SCEL's CFO).

Thanks!

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Friday, July 21, 2023 2:27 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Re: FOIA Request, Items #2 and #4

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Hi Dolly,

Thanks for your prompt and comprehensive response.

I have reviewed your attached claim forms and the following forms appear to continue to redact the printed name of the processing official:

08-27-21, Greenville, SC claimant

02-17-23, Columbia, SC claimant

Kindly provide a supplemental response that provides copies of these forms showing the printed names, or, in the alternative, a copy of the respective form (indicating the absence of a printed name) and advise me of the name of the official who signed these particular forms if no printed name exists on the original form.

Finally, do disbursement checks payable to lottery winners only require one drawer signature (i.e., the Lottery CFO)? If not, kindly advise the name(s) of persons who also signed these checks as drawers.

Thanks again,

George

On Friday, July 21, 2023 at 12:59:45 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

George,

Thank you for your response and further clarification.

As to Item 2, SCEL will provide the claim forms, redacted, with the **printed name** of the personnel/official that processed the claim. Please see attached. Please note a printed name was not included on each claim form. If you would like a particular official identified, please let me know. However, in response to request for signatures for Items 2 and 4, signatures are not subject to disclosure and are considered private information under the Family Privacy Protection Act, S.C. Code Ann. § 30-2-10 *et seq.*, which requires public officials to redact records that contain such personal information. The respective drawers of the checks were completed by SCEL's CFO and the CFO that preceded him. Those names with each corresponding check will be provided. Please see attached.

The claim form dated 10-25-22 submitted by a winner from Conway, SC does not contain an authorized

signature and is believed to be inadvertent. In an abundance of caution, and as a response to your e-mail from yesterday (7/20/2023) reporting a formal complaint of misconduct, SCEL will refer this matter to the SCEL Security Department for further review. The findings of this review will be made available when completed.

Thank you and have a great weekend,

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Tuesday, July 18, 2023 8:54 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: FOIA Request, Items #2 and #4

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Dear Ms. Garfield:

I am in receipt of your responses to Item #2 and Item #4 of my FOIA request dated June 16, 2023.

Neither response satisfies my respective requests.

As to Item #2, the authorized signature and official's name has been redacted on all copies, except one, of claim forms that you have provided. The claim form dated 10-25-22, presumably submitted by a resident of Conway, SC is absent an authorized signature, or an official's name, and that portion of the form has no redaction. Please provide copies of all requested claim forms with the respective authorized signatures and official's names clearly visible.

As to Item #4, the signatures of the drawer, and/or drawers, has been redacted on all copies of the front of the checks that you have provided. Please provide copies of all requested checks with the respective drawer(s) signature(s) clearly visible.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer



South Carolina Education Lottery Winner Claim Form

CLAIMANT COMPLETE THIS SECTION

1. CLAIMANT TYPE (CHECK ONE) ☒ INDIVIDUAL ☐ GROUP WINNERS - Complete IRS Form 5754 (One check per group and individual tax documents will be printed.)

2. NAME: [REDACTED]

3. MAILING ADDRESS: [REDACTED]

4. CITY: COLUMBIA 5. STATE: SC 6. ZIP: [REDACTED]

7. PHONE NUMBER: [REDACTED] 8. DATE OF BIRTH: [REDACTED]

9. SOCIAL SECURITY NUMBER: [REDACTED]

10. TAX STATUS (CHECK ONLY ONE BOX)

U.S. Citizen ☐

Resident Alien ☒
(must have TIN or SSN)

Non-Resident Alien ☐

COUNTRY OF ORIGIN: _____

- Multiple tickets presented at the same time will be combined.
- If the total winnings exceed \$500, applicable taxes will be withheld.
- Debts owed to South Carolina or its political subdivisions may be deducted from winnings.
- Knowingly presenting a counterfeit, altered, or stolen lottery ticket or knowingly filing a claim based on facts that are untrue is in violation of South Carolina Law.

You must check "Yes" or "No" for the following:

Yes No

- ☐ ☒ I authorize the South Carolina Education Lottery (SCEL) to use any photographic or video-graphic replication of my likeness or any audio replication of my voice, in any medium for purposes of advertising or trade of SCEL. I agree not to hold SCEL or its employees responsible for any unauthorized use or misuse of my likeness by third parties.

SOME INFORMATION FROM THIS FORM MAY BE SUBJECT TO DISCLOSURE UNDER THE S.C. FREEDOM OF INFORMATION ACT (FOIA). I release SCEL from all liability or claims relating to information provided to or used by a party obtaining information pursuant to FOIA.

By signing this form, I attest that I am at least eighteen (18) years of age and that I am eligible to claim a lottery prize pursuant to the laws and regulations governing the operation of the Lottery. By signing below, I affirm that all information provided on this form, such as my name, address, and Social Security number is true and accurate.

CLAIMANT'S SIGNATURE:

DATE: 02-17-2023

OFFICIAL USE ONLY

PRIZE AMOUNT: \$ 2,000,000

AUTHORIZED SIGNATURE: [REDACTED]

OFFICIAL'S NAME: _____
(Please Print)

CLAIM NUMBER PROVIDED BY S.C. EDUCATION LOTTERY:

DATE: 02-17-2023
MONTH DAY YEAR

Revised 7.21.2023

EXHIBIT D

From: [Garfield, Dolly](#)
To: [George Glassmeyer](#)
Subject: RE: Misconduct Complaint

George, the Lottery is in receipt of your email. I have been out of the office and am catching up on emails. I will respond with more particularity as soon as possible. Thank you.
Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Thursday, July 20, 2023 12:30 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Misconduct Complaint

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Dear Ms. Garfield:

In my below email to you dated July 18, 2023, I reference a copy of a lottery winner's claim form which you provided to me in response to my FOIA request of June 16, 2023. I noted that this form did not bear an authorized signature, or an official's name. Additionally, the prize amount, claim number, and date in the lower right corner are also absent.

Upon review of the checks that you provided in response to Item #4 of my FOIA request, that were presumably issued to the winners who submitted the claim forms

that you provided, it is clear that one or more SCEL employees authorized disbursement, allowed disbursement, or disbursed at least \$690,000.00 in public funds without following established SCEL protocol or procedure. I also find it somewhat suspicious that two winner's checks for virtually the same amount were both issued to a payee in Conway, SC within 3 days of each other.

As a South Carolina citizen, resident, and taxpayer all of these facts cause me great concern as I suspect wrongdoing by one or more SCEL employees, and potential embezzlement of public funds. I ask that you immediately cause an internal investigation to be undertaken and to appraise me of the results of same. Should your office determine that criminal activity may have occurred, I request that you immediately notify the State Law Enforcement Division (SLED).

I ask that you consider this email as a formal complaint by me. I remain available to cooperate with your investigative staff as may be required.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

----- Forwarded Message -----

From: George Glassmeyer <scverdict@aol.com>
To: Dolly Garfield <dolly.garfield@scot.com>
Sent: Tuesday, July 18, 2023 at 08:54:08 PM EDT
Subject: FOIA Request, Items #2 and #4

Dear Ms. Garfield:

I am in receipt of your responses to Item #2 and Item #4 of my FOIA request dated June 16, 2023.

Neither response satisfies my respective requests.

As to Item #2, the authorized signature and official's name has been redacted on all copies, except one, of claim forms that you have provided. The claim form dated 10-25-22, presumably submitted by a resident of Conway, SC is absent an authorized signature, or an official's name, and that portion of the form has no redaction. Please provide copies of all requested claim forms with the respective authorized signatures and official's names clearly visible.

As to Item #4, the signatures of the drawer, and/or drawers, has been redacted on all copies of the front of the checks that you have provided. Please provide copies of all requested checks with the respective drawer(s) signature(s) clearly visible.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

EXHIBIT E

From: [Garfield, Dolly](#)
To: [George Glassmeyer](#)
Subject: RE: Misconduct Complaint
Attachments: [S. Berry.pdf](#)

Hey George, please see the HR notes regarding Mr. Berry's separation of employment in the attachment. The information contained therein should satisfy your request. Please let know if I can provide anything further, and have a great weekend.

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>

Sent: Tuesday, August 1, 2023 3:45 PM

To: Garfield, Dolly <Dolly.Garfield@sclot.com>

Subject: Re: Misconduct Complaint

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Hey Dolly,

That will be fine. Thank you.

George

On Tuesday, August 1, 2023 at 03:24:25 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

George,

In reference to your request for information regarding Mr. Berry, I am in receipt of the request and deem it a request submitted pursuant to the SC FOIA Act and is subject to disclosure. A response will be provided in a timely manner.

Thank you!

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Saturday, July 29, 2023 2:39 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Re: Misconduct Complaint

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Hi Dolly,

Thanks so much for your reply, especially as you took the time and effort to reply on a Saturday.

I appreciate the followup investigative efforts, and the clarity provided as to the \$3.00 difference between the two payouts.

As to the employment status of Mr. Scott Berry, you report that he is no longer employed by SCEL. I note that his name appears on the latest of the personnel salary listings that you provided to me pursuant to Item #6 of my FOIA request, indicating that he was employed by SCEL at least as recently as June 1, 2023. Please advise what his last day of employment was and whether his employment terminated as a result of a voluntary resignation, disciplinary action, or resignation in lieu of disciplinary action. If Mr. Berry was ever the subject or target of any disciplinary action, please provide the relevant details.

I get that this issue seems to be an onion with infinite layers, but I am hopeful that we are nearing the end. Again, thanks for your responsive and timely efforts.

Enjoy your time with your family.

All the best,

George Glassmeyer

On Saturday, July 29, 2023 at 02:13:30 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

Hey George,

I hope you are having a nice weekend. I shared your concerns below with SCEL's Security Department, and further investigation ensued. Please see the attached supplemental investigative report. The findings should explain the lack of documentation as well as the \$3 difference in the prize money won by the two Conway winners.

Mr. Scott Berry is no longer employed with SCEL.

Please do not hesitate to reach out to me for anything further. I am leaving tomorrow for a family vacation so responses may be delayed.

Enjoy the rest of your weekend,

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Tuesday, July 25, 2023 4:47 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Re: Misconduct Complaint

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Hi Dolly,

Thanks for providing the investigative report. After examining it, I have a few remaining concerns and questions.

First, while I did not suggest that both payouts went to the same person, I certainly did not rule it out. Nonetheless, I am mystified as to how two winners' payouts for the same gross prize amount, made within three days of each other, were for a different amount. I understand that various taxes and possible setoffs are deducted from the gross prize amount prior to payment to a claimant, but I doubt that the tax tables were revised during the three days at issue. Kindly explain this discrepancy.

Also, as I noted in my complaint, I found it suspicious that two winners' checks, for nearly identical amounts were presumably issued to two claimants, both presumably residing in the relatively small city of Conway, SC when your office reported only a total of 30 million dollar plus winners over a nearly two year period. While I understand that your investigators determined that both claims were separate and legitimate, my suspicion remains.

I additionally noted that the prize amount, claim number, and date were also absent from the bottom of the 10-25-2022 claim form. Your investigative report fails to address these concerns.

Finally, please advise what, if any, disciplinary action has been, or will be, imposed against Scoot Berry for failing to follow SCEL procedures as noted above.

Thanks again,

George

On Tuesday, July 25, 2023 at 03:13:40 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

Dear George,

Please find the attached investigative report regarding the incident reported July 20, 2023. Please let me know if you need anything further.

Thank you!

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

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From: George Glassmeyer <scverdict@aol.com>
Sent: Thursday, July 20, 2023 12:30 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Misconduct Complaint

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Dear Ms. Garfield:

In my below email to you dated July 18, 2023, I reference a copy of a lottery winner's claim form which you provided to me in response to my FOIA request of June 16, 2023. I noted that this form did not bear an authorized signature, or an official's name. Additionally, the prize amount, claim number, and date in the lower right corner are also absent.

Upon review of the checks that you provided in response to Item #4 of my FOIA request, that were presumably issued to the winners who submitted the claim forms that you provided, it is clear that one or more SCEL employees authorized disbursement, allowed disbursement, or disbursed at least \$690,000.00 in public funds without following established SCEL protocol or procedure. I also find it somewhat suspicious that two winner's checks for virtually the same amount were both issued to a payee in Conway, SC within 3 days of each other.

As a South Carolina citizen, resident, and taxpayer all of these facts cause me great concern as I suspect wrongdoing by one or more SCEL employees, and potential embezzlement of public funds. I ask that you immediately cause an internal investigation to be undertaken and to appraise me of the results of same. Should your office determine that criminal activity may have occurred, I request that you immediately notify the State Law Enforcement Division (SLED).

I ask that you consider this email as a formal complaint by me. I remain available to cooperate with your investigative staff as may be required.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

----- Forwarded Message -----

From: George Glassmeyer <scverdict@aol.com>

To: Dolly Garfield <dolly.garfield@sclot.com>

Sent: Tuesday, July 18, 2023 at 08:54:08 PM EDT

Subject: FOIA Request, Items #2 and #4

Dear Ms. Garfield:

I am in receipt of your responses to Item #2 and Item #4 of my FOIA request dated June 16, 2023.

Neither response satisfies my respective requests.

As to Item #2, the authorized signature and official's name has been redacted on all copies, except one, of claim forms that you have provided. The claim form dated 10-25-22, presumably submitted by a resident of Conway, SC is absent an authorized signature, or an official's name, and that portion of the form has no redaction. Please provide copies of all requested claim forms with the respective authorized signatures and official's names clearly visible.

As to Item #4, the signatures of the drawer, and/or drawers, has been redacted on all copies of the front of the checks that you have provided. Please provide copies of all requested checks with the respective drawer(s) signature(s) clearly visible.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

Employee(s): Scott Berry
Event: Poor Work Performance
Disposition: Termination

Date Notes

- 3/22/2023 Scott is working mail in claims when he gets a ticket from Claimant, William Bryan. The ticket to be cashed has a partial name scratched out on the back. The SOP for processing a claim for a ticket with any discrepancy is to first, have the ticket investigated by SCEL Security. Scott claims he was working too quickly and missed the scratch out. He issued a claim check in the amount of \$935 to the claimant without having the ticket verified by SCEL Security.
- 3/22/2023 Scott is working mail in claims when he gets a ticket from Claimant, Gary Lloyd. The ticket to be cashed has an address covered in white out and written back over. The SOP for processing a claim for a ticket with white out is to send to SCEL Security. Additionally, the address on the claim form and the address on the back of the ticket do not match. Scott mails the claimant's check to the address on the back of the ticket - not the claim form. Claimant calls claims center to ensure that check is mailed to address on the claim form - not his home address. Scott issues the check to his home address, even after assuring the claimant it would be mailed to the address on the form.
- 6/26/2023 Scott issues a check for claim # 23062666413 to Charles Meyers - \$935
 Scott gives this check to claimant Valerie Meyers
 Valerie Meyers claims # was 23062666414 - \$832
 Valerie does not notice the mistake when she is handed the check and goes to her bank to deposit
 She, then, realizes the check is not hers
 She brings the check back to the Claims Center and her correct check is provided to her
 Scott did not complete the mail in Claim for Charles before starting the walk-in claim for Valerie
- 6/29/2023 Scott was assisting a walk-in claimant. He grabbed a check off of the printer and did not verify that the check belonged to the person for whom he was serving. The claimant also, did not notice that the check was not written to them. The claimant presented the check at the bank and realized they had the wrong check. The claimant brought the check back - which belonged to a mail-in claimant - Andrew Powell. Scott had to retrieve the walk-in claimant's check from the mail (in the incorrect envelope) to provide the walk-in claimant with the correct check. Mr. Powell's check was voided and reissued and sent to him via mail. Tracey took Scott to the back to advise him that this error was not acceptable, especially on the heels of a very similar incident a couple of days prior.
- 7/18/2023 Dolly Garfield is made aware that a \$1M claim, dating back to 10/2022 did not have the proper authorized signature or official's name, pursuant to review of materials provided to a FOIA request.

It was discovered that this was an error made by Scott Berry.

- 7/21/2023 Hogan is made aware of the lack of signature with the \$1M claim, dating back to 10/2022. Hogan, JoAnn, Brian & Dolly discuss this mistake, and paired with most recent errors in March/June, they place Scott on administrative leave until I am back in the office on Monday. (I was out of office on Annual Leave.)
- 7/24/2023 Scott reports to the Columbia Business Office. He is brought into a meeting with Brian Ford and me. Scott is advised that since our last meeting in January, multiple errors have occurred on his part: March 2023 (2), June 2023 (2) and one from October 2022 that was just discovered the week of July 10th. His carelessness is no longer a risk that SCEL can assume, and therefore he is terminated.

EXHIBIT F

From: [George Glassmeyer](#)
To: [Garfield, Dolly](#)
Subject: Re: Misconduct Complaint
Date: Tuesday, July 25, 2023 4:52:11 PM
Attachments: [Investigative Report.pdf](#)

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Hi Dolly,

Thanks for providing the investigative report. After examining it, I have a few remaining concerns and questions.

First, while I did not suggest that both payouts went to the same person, I certainly did not rule it out. Nonetheless, I am mystified as to how two winners' payouts for the same gross prize amount, made within three days of each other, were for a different amount. I understand that various taxes and possible setoffs are deducted from the gross prize amount prior to payment to a claimant, but I doubt that the tax tables were revised during the three days at issue. Kindly explain this discrepancy.

Also, as I noted in my complaint, I found it suspicious that two winners' checks, for nearly identical amounts were presumably issued to two claimants, both presumably residing in the relatively small city of Conway, SC when your office reported only a total of 30 million dollar plus winners over a nearly two year period. While I understand that your investigators determined that both claims were separate and legitimate, my suspicion remains.

I additionally noted that the prize amount, claim number, and date were also absent from the bottom of the 10-25-2022 claim form. Your investigative report fails to address these concerns.

Finally, please advise what, if any, disciplinary action has been, or will be, imposed against Scoot Berry for failing to follow SCEL procedures as noted above.

Thanks again,

George

On Tuesday, July 25, 2023 at 03:13:40 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

[Dear George,](#)

Please find the attached investigative report regarding the incident reported July 20, 2023. Please let me know if you need anything further.

Thank you!

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Thursday, July 20, 2023 12:30 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Misconduct Complaint

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Dear Ms. Garfield:

In my below email to you dated July 18, 2023, I reference a copy of a lottery winner's claim form which you provided to me in response to my FOIA request of June 16, 2023. I noted that this form did not bear an authorized signature, or an official's name. Additionally, the prize amount, claim number, and date in the lower right corner are also absent.

Upon review of the checks that you provided in response to Item #4 of my FOIA request, that were presumably issued to the winners who submitted the claim forms that you provided, it is clear that one or more SCEL employees authorized disbursement, allowed disbursement, or disbursed at least \$690,000.00 in public funds without following established SCEL protocol or procedure. I also find it somewhat suspicious that two winner's checks for virtually the same amount were both issued to a payee in Conway, SC within 3 days of each other.

As a South Carolina citizen, resident, and taxpayer all of these facts cause me great concern as I suspect wrongdoing by one or more SCEL employees, and potential embezzlement of public funds. I ask that you immediately cause an internal investigation to be undertaken and to appraise me of the results of same. Should your office determine that criminal activity may have occurred, I request that you immediately notify the State Law Enforcement Division (SLED).

I ask that you consider this email as a formal complaint by me. I remain available to cooperate with your investigative staff as may be required.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

----- Forwarded Message -----

From: George Glassmeyer <scverdict@aol.com>

To: Dolly Garfield <dolly.garfield@scot.com>

Sent: Tuesday, July 18, 2023 at 08:54:08 PM EDT

Subject: FOIA Request, Items #2 and #4

Dear Ms. Garfield:

I am in receipt of your responses to Item #2 and Item #4 of my FOIA request dated June 16, 2023.

Neither response satisfies my respective requests.

As to Item #2, the authorized signature and official's name has been redacted on all copies, except one, of claim forms that you have provided. The claim form dated 10-25-22, presumably submitted by a resident of Conway, SC is absent an authorized signature, or an official's name, and that portion of the form has no redaction. Please provide copies of all requested claim forms with the respective authorized signatures and official's names clearly visible.

As to Item #4, the signatures of the drawer, and/or drawers, has been redacted on all copies of the front of the checks that you have provided. Please provide copies of all requested checks with the respective drawer(s) signature(s) clearly visible.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

SCEL INCIDENT REPORT

<u>Incident Type:</u> Claims Inquiry by Dolly Garfield for George Glassmeyer		<u>Incident #</u> 23-078	
<u>Complainant Name:</u> George Glassmeyer			
<u>Complainant Telephone #:</u> n/a			
<u>Received Date:</u> 07/21/23			
<u>Facts Of Incident</u>			
<p>07/21/23 1130 Hrs. Senior Investigations and Enforcement Manager, Mark Ritchie and myself were briefed on Mr. Glassmeyer's request by General Counsel Dolly Garfield. Mr. Glassmeyer had questions concerning two different winning payouts that occurred in October of 2022. Security was requested to audit the payment process for each of the two winning tickets Mr. Glassmeyer was interested in.</p> <p>One of the issues Mr. Glassmeyer submitted revolved around two winning tickets (Powerball and instant ticket) of \$1,000,000.00 each to individuals living in Conway, South Carolina. The first claim (22102528212) on October 25th, 2022 paid in the amount of \$690,000.00 and the second claim (22102828928) on October 28th, 2022 paid in the amount of \$690,003.00. In Mr. Glassmeyer's email, dated July 20th, 2023, he believed the two payouts went to the same person. A review of the SCEL claim files for each ticket was conducted. This verified the two winning payouts were claimed by two different individuals who both happened to reside in Conway South Carolina. This finding is based on verified identification documents on two different claim forms and W2G forms indicating different names, dates of birth, social security numbers telephone numbers and home addresses for the two claimants.</p> <p>The second issue Mr. Glassmeyer brought forward was one of the claim forms did not bear the signature of the Claim Representative who processed the claim (# 22102528212). This claim was for the winning instant ticket submitted on October 25th, 2022 in the amount of \$1,000,000.00. Again, after reviewing the claim form, it was noticed that the claim form was not signed by Claim Representative. An Aurora Claims audit revealed the Claims Representative was Scott Berry, who processed the claim. An Aurora Claims audit show all related data to a particular claim such as, but not limited to, Claim Number, Payment Amount, Payment Party information, etc.</p> <p>After reviewing all claim documents, it was determined that other than the claim form dated October 25, 2022 not being signed by Claim Representative Berry, all SCEL procedures were correctly followed.</p>			
<u>Received by:</u> Dolly Garfield, Esq.	<u>Case Opened:</u> Yes ☒ No ☐	<u>Date Assigned:</u> 07/21/23	<u>Assigned To:</u> Inv. A. Caldwell <u>Authorization:</u>  7/25/23

EXHIBIT G

From: [George Glassmeyer](#)
To: [Garfield, Dolly](#)
Subject: FOIA Request, Item #17
Date: Monday, July 31, 2023 5:48:01 PM

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Dear Ms. Garfield:

I am in receipt of your response to Item #17 of my FOIA request dated June 16, 2023.

Your response does not satisfy my respective request for the following reasons:

1. Monthly statements for the months of June, 2022 and February, 2023 for the "Prize" account were not provided. Please provide copies of these statements.
2. Account numbers have been redacted on all statements provided. Please provide copies of all requested statements with the full account numbers visible.

Kindly acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

EXHIBIT H

From: [George Glassmeyer](#)
To: [Garfield, Dolly](#)
Subject: Re: FOIA Request, Item #8
Date: Tuesday, August 15, 2023 7:55:18 PM

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Dolly,

Thanks again for your efforts. That answers all of my questions as to this FOIA item.

I suspect that we've both learned a lot about SCEL HR procedure.

Take care,

George

On Tuesday, August 15, 2023 at 05:24:48 PM EDT, Garfield, Dolly <dolly.garfield@scot.com> wrote:

Hello George,

The confusion regarding the "respective closing dates are not consistently in chronological order" is understandable. The requisition closed date does not reflect the date the vacancy posting was closed. The requisition closed date displayed on the provided spreadsheet indicates the date that the HR Department had completed all necessary tasks to finalize the vacancy and its fulfillment (interviews, offers, onboarding, distributing rejection letters, etc.).

In reference to your question pertaining to the period of time that position announcements are "open," SCEL's HR director has explained that typically, position vacancies are posted for approximately two weeks. Vacant positions for the time period of 6/30/2021 through 6/15/2023 were posted an average of 12.6 days, with posting lengths ranging from a minimum of 9 days to maximum of 17 days. The factors considered when choosing the length of a time for a posting include personnel resources (for applicant screening, interviewing, and onboarding, if applicable) along with general calendar considerations for those involved in a particular recruitment. The HR Department tentatively plans a date(s) for interviews, and backs everything up from there, which sometimes lengthens (or shortens) the posting time. When SCEL is unable to fill a vacancy with the applicant pool at hand, the vacancy is closed and reposted for two reasons: (1) to better position SCEL's vacancies on the job boards, and (2) to ensure applicants which were already screened and/or interviewed are not comingled with new applicants. Requisition 1056 (Associate MSR), closed on 6/8/2021, and had 11 total applications, which resulted in 1 applicant hired. Requisition 1093 (Intern), closed on 7/12/2023, had 3 total applications, which resulted in 2 applicants hired.

I hope this explanation satisfies your inquiry.

Thanks!

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>

Sent: Tuesday, August 15, 2023 10:23 AM

To: Garfield, Dolly <Dolly.Garfield@sclot.com>

Subject: Re: FOIA Request, Item #8

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Hi Dolly,

Thanks for researching this issue, and for your prompt response.

The explanation from HR as to replacement requisition numbers needed for #s 1078 and 1084 seems to make sense.

Regarding the remaining requisitions, I am somewhat mystified. Again, upon close examination of the spread sheet that you provided, I note that while the requisition numbers are in numerical order, the respective closing dates are not consistently in chronological order. A good example of this is #1063 which has a closing date over 8 months prior to #1061,

Are requisition numbers not assigned sequentially? Additionally, is the period of time that position announcements (requisitions) are "open" not the same for each?

George

On Monday, August 14, 2023 at 06:01:22 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

Dear George,

I spoke to SCEL's Director of Human Resources regarding your concern. It was explained that when a requisition is created for a job posting, it cannot be subsequently edited. Therefore if an error is determined or an edit is needed, the only remedy is to delete the requisition and proceed with a new listing. The former requisition cannot be recovered once deleted. This seems to be the case in reference to Requisition #s 1078 (Claims Center Support Specialist) and 1084 (QA Analyst), which were subsequently re-posted with the next sequential requisition number. It was further explained that Requisition #1056 and #1093 are outside the dates of your FOIA request (June 30, 2021 – June 15, 2023) ; one closed on June 8, 2021, while the other closed on July 12, 2023.

Thanks!

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>

Sent: Sunday, August 13, 2023 2:27 PM

To: Garfield, Dolly <Dolly.Garfield@sclot.com>

Subject: FOIA Request, Item #8

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Dear Ms. Garfield:

I am in receipt of your substantive response to Item #8 of my FOIA request dated June 16, 2023.

I have a concern.

There are four gaps in the sequential requisition numbering on the spread sheet that you provided. Numbers 1056, 1078, 1084, and 1093 are missing.

Kindly address this issue.

Thanks so much,

George S. Glassmeyer

EXHIBIT I



August 16, 2023

Mr. George S. Glassmeyer
Post Office Box 661
Irmo, South Carolina 29063

RE: Request for Information Pursuant to the South Carolina Freedom of Information Act

Dear Mr. Glassmeyer:

The South Carolina Education Lottery (SCEL) has provided all records subject to disclosure in response to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* (FOIA), request received from you through certified mail on Wednesday, June 21, 2023. After receiving SCEL's initial response dated July 5, 2023, you indicated via e-mail dated July 6, 2023, that you were "*not willing to withdraw any of your requests*" but did modify the request listed in Item 8, which was in turn satisfied.

Specifically, in its July 5 response, SCEL determined the information requested in Item 5 (***Copies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023***), Item 12 (***A copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15, 2023, inclusive.***), and Item 18 (***Copies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive.***) to be unduly burdensome, overly broad, and otherwise improper requests.

As initially explained, responding to these requests would include a significant and comprehensive review of responsive documents to redact all personal information (including but not limited to bank account numbers, account or identification numbers issued by private financial institutions, signatures, and current names when combined with, and linked to, other identifying information); personal identifying information; information regarding lottery prize winners prohibited from disclosure in accordance with Proviso 3.5 in Part 1B of the 2023–2024 South Carolina Annual Appropriations Act; information protected by Health Insurance Portability and Accountability Act of 1996; privileged communications with outside legal counsel; information exempted from disclosure pursuant to FOIA, such as trade secrets, information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy, records compiled for law enforcement purposes that may interfere with a prospective law enforcement proceeding, information that may endanger the life or physical safety of any individual (specifically lottery prize winners), documents incidental to proposed contractual arrangements, information prohibited from disclosure as required by law,

1333 Main Street • 4th Floor • Columbia, SC 29201
P.O. Box 11949, Columbia, SC 29211 - 1949
Ph. 803-737-2002 • FAX 803-737-2005 • sceducationlottery.com

Mr. George Glassmeyer
July 5, 2023

and correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

If you would like to modify, specify, or narrow your requests in Items 5, 12, or 18, SCEL will reconsider its position and will make reasonable efforts to accommodate your requests.

If you have any questions or concerns, please feel free to contact me. My direct phone line is 803-737-3941 and my email address is dolly.garfield@sclot.com.

Sincerely,

A handwritten signature in blue ink that reads "Dolly J. Garfield". The signature is written in a cursive, flowing style.

Dolly J. Garfield
General Counsel

EXHIBIT J

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF</u>
	)	<u>JOHN S. NICHOLS</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, John S. Nichols, Esquire, who first being duly sworn, deposes and states as follows:

1. I am a resident of South Carolina over 18 years of age. I have personal knowledge of the truth of the facts set forth in this affidavit.
2. I am an attorney practicing law in Columbia, South Carolina.
3. I received my juris doctor from the University of South Carolina and became licensed to practice law in South Carolina in 1985.
4. I have been licensed to practice law in the State of South Carolina since 1985 and have continuously been a member in good standing with the South Carolina Bar. I am also admitted to practice law in the United States District Court for the District of South Carolina; the United States Courts of Appeals for the Fourth Circuit, the Eleventh Circuit, and the Federal Circuit; and the Supreme Court of the United States.
5. I am a member of a number of professional organizations, including on the South Carolina Commission on Indigent Defense, and have acted as chair and president for several other professional organizations in the past. For instance, I previously served as President of the South Carolina Trial Lawyers' Association/South Carolina Association for Justice and as President of

the South Carolina Chapter of the Federal Bar Association. I also served on the Chief Justice's Commission on the Profession.

6. Since becoming an attorney in South Carolina, I have practiced law in both the private and public sectors. I have been admitted pro hac vice in multiple jurisdictions as well.

7. Early in my career from 1986 to 1996, I worked as a law clerk, staff attorney, Deputy Chief Staff Attorney, and then Chief Staff Attorney for the South Carolina Court of Appeals. I clerked for Chief Judge Alex Sanders, Associate Judge Randall Bell, and Acting Associate Judge Bruce Littlejohn.

8. Several years after I returned to private practice, I opened my own law firm, Bluestein & Nichols, in 2000. Prior to that, I practiced at Suggs & Kelly from 1996 to 2000.

9. I remained part of my firm—bearing several names over the years—and in private practice for the next 17 years.

10. In 2017, I returned to the public sector and began working as the Chief Disciplinary Counsel in the Supreme Court of South Carolina's Office of Disciplinary Counsel. I served as the Chief Disciplinary Counsel for 5 years, during which I was charged with receiving, screening, investigating, and, as necessary, prosecuting complaints made against judges or lawyers.

11. I returned to private practice in 2023 and now practice general civil litigation, offer professional responsibility and ethics consultation, and handle appellate matters.

12. Along with Professor Joel Samuels and Professor Colin Miller, I co-wrote the Fourth Edition of Professor James Flanagan's book, *South Carolina Civil Procedure*, that was published in 2020. Further, along with Elizabeth Scott Moïse and Lyndey R.Z. Bryant, I co-wrote the Fifth Edition of Professor Pat Hubbard and Professor Bob Felix's book, *South Carolina Law of Torts*, that was published in 2023.

13. I am familiar with applicable legal fees and standards in general and for lawyers practicing in South Carolina based on (a) my legal education, (b) my experience as a private practitioner in South Carolina law, (c) my experience practicing before the United States Judicial Panel on Multidistrict Litigation, (d) my five years of experience as Disciplinary Counsel for the Supreme Court of South Carolina, and (e) my legal research for litigation matters, appellate matters, authoring several legal publication and numerous CLE presentations.

14. I am charging a rate of \$300 per hour for services rendered in this matter.

15. After a review of the available information in this matter, I am of the opinion that Plaintiff George S. Glassmeyer's June 16, 2023 Freedom of Information Act (FOIA) Request to Defendant South Carolina Lottery Commission (SCEL) contains several requests that would require SCEL to divert significant resources, both human and capital, to respond to such requests.

Facts Considered by and Known to this Affiant

16. Based on my review of the documents and pleadings in this case, the following facts are known to me:

- a. Plaintiff submitted a FOIA Request to SCEL dated June 16, 2023, seeking voluminous records responsive to 18 categories.
- b. SCEL received the FOIA Request on June 21, 2023.
- c. On July 5, 2023, SCEL responded to Plaintiff's FOIA request with its final determination, explaining it determined Requests 5, 12, and 18 were overly broad, unduly burdensome, and otherwise improper.
- d. In that letter, SCEL invited Plaintiff to revise Requests 5, 12, and 18, but Plaintiff refused.

- e. SCEL's General Counsel Dolly Garfield and Plaintiff exchanged at least 20 emails over the next 5 weeks regarding several of the Requests.
- f. On August 16, 2023, SCEL sent a final letter to Plaintiff, informing him that it had responded to his FOIA request and that it still had a good-faith reason for determining Requests 5, 12, and 18 were overly broad, unduly burdensome, and otherwise improper. SCEL again invited Plaintiff to revise Requests 5, 12, and 18. Plaintiff filed this lawsuit instead.

17. SCEL asked me to review three specific requests from Plaintiff's FOIA request: Requests 5, 12, and 18.

- a. Request 5 seeks: "Copies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023."
- b. Request 12 seeks: "A copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15, 2023, inclusive."
- c. Request 18 seeks: "Copies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive."

18. As to Request 5, Dolly Garfield—General Counsel for the SCEL—explained that it covers approximately 120,000 checks or wire transfers.

19. As to Request 12, Ms. Garfield explained that SCEL possesses over 8,000 responsive records.

20. As to Request 18, she explained that SCEL has 125 current employees and estimated that responsive emails would surpass 3 million.

21. Ms. Garfield also explained that SCEL already spent over 100 hours retrieving, reviewing, and redacting documents and otherwise responding to Plaintiff's remaining 15 FOIA requests.

Opinions

22. Based on this information, I estimate it would take SCEL employees approximately 52,134 hours to retrieve, review, and redact all records responsive to Requests 5, 12, and 18.

23. Based on my review of the Freedom of Information Act, there are at least 9 exemptions that may apply to the records sought in Requests 5, 12, and 18, including but not limited to:

- a. S.C. Code Ann. § 30-4-40(a)(1) (concerning trade secrets);
- b. S.C. Code Ann. § 30-4-40(a)(2) (concerning information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy);
- c. S.C. Code Ann. § 30-4-40(a)(3) (concerning records and other information compiled for law enforcement purposes in certain circumstances);
- d. S.C. Code Ann. § 30-4-40(a)(4) (concerning matters specifically exempted from disclosure by statute or law);
- e. S.C. Code Ann. § 30-4-40(a)(6) (concerning compensation paid by SCEL to employees with exceptions);
- f. S.C. Code Ann. § 30-4-40(a)(7) (concerning correspondence or work product of legal counsel and any other material that would violate attorney-client privilege);

- g. S.C. Code Ann. § 30-4-40(a)(13) (concerning materials gathered during the search to fill an employment positions with exceptions);
- h. S.C. Code Ann. § 30-4-40(a)(15) (concerning the identity or information leading to the identity of a whistleblower); and
- i. Proviso 3.5 of the 2023–2024 South Carolina Annual Appropriations Act (prohibiting disclosure of lottery and prize winner’s name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification).

24. For instance, checks and wire transfers responsive to Request 5 will require a review and redaction of at least personal information such as names, bank account numbers, account or identification numbers, and signatures.

25. And Request 12 includes bills, invoices, and statements, which includes exempt information similar to records responsive to Request 5.

26. Request 18—the request seeking any and all emails received, sent, or forwarded by any SCEL employee for two years—covers each of the exemptions listed above and likely even more.

27. Based on my experience and expertise, a reasonable rate for outside counsel to review and redact records responsive to Requests 5, 12, and 18 based on the above-mentioned exemptions, as well as for attorney-client privileged information, ranges between \$150.00 to \$200.00 per hour. This is a reasonable, customary legal fee for similar services that takes into account the nature, extent, and difficulty of the issues as well as the time a lawyer would necessarily need to devote to the case.

28. Based on my experience and expertise, it would take around 2,000 hours to review and redact 120,000 checks and wire transfers responsive to Request 5. This conservatively assumes an average of one minute per check. There are only 720 hours in 30 days, and even aggressively assuming timekeepers worked 12 hours per day, that leaves 360 working hours. SCEL therefore would have had to use or hire at least 5 timekeepers to comply with the 30-day deadline. Depending on the rate of the timekeepers, it would have cost SCEL approximately \$300,000 to \$400,000 to comply with Request 5.

29. Based on my experience and expertise, it would take around 134 hours to review and redact 8,000 bills, invoices, and statements responsive to Request 12. This conservatively assumes an average of one minute per bill, invoice, or statement. SCEL would have had to use or hire one timekeeper, at a minimum, to comply with the 30-day deadline. Depending on the timekeeper's rate, it would have cost SCEL approximately \$20,100 to \$26,800 to comply with Request 12.

30. Based on my experience and expertise, it would take around 50,000 hours to review and redact the roughly 3 million emails received, sent, or forwarded by any SCEL employee for the two-year period as requested in Request 18. This very conservatively assumes an average of one minute per email. Again, there are only 720 hours in 30 days, and even aggressively assuming timekeepers worked 12 hours per day, that leaves 360 working hours. SCEL therefore would have had to use or hire at least 138 timekeepers to comply with the 30-day deadline. Depending on the rate of the timekeepers, it would have cost SCEL approximately \$7,500,000 to \$10,000,000 to comply with Request 18.

31. In sum, it is my opinion that it would have taken roughly 52,134 hours to review and redact records responsive to Requests 5, 12, and 18. Because SCEL does not have sufficient

resources within the agency to perform this work, even if all employees did nothing but work on responding to Glassmeyer's FOIA request, SCEL would have needed to hire outside counsel. Given the unique privilege issues a reviewer would have needed to check before providing responsive documents, outside counsel would have especially been necessary. This opinion does not even consider the substantial agency time and resources SCEL already dedicated to responding to Glassmeyer's remaining 15 requests. Given the necessity of outside counsel, it would have cost SCEL approximately anywhere from \$7,820,100 to \$10,426,800 to review, redact, and produce all records responsive to Requests 5, 12, and 18.

32. I have knowledge of and am familiar with discovery practice involving large volumes of documents. It is standard for the party seeking information to provide search terms and connectors to cull down the relevant documents that need to be searched. In this case, Plaintiff refused to narrow his request for 3 million emails. This was not reasonable.

33. While SCEL employees may conduct the review and redactions of responsive records itself, it is my opinion that it would take internal employees much longer than it would take outside counsel skilled in conducting bulk document review. Plus, SCEL would need to train employees to conduct this skilled type of review. It is also my opinion that lay persons who are not as familiar with document review, privileges, and the provisions and exemptions in FOIA will not be as thorough or precise in conducting a review and redaction of this volume of documents.

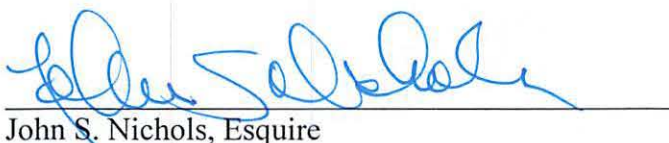
34. If SCEL employees did conduct the review and redactions, SCEL would still have to divert significant resources, both human and capital, to respond to Requests 5, 12, and 18. Assuming the prorated hourly salary of the lowest paid employee—which would be charged in accordance with section 30-4-30(B) of the South Carolina Code if SCEL charged and collected fees for FOIA requests—is minimum wage, \$7.25, it would still cost SCEL approximately

\$377,978.75 to review, redact, and produce all records responsive to Requests 5, 12, and 18. It would essentially halt all operations of SCEL in the meantime to conduct 52,134 hours of review.

35. Further, Plaintiff's FOIA request asked that all responsive records be produced to him in a "hard copy (i.e. paper) format." It would have taken an exorbitant amount of time and human and capital resources to—after a review and redaction of responsive records—print those records to produce to Plaintiff in hard copy format. A reasonable rate for copies is \$0.10 per page. Even conservatively assuming these documents are anywhere from 1 to 5 pages long, it would have cost SCEL anywhere from \$312,800 to \$1,564,000 to provide documents responsive to Requests 5, 12, and 18.

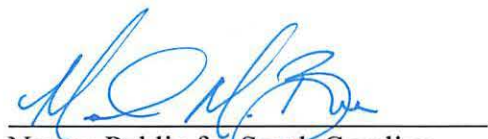
36. It is my opinion that SCEL would have to divert significant resources, both human and capital, if it were required to respond to Requests 5, 12, and 18 of Plaintiff's June 16, 2023, FOIA request.

FURTHER AFFIANT SAYETH NOT.



John S. Nichols, Esquire

SWORN to and subscribed before
me this 2nd day of October, 2023



Notary Public for South Carolina

My Commission expires: 10/15/2031

MEREDITH M. BROWN
Notary Public, State of South Carolina
My Commission Expires 10/15/2031

EXHIBIT K

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	DOLLY GARFIELD
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Dolly Garfield, Esquire, who first being duly sworn, deposes and states as follows:

1. I am a resident of South Carolina over 18 years of age. I have personal knowledge of the truth of the facts set forth in this affidavit.

2. I am the General Counsel of the South Carolina Education Lottery, which is governed by the South Carolina Lottery Commission, the Defendant in this case. If called as a witness, I could and would competently testify to the facts set forth below as I know them to be true based upon my own knowledge or upon my review of the documents set forth below. The following is a description of the exhibits filed with the Counterclaims in this matter.

3. Exhibit A is a true and correct copy the July 5, 2023, through July 7, 2023, emails between me and George Glassmeyer, regarding his Freedom of Information Act (FOIA) request and requests 7 and 8 specifically.

4. Exhibit B is a true and correct copy of the July 18, 2023, through July 21, 2023, emails between me and George Glassmeyer, regarding request 1 of his FOIA request.

5. Exhibit C is a true and correct copy of the July 18, 2023, through July 24, 2023, emails between me and George Glassmeyer, regarding requests 2 and 4 of his FOIA request.

6. Exhibit D is a true and correct copy of the July 18, 2023, through July 20, 2023, emails between me and George Glassmeyer, regarding requests 2 and 4 of his FOIA request.

7. Exhibit E is a true and correct copy of the July 18, 2023, through August 18, 2023, emails between me and George Glassmeyer, regarding request 4 of his FOIA request and his formal complaint based on records responsive to request 4.

8. Exhibit F is a true and correct copy of the July 18, 2023, through July 25, 2023, emails between me and George Glassmeyer, regarding his formal complaint based on records responsive to request 4.

9. Exhibit G is a true and correct copy of the July 31, 2023, email George Glassmeyer to me, regarding request 17 of his FOIA request.

10. Exhibit H is a true and correct copy of the August 13, 2023, through August 15, 2023, emails between me and George Glassmeyer, regarding request 8 of his FOIA request.

11. Exhibit I is a true and correct copy of my August 16, 2023, letter to George Glassmeyer, regarding the final production of records responsive to his FOIA request and inviting him again to revise certain requests.

FURTHER AFFIANT SAYETH NOT.


Dolly Garfield

SWORN to and subscribed before
me this 2 day of October, 2023


Notary Public for South Carolina
My Commission expires: 12/5/2027

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2023-CP-40-04854

George S. Glassmeyer,

Plaintiff,

vs.

South Carolina Lottery Commission,

Defendant.

**MOTION TO DISMISS
AND STRIKE**

YOU WILL PLEASE TAKE NOTICE that Plaintiff George S. Glassmeyer move before this court pursuant to Rules 12(b)(6) and 12(f), SCRCP, and Chapter 4 of Title 30 of the South Carolina Code of Laws, as well as pursuant to all other applicable law, for an order dismissing the counterclaims and defense of Defendant South Carolina Lottery Commission in the above-captioned action as stated in Defendant's Answer and Counterclaim paragraphs 54 through 87 and generally as the "unduly burdensome, overly broad, and an otherwise improper request" defense.

The Plaintiff so moves on the following grounds:

1. Defendant in the above-identified paragraphs of its answer and counterclaim provides that the Court should either order certain requests of Plaintiff are "unduly burdensome, overly broad, and an otherwise improper request" or provide a general defense to Plaintiff's claims, as allowed in S.C. Code Ann. §30-4-110(A).
2. "A public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure." S.C. Code Ann. §30-4-110(A).

3. As shown by A to Plaintiff's Verified Complaint, Mr. Glassmeyer requested records, pursuant to the South Carolina Freedom of Information Act (hereinafter "FOIA"), from Defendant.
4. Plaintiff alleges Defendant has violated FOIA in several instances and Defendant in turn defends on several basis including, but not limited to, how a purported change in law required Defendant to respond in a certain way or how certain information within responsive documents is properly withheld from disclosure under S.C. Code Ann. § 30-4-40.
5. At no point between the time Plaintiff requested records from Defendant and the time Plaintiff served this action, did Defendant "file a request for hearing with the circuit court" pursuant to S.C. Code Ann. §30-4-110(A).
6. Instead, Defendant asserts this aforementioned subsection as a counterclaim and (generally) as a defense to Plaintiff's lawsuit.
7. Defendant cannot be allowed to now assert a cause of action the statute only provides a person who "request[s] a hearing". In this action it is Plaintiff that sought a hearing in this controversy, not Defendant.
8. To allow public bodies to offensively sue requesters, like Defendant is attempting to do, would frustrate the codified purpose of FOIA in §30-4-15 and chill other requesters willingness to sue the government for such violations.
9. Defendant's counterclaim and "unduly burdensome, overly broad, and an otherwise improper request" defense must be dismissed and stricken from this controversy.
10. This motion is also based on all applicable statutory law, case law, common law, and the record in this action.

As this is a motion to dismiss, consultation with opposing counsel in advance of the making of this motion is not required.

Respectfully submitted,

s/Taylor Smith

Taylor M. Smith IV
S.C. Bar No. 101584
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@harrisonfirm.com (email)
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
October 6, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>RESPONSE IN OPPOSITION TO</u>
	)	<u>MOTION TO DISMISS AND STRIKE</u>
South Carolina Lottery Commission,	)	<u>DEFENDANT’S COUNTERCLAIM</u>
	)	
Defendant.	)	
	)	

South Carolina Lottery Commission (SCEL) submits this response in opposition to George S. Glassmeyer’s (Glassmeyer) motion to dismiss and strike its counterclaim. For the reasons below, the Court should deny Glassmeyer’s motion.

BACKGROUND

For years, Glassmeyer has served Freedom of Information Act (FOIA) requests on SCEL seeking information about lottery prize claimants. On June 21, 2023, SCEL received a FOIA request from Glassmeyer seeking that and much more. Ex. A to Pl.’s Compl. Three of those requests are relevant to SCEL’s defense and counterclaim requesting a hearing and relief under subsection 30-4-110(A) of the South Carolina Code.

Request 5 sought “[c]opies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023.” *Id.* Request 12 sought “[a] copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15, 2023, inclusive.” *Id.* And Request 18 sought “[c]opies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive.” *Id.* On July 5, 2023, SCEL’s general counsel, Dolly Garfield, responded to Glassmeyer’s FOIA Request with a good-faith determination that

Requests 5, 12, and 18 were unduly burdensome, overly broad, and otherwise improper. Ex. B. to Pl.'s Compl.

For each request, SCEL explained the volume of records that would be responsive and noted that the efforts SCEL would have to take to retrieve, review, and redact those documents would be unduly burdensome. *Id.* But SCEL also invited Glassmeyer to revise the requests. Specifically, SCEL asked Glassmeyer to let it know by July 7, 2023, “if [he] was willing to withdraw or revise the objectionable requests.” SCEL continued, “[w]e certainly want to work together to provide responsive information. As drafted, however, several requests would require SCEL to divert unnecessary and significant agency and outside resources to review, redact, and produce documents that are not related to the statute purpose underlying the request.” *Id.*

Glassmeyer responded on June 6, 2023, stating he was not willing to withdraw any requests. Ex. A to Counterclaim. He did, however, revise one of the other requests SCEL flagged as overly broad, unduly burdensome, and otherwise improper. *Id.* SCEL promptly provided records responsive to that revised request. After that, SCEL and Glassmeyer exchanged over 20 emails about Glassmeyer's FOIA request and the responsive documents produced on a rolling basis. *See* Exs. B, C, D, E, F, G, & H to Counterclaim. In those communications, Glassmeyer did not mention SCEL's determination regarding Requests 5, 12, and 18.

On August 16, 2023, SCEL sent a letter to Glassmeyer, indicating it had provided all responsive records subject to disclosure in response to his FOIA Request. Ex. I to Counterclaim. SCEL repeated its explanation of the determination that Requests 5, 12, and 18 were overly broad, unduly burdensome, and otherwise improper. But SCEL again invited Glassmeyer to modify or narrow those requests, stating “[i]f you would like to modify, specify, or narrow your requests in Items 5, 12, or, 18, SCEL will reconsider its position and will make reasonable efforts to

accommodate your requests.” *Id.* Glassmeyer did not respond. Instead, he filed this lawsuit on September 5, 2023.

STANDARD

“Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). A court must limit itself to “the allegations contained within the four corners of the complaint” in considering a Rule 12(b)(6) motion to dismiss. *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011). But “[a] copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.” Rule 10(c), SCRCP. “If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010) (citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)).

“A motion to strike under Rule 12(f), SCRCP, which challenges a theory of recovery in the complaint, is in the nature of a motion to dismiss under Rule 12(b)(6), SCRCP.” *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 567, 703 S.E.2d 197, 199 (2010) (citing *McCormick v. England*, 328 S.C. 627, 632, 494 S.E.2d 431, 433 (Ct. App. 1997)). “Motions to strike ‘are generally viewed with disfavor because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic.’” *Burgess v. Cherokee Cnty. Sch. Dist.*, No. 7:19-CV-02704-DCC, 2020 WL 13876915, at *2 (D.S.C. Sept. 3, 2020) (quoting *Waste Mgmt. Holdings v. Gilmore*, 252 F.3d 316, 347 (4th Cir. 2001)).

ARGUMENT

At issue in this case is the scope of the remedy available to a public body seeking a hearing for relief from vexatious FOIA requests under subsection 30-4-110(A) of the South Carolina Code.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly].” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). And courts “must give the words found in the statute their ‘plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.’” *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007)).

Subsection 30-4-110(A), the pertinent statute here, provides as follows:

A public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

S.C. Code Ann. § 30-4-110(A). The statute, of course, is silent on the timing and method used for seeking relief from “unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests.” *Id.*

Indeed, the only hint of a temporal limitation is in the second part of the statute—separated by the disjunctive term *or*—that governs a situation in which a public body “is unable to make a good faith determination as to whether the information is exempt from disclosure.” *Id.*; *cf. Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963) (“The word ‘or’ used in a statute, is a disjunctive particle that marks an alternative.”). This distinction is important because the

determination on an exemption must occur within 10 business days after receipt of a request under the statute. *See* S.C. Code Ann. § 30-4-30(C) (stating a “public body, upon written request for records made under this chapter, shall within ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request of its determination and the reasons for it”).

Here, however, SCEL was able to make a good-faith determination that Requests 5, 12, and 18 were “unduly burdensome, overly broad, . . . or otherwise improper.” S.C. Code Ann. § 30-4-110(A). SCEL so informed Glassmeyer and tried in earnest to resolve this dispute, telling him it would consider and try to accommodate any narrowing of or revisions to those requests. When SCEL made the final production of other responsive records, it asked Glassmeyer again if he wanted to narrow or revise Requests 5, 12, and 18. In the parties’ more than 20 communications over the course of about 6 weeks, however, Glassmeyer said nothing more about those requests.

Given the text of the statute, and contrary to Glassmeyer’s assertion, SCEL did *not* “offensively sue” Glassmeyer.¹ Mot. to Dismiss & Strike at 2. Instead, SCEL awaited a response to its August 16 letter, inviting Glassmeyer “to modify, specify, or narrow” Requests 5, 12, or 18. Ex. I to Counterclaim. SCEL had no need to seek relief from the Court if Glassmeyer would ultimately revise his requests. Further, Glassmeyer is trying to have it both ways here. On the one hand, he argues that SCEL’s request is untimely because it did not offensively bring this claim to the Court’s attention sooner. To be clear, the only way to request a hearing is to have a case with a caption. In other words, SCEL would have had to file a lawsuit against someone. Yet on the other hand, he argues the statute does not allow a public body to offensively sue someone.

¹ Even if SCEL had “offensively sue[d]” him, as Glassmeyer knows, the agency could have done so under our supreme court’s ruling in *Lottery Commission v. Glassmeyer*, 433 S.C. 244, 250, 857 S.E.2d 889, 892–93 (2021).

Glassmeyer’s proposed “heads-I-win-tails-you-lose” approach would render the statute meaningless and provide no remedy at all. *Cf. Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008) (“The Court must presume the [General Assembly] intended its statutes to accomplish something and did not intend a futile act.”). That is not, and cannot be, what the General Assembly intended when providing public bodies an avenue for relief. *Cf. State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the [General Assembly] or would defeat the plain legislative intention.”).

The statute merely says “[a] public body *may* file a request for hearing with the circuit court to seek relief.” *Id.* (emphasis added); *cf. Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981) (“Ordinarily, ‘may’ signifies permission and generally means the action spoken of is optional or discretionary.”). That is what SCEL is doing. Glassmeyer “cannot rewrite the statute and inject matters into it which are not in the legislature’s language.” *Hodges*, 341 S.C. at 87, 533 S.E.2d at 582. More importantly, neither can this Court. *Id.*

What is more, nothing in the South Carolina Rules of Civil Procedure prohibits SCEL from asking for a hearing under section 30-4-110(A) by way of a defense and a counterclaim. *E.g.*, Rules 12 & 13, SCRCF. In fact, the request is likely compulsory under Rule 13(a), SCRCF, as it obviously “arises out of the transaction or occurrence that is the subject matter” of Glassmeyer’s claims against SCEL. Glassmeyer’s contention that SCEL cannot seek a hearing this way merely elevates form over substance and is not tethered to anything in the statute or other statutory or common law. *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (quoting *Sloan*, 371 S.C. at 499, 640 S.E.2d at 459)). By responding to Glassmeyer’s complaint, which alleges SCEL violated FOIA by not producing documents responsive to his overly broad, unduly burdensome, and

otherwise improper requests, and using the normal tools available in civil litigation under the Rules of Civil Procedure, SCEL properly requested a hearing seeking relief. *See* S.C. Code Ann. § 30-4-110(A).

SCEL has plausibly alleged verified facts and furnished an expert affidavit in support of its counterclaim from John Nichols, *see* Rule 10(c), SCRPC, demonstrating the burden SCEL would face responding to Requests 5, 12, and 18. Viewing those facts in the light most favorable to SCEL, as the Court must, SCEL stated a plausible claim for relief from Glassmeyer's overly broad, unduly burdensome, and otherwise improper requests under subsection 30-4-110(A).

CONCLUSION

The Court should deny Glassmeyer's motion to dismiss and strike.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
October 13, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No. 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>JOINT CONSENT</u>
	)	<u>MOTION FOR ASSIGNMENT</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

Plaintiff George S. Glassmeyer and Defendant South Carolina Lottery Commission, by and through the undersigned counsel, submit this joint consent motion for the Honorable Jocelyn Newman, Chief Administrative Judge of the Fifth Judicial Circuit, to issue an Order assigning this nonjury case to the Honorable Daniel M. Coble for scheduling, hearings, and final disposition.

This case primarily involves the interpretation and application of various provisions of the Freedom of Information Act (FOIA). S.C. Code Ann. §§ 30-4-10 through -165. When Plaintiff filed his complaint, he requested an initial hearing for a scheduling order and disposition of any motions. *See* S.C. Code Ann. § 30-4-100. Defendant filed an answer, counterclaim, and partial motion to dismiss. Plaintiff then moved to dismiss and strike the counterclaim.

On October 13, 2023, the parties appeared before the Honorable Daniel M. Coble to argue the motions. Judge Coble denied the motions via Form 4 orders on October 20, 2023. Because Judge Coble is not the Chief Administrative Judge, however, he was unable to enter a Scheduling Order as the parties requested during the hearing. Nevertheless, Judge Coble indicated during the hearing that he would be willing to hear this matter again. Under FOIA, the General Assembly has mandated that the Court “shall establish a scheduling order to conclude” this matter “within six months of initial filing.” S.C. Code Ann. § 30-4-100. That means the case must be resolved

by March 2024. Now that the initial motions have been resolved, this matter comes before the Court on the parties' motion to assign the case, in full, to Judge Coble.

Of course, the Court has broad authority to resolve scheduling and other administrative issues when they arise and to assign judges as the Court sees fit. *See, e.g., In re Duties of Circuit Court Chief Judges for Administrative Purposes*, Order No. 2019-06-28-02, at ¶ 2 (S.C. Sup. Ct. filed June 29, 2019) (stating “the authority of a circuit court judge designated as a chief judge for administrative purposes shall include, but not be limited to,” various “administrative purposes and acts” such as the ability “[t]o set jury and nonjury trial rosters and/or dockets for all civil terms of circuit court and to designate which presiding judge shall hear each roster or rosters”); Rule 40(h), SCRCF (“The Chief Judge for Administrative Purposes, in cooperation with the clerk, is responsible for setting all matters on the Nonjury Docket for disposition.”).

Here, given that the case must be expedited for resolution under FOIA, S.C. Code Ann. § 30-4-100, the parties believe it would be more efficient to have one judge—especially one who is already familiar with the issues in the case—to have exclusive jurisdiction to enter a scheduling order, coordinate hearings, and try the case. This would also promote judicial economy because the parties would not have to burden the Chief Administrative Judge with scheduling matters every time a motion is filed within this tight six-month window or explain the case anew at each hearing to a different judge. After all, the parties anticipate additional motions practice, including motions for summary judgment that will largely focus on issues with which Judge Coble is already familiar.

For good cause shown, the parties therefore respectfully request that the Court assign this case to the Honorable Daniel M. Coble for future handling of all matters related to the case, including but not limited to, entering a scheduling order, hearing motions, and presiding at trial. The parties are submitting a Proposed Order in conjunction with this motion for the Court's review.

WE SO MOVE AND CONSENT:

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

WE SO MOVE AND CONSENT:

s/Taylor Smith
Taylor M. Smith, IV (101584)
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
taylor@harrisonfirm.com

Counsel for Plaintiff George S. Glassmeyer

Columbia, South Carolina
October 26, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2023-CP-40-04854

George S. Glassmeyer,
Plaintiff,
vs.
South Carolina Lottery Commission,
Defendant.

**REPLY AND ANSWER TO
COUNTERCLAIMS**

The Plaintiff, in reply and answer to the counterclaims asserted in the Defendant's answer and counterclaim, replies and asserts as follows:

FOR A FIRST REPLY AND DEFENSE

1. Any allegation of the answer and counterclaim not herein admitted, qualified, or explained is denied. Any allegations of the answer and counterclaim subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the answer and counterclaim subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Replying to the allegations of paragraph 55 the counterclaim, Plaintiff admits he mailed a FOIA request to Defendant but lacks sufficient information and belief to know when it was received, the remaining allegations are denied.

3. Replying to the allegations of paragraph 56 of the counterclaim, Plaintiff admits he requested in part the same, but craves reference to the request as it speaks for itself.

4. Replying to the allegations of paragraph 57 of the counterclaim, Plaintiff lacks sufficient information and belief to understand how many records are responsive or what amount of review is appropriate, but denies it would be unduly burdensome, overly broad, or otherwise improper to fully respond to Plaintiff's request.

5. Replying to the allegations of paragraph 58 of the counterclaim, Plaintiff admits he requested in part the same, but craves reference to the request as it speaks for itself.

6. Replying to the allegations of paragraph 59 of the counterclaim, Plaintiff lacks sufficient information and belief to understand how many records are responsive or what amount of review is appropriate, but denies it would be unduly burdensome, overly broad, or otherwise improper to fully respond to Plaintiff's request.

7. Replying to the allegations of paragraph 60 of the counterclaim, Plaintiff admits he requested in part the same, but craves reference to the request as it speaks for itself.

8. Replying to the allegations of paragraph 61 of the counterclaim, Plaintiff lacks sufficient information and belief to understand how many records are responsive or what amount of review is appropriate, but denies it would be unduly burdensome, overly broad, or otherwise improper to fully respond to Plaintiff's request.

9. Replying to the allegations of paragraph 62 of the counterclaim, Plaintiff admits he requested in part the same, but craves reference to the request as it speaks for itself.

10. Replying to the allegations of paragraph 63 of the counterclaim, Plaintiff lacks sufficient information and belief to understand how many records are responsive or what amount of review is appropriate, but denies it would be unduly burdensome, overly broad, or otherwise improper to fully respond to Plaintiff's request.

11. Replying to the allegations of paragraph 64 of the counterclaim, Plaintiff admits Defendant's response says what it says, but denies Defendant is entitled to the relief it seeks.

12. Replying to the allegations of paragraph 65 of the counterclaim, Plaintiff denies the same.

13. Replying to the allegations of paragraph 66 of the counterclaim, Plaintiff lacks sufficient information and belief to form a response.

14. Replying to the allegations of paragraph 67 of the counterclaim, Plaintiff denies the same.

15. Replying to the allegations of paragraph 68 of the counterclaim, Plaintiff admits Defendant July 5 letter speaks for itself, and craves reference to it.

16. Replying to the allegations of paragraph 69 of the counterclaim, Plaintiff admits Defendant July 5 letter speaks for itself, and craves reference to it.

17. Replying to the allegations of paragraph 70 of the counterclaim, Plaintiff admits his response speaks for itself in the part referenced.

18. Replying to the allegations of paragraph 71 of the counterclaim, Plaintiff admits the same.

19. Replying to the allegations of paragraph 72 of the counterclaim, Plaintiff denies the same.

20. Replying to the allegations of paragraph 73 of the counterclaim, Plaintiff admits he corresponded with Defendant regarding production of the responsive records, that the Exhibits evidence some of that correspondence, but craves reference to each and denies any remaining allegations.

21. Replying to the allegations of paragraph 74 of the counterclaim, Plaintiff admits Exhibit I says what is says and craves reference to it and the contents of Exhibit K, but denies the remaining allegations.

22. Replying to the allegations of paragraph 75 of the counterclaim, Plaintiff admits Exhibit I says what is says and craves reference to it.

23. Replying to the allegations of paragraph 76 of the counterclaim, Plaintiff admits Exhibit I says what it says and craves reference to it but denies any remaining allegations.

24. Replying to the allegations of paragraph 77 of the counterclaim, Plaintiff admits it filed this lawsuit but denies the remaining allegations.

25. Replying to the allegations of paragraph 78 of the counterclaim, no response is necessary but to the extent one is later deemed required, it is denied.

26. Replying to the allegations of paragraph 79 of the counterclaim, Plaintiff lacks sufficient information and belief to form a response.

27. Replying to the allegations of paragraph 80 of the counterclaim, Plaintiff denies the same.

28. Replying to the allegations of paragraph 81 of the counterclaim, Plaintiff denies the same.

29. Replying to the allegations of paragraph 82 of the counterclaim, Plaintiff denies the same.

30. Replying to the allegations of paragraph 83 of the counterclaim, Plaintiff admits Defendant seeks the relief it states but denies it is legally entitled to receive it, any remaining allegations are denied.

31. Replying to the allegations of paragraph 84 of the counterclaim, Plaintiff admits Defendant seeks the relief it states but denies it is legally entitled to receive it, any remaining allegations are denied to the extent Plaintiff has sufficient information and belief to respond.

32. Replying to the allegations of paragraph 85 of the counterclaim, Plaintiff admits Defendant seeks the relief it states but denies it is legally entitled to receive it, any remaining allegations are denied to the extent Plaintiff has sufficient information and belief to respond.

33. Replying to the allegations of paragraph 86 of the counterclaim, Plaintiff admits Defendant seeks the relief it states but denies it is legally entitled to receive it, any remaining allegations are denied to the extent Plaintiff has sufficient information and belief to respond.

34. Replying to the allegations of paragraph 87 of the counterclaim, Plaintiff admits Defendant seeks the relief it states but denies it is legally entitled to receive it.

FOR A SECOND REPLY AND DEFENSE
(Dismissal is proper under Rule 12(b)(6), SCRPC)

35. The Defendant's answer and counterclaim fails to state facts sufficient to constitute a cause of action.

36. The Defendant's counterclaims should be dismissed.

WHEREFORE, the Plaintiff prays for judgment against the Defendant as follows:

- a) For the relief sought by the Plaintiff in his verified complaint;
- b) For the dismissal of the Defendant's counterclaims;
- c) For judgment against the Defendant on its counterclaims and affirmative defenses; and
- d) For such other and further relief for the Plaintiff as may be just and proper.

Respectfully submitted,

s/Taylor Smith
Taylor M. Smith IV
S.C. Bar No. 101584
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@harrisonfirm.com (email)
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
October 31, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANT’S MOTION FOR</u>
	)	<u>SUMMARY JUDGMENT</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Lottery Commission (the Lottery), by and through the undersigned counsel, will move before the Honorable Daniel M. Coble, Presiding Judge of the Court of Common Pleas for Richland County, in the Fifth Judicial Circuit of South Carolina, ten days after service hereof, or as soon as counsel may be heard, for an Order granting summary judgment in favor of the Lottery pursuant to Rule 56(a)–(c), SCRCPP. For the reasons below, the Court should grant the Lottery’s motion and dismiss the complaint.

BACKGROUND

For years, Plaintiff George S. Glassmeyer has served Freedom of Information Act (FOIA) requests on the Lottery seeking information about lottery prize claimants.

In 2013 and 2014, Plaintiff sent several FOIA requests to the Lottery, seeking information about winners of lottery prizes equal to or greater than \$1 million. *S.C. Lottery Comm’n v. Glassmeyer*, 433 S.C. 244, 248, 857 S.E.2d 889, 891 (2021). The Lottery determined some information responsive to those requests—lottery winners’ names, addresses, telephone numbers, and forms of identification—was exempt under the unreasonable invasion of privacy exemption in section 30-4-40(a)(2) of the South Carolina Code and declined to disclose it. *Id.* at 248, 857 S.E.2d at 891–92. The Lottery then sought a declaratory judgment that the information was exempt

after Glassmeyer disliked the Lottery’s determination. *Id.* The circuit court granted judgment on the pleadings, which the court of appeals upheld. *Id.* at 249, 857 S.E.2d at 892. But our supreme court reversed and remanded for a new trial because, “[w]ithout a trial on the issues to develop a factual record, there is no evidence on which the circuit court could base its judgment.” *Id.* at 252, 857 S.E.2d at 893.

On remand, the parties settled in a February 15, 2022 agreement. Pl.’s Compl. at ¶ 13. As relevant here, Glassmeyer agreed not to submit FOIA requests to the Lottery seeking information about claimants or prize winners through May 31, 2023. *See* Ex. 1, 2022 Settlement Agreement. In exchange, the Lottery agreed its policy not to disclose personal information under section 30-4-40(a)(2) would remain in “full force until May 31, 2023.” *Id.* The agreement also provided that “[i]f the South Carolina General Assembly does not enact legislation addressing this specific issue by such date, then the South Carolina Lottery Commission will provide the full names, cities, and states of lottery prize claimants in response to FOIA requests after that date.” *Id.*

Not two months later, on April 4, 2022, Glassmeyer sued the Lottery, arguing it violated FOIA by not posting a fee schedule to its website. A year later, the Court granted the Lottery’s motion for summary judgment, holding the Lottery did not have to post a fee schedule because it does not charge—and has never charged—fees for the review, retrieval, redaction, and production of public records in response to FOIA requests. *See* Ex. 2, Order Gr. Summ. J. to Def., No. 2022-CP-40-01769, at 1–6 (S.C. Ct. Comm. Pl. Mar. 31, 2023). The Court dismissed that complaint with prejudice, *id.*, and Glassmeyer did not appeal.

Turning to the case at hand, on June 21, 2023—only a few weeks after the date through which Glassmeyer agreed by settlement not to request lottery winners’ names—the Lottery received another FOIA request from Glassmeyer, seeking that information and more in 18

voluminous requests. Ex. A to Pl.’s Compl. The Lottery responded to Glassmeyer’s request with its determination that, in addition to several laws allowing the Lottery to redact “winners/claimant names,” Proviso 3.5 of the 2023–2024 Annual Appropriations Act (the Proviso) prohibits disclosure of such information.

That is not all. Knowing the Lottery declines to charge fees in an effort to be transparent and make its records more accessible to the public, Glassmeyer sought to exploit that by submitting three particularly voluminous requests. Ex. A to Pl.’s Compl. For instance, he sought two years’ worth of emails to and from every Lottery employee, every check in the Lottery’s possession spanning that same period, and all bills and invoices too. *Id.* (Requests 5, 12 & 18). And for each response, he wanted hard copy (paper) records.

On July 5, 2023, the Lottery’s general counsel, Dolly Garfield, responded to Glassmeyer’s FOIA Request with a good-faith determination that lottery claimants’ names and information should be redacted to prevent disclosure of information protected by the Proviso and that Requests 5, 12, and 18 were unduly burdensome, overly broad, and otherwise improper. Ex. B. to Pl.’s Compl. For each of the latter requests, the Lottery explained the volume of responsive records and noted the efforts required to retrieve, review, and redact those documents would be unduly burdensome. *Id.* Even still, the Lottery invited Glassmeyer to revise the requests. Specifically, it asked Glassmeyer to let it know by July 7, 2023, “if [he] was willing to withdraw or revise the objectionable requests.” *Id.* The Lottery continued, “[w]e certainly want to work together to provide responsive information. As drafted, however, several requests would require the Lottery to divert unnecessary and significant agency and outside resources to review, redact, and produce documents that are not related to the stated purpose underlying the request.” *Id.*

Glassmeyer responded on June 6, 2023, stating he was not willing to withdraw any requests. Ex. A to Counterclaim. He did, however, revise one of the other requests the Lottery flagged as overly broad, unduly burdensome, and otherwise improper. *Id.* The Lottery promptly provided records responsive to that revised request. After that, the Lottery and Glassmeyer exchanged over 20 emails about Glassmeyer's FOIA request and the responsive documents produced on a rolling basis. See Exs. B, C, D, E, F, G, & H to Counterclaim. Glassmeyer did not once mention the Lottery's determination on Requests 5, 12, and 18.

On August 16, 2023, the Lottery sent a letter to Glassmeyer, conveying it had provided all responsive records subject to disclosure in response to his FOIA request. Ex. I to Counterclaim. The Lottery repeated its explanation of the determination that Requests 5, 12, and 18 were overly broad, unduly burdensome, and otherwise improper. And the Lottery again invited Glassmeyer to modify or narrow those requests, stating "[i]f you would like to modify, specify, or narrow your requests in Items 5, 12, or, 18, the Lottery will reconsider its position and will make reasonable efforts to accommodate your requests." *Id.* Glassmeyer did not respond.

Instead, he filed this lawsuit on September 5, 2023, alleging the Lottery breached the settlement agreement with him because it would not disclose "the full names" of "lottery prize claimants." Pl.'s Compl. at ¶¶ 27–32. Glassmeyer also alleges the Lottery violated FOIA by "fail[ing] to supply all responsive information to Plaintiff's attached request." Pl.'s Compl. at ¶ 34. The Lottery filed a counterclaim, verified by its general counsel Dolly Garfield and supported by expert John Nichols, asserting that Glassmeyer's voluminous requests are "unduly burdensome, overly broad," and "otherwise improper" under section 30-4-110(A) of the South Carolina Code.

The Lottery filed a partial motion to dismiss, arguing Proviso 3.5 prohibited it from disclosing lottery winners' names and personal information. Glassmeyer opposed the motion and,

for his part, moved to dismiss the Lottery's counterclaim. Following a hearing, the Court denied both parties' motions via Form 4 Orders. This matter comes before the Court on the parties' cross-motions for summary judgment.

STANDARD

The purpose of summary judgment is "to expedite disposition of cases which do not require the services of a factfinder." *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). It is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCp. "In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). But "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

When "cross motions for summary judgment are filed, the parties concede the issue before [the Court] should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

ARGUMENT

I. *The Lottery is entitled to relief from Plaintiff's Requests 5, 12, and 18 because they are unduly burdensome, overly broad, and otherwise improper.*

A. *The Lottery brought a proper counterclaim.*

To begin, and to the extent Glassmeyer still challenges the scope of the remedy available to a public body seeking a hearing for relief from vexatious FOIA requests under subsection 30-4-110(A), his concerns are misplaced.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly].” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). And courts “must give the words found in the statute their ‘plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.’” *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007)).

Subsection 30-4-110(A), the pertinent statute here, provides as follows:

A public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

S.C. Code Ann. § 30-4-110(A). The statute, of course, is silent on the timing and method used for seeking relief under this subsection. *Id.* Indeed, the only hint of a temporal limitation is in the second part of the statute—separated by the disjunctive term *or*—that governs a situation in which a public body “is unable to make a good faith determination as to whether the information is exempt from disclosure.” *Id.*; *cf. Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963) (“The word ‘or’ used in a statute, is a disjunctive particle that marks an alternative.”). This distinction is important because the determination on an exemption must occur within 10 business days after receipt of a request under the statute. *See* S.C. Code Ann. § 30-4-30(C) (stating a “public body, upon written request for records made under this chapter, shall within ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request of its determination and the reasons for it”).

Here, however, the Lottery could and did make a good-faith determination that Requests 5, 12, and 18 were “unduly burdensome, overly broad, . . . or otherwise improper.” S.C. Code Ann. § 30-4-110(A). The Lottery so informed Glassmeyer and tried in earnest to resolve this dispute, telling him it would consider and try to accommodate any narrowing of or revisions to those requests. Ex. B. to Pl.’s Compl. When the Lottery made the final production of other responsive records, it asked Glassmeyer again if he wanted to narrow or revise Requests 5, 12, and 18. Ex. I to Counterclaim. In the parties’ more than 20 communications over the course of about 6 weeks, however, Glassmeyer said nothing more about those requests.

Given the text of the statute, and contrary to Glassmeyer’s assertion, the Lottery did *not* “offensively sue” Glassmeyer.¹ Instead, the Lottery awaited a response to its August 16 letter, inviting Glassmeyer “to modify, specify, or narrow” Requests 5, 12, or 18. Ex. I to Counterclaim. The Lottery had no need to seek relief from the Court if Glassmeyer ultimately revised his requests.

Glassmeyer’s proposed “heads-I-win-tails-you-lose” approach would render the statute meaningless and provide no remedy at all.² *Cf. Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008) (“The Court must presume the [General Assembly] intended its statutes to accomplish something and did not intend a futile act.”). That is not, and cannot be, what the General Assembly intended when providing public bodies an avenue for relief. *See S.C. Lottery Comm’n v. Glassmeyer*, 428 S.C. 423, 434, 835 S.E.2d 524, 529 (Ct. App. 2019) (“The

¹ Even if the Lottery had “offensively sue[d]” him, as Glassmeyer knows, the agency could have done so under our supreme court’s ruling in *South Carolina Lottery Commission v. Glassmeyer*, 433 S.C. at 250, 857 S.E.2d at 892–93.

² On one hand, he contends the Lottery’s request is untimely because it did not offensively bring this claim sooner. To be clear, the only way to request a hearing is to have a case with a caption. In other words, the Lottery would have had to file a lawsuit against someone. Yet on the other hand, he argues the statute does not allow a public body to offensively sue someone.

FOIA statute now explicitly provides an avenue for agencies like SCLC to seek relief if presented with a similar factual scenario as the case at bar.”), *rev'd on other grounds*, 433 S.C. 244, 857 S.E.2d 889 (2021); *see also State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the [General Assembly] or would defeat the plain legislative intention.”).

The statute merely says “[a] public body *may* file a request for hearing with the circuit court to seek relief.” *Id.* (emphasis added); *cf. Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981) (“Ordinarily, ‘may’ signifies permission and generally means the action spoken of is optional or discretionary.”). That is what the Lottery did. Glassmeyer “cannot rewrite the statute and inject matters into it which are not in the legislature’s language.” *Hodges*, 341 S.C. at 87, 533 S.E.2d at 582. Neither can this Court. *Id.*

What is more, nothing in the South Carolina Rules of Civil Procedure prohibits the Lottery from asking for a hearing under subsection 30-4-110(A) by way of a defense and a counterclaim. *E.g.*, Rules 12 & 13, SCRCPP. In fact, the request is likely compulsory under Rule 13(a), SCRCPP, as it obviously “arises out of the transaction or occurrence that is the subject matter” of Glassmeyer’s claims. Glassmeyer’s contention that the Lottery cannot seek a hearing this way merely elevates form over substance and is not tethered to anything in the statute or other statutory or common law. *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (quoting *Sloan*, 371 S.C. at 499, 640 S.E.2d at 459).

By responding to Glassmeyer’s complaint, which alleges the Lottery violated FOIA by not producing documents responsive to his overly broad, unduly burdensome, and otherwise improper requests, and using the normal tools available in civil litigation under the Rules of Civil Procedure, the Lottery properly requested a hearing seeking relief. *See S.C. Code Ann. § 30-4-110(A)*.

B. *The requests are unduly burdensome, overly broad, and otherwise improper.*

With that out of the way, the Lottery is entitled to summary judgment because it proved—through verified facts and an un rebutted expert affidavit from John Nichols—the significant burden it would face responding to Requests 5, 12, and 18.

To be sure, “FOIA is remedial in nature and should be liberally construed to carry out its purpose.” *Evening Post Publ’g Co. v. Berkeley Cnty. Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011) (quoting *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001)). But the right to public records is not absolute. In 2017, the General Assembly “rewrote” section 30-4-110 to “provid[e] rights and remedies of public bodies from whom requests are made.” S.C. Code Ann. § 30-4-110 rptr. note (citing 2017 S.C. Act No. 67, § 5). These “rights and remedies,” *id.*, were designed to guard against vexatious FOIA requests precisely like those at issue here. Now, “[a] public body,” in relevant part, “may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, . . . or otherwise improper requests.” S.C. Code Ann. § 30-4-110(A).

The Lottery is seeking relief from three of Glassmeyer’s requests that fit the bill under the statute. Request 5 sought “[c]opies of all checks (front and back) and wire transfers issued by SCEL from June 30, 2021 through June 15, 2023.” Ex. A to Pl.’s Compl. Request 12 sought “[a] copy of all bills, invoices, and statements submitted by any vendor, contractor, supplier, professional, or professional entity and received by SCEL between June 30, 2021 and June 15, 2023, inclusive.” *Id.* And Request 18 sought “[c]opies of all emails received, sent, or forwarded by any and all SCEL employees from June 30, 2021 through June 15, 2023, inclusive.” *Id.*

As verified by Ms. Garfield in the Lottery’s counterclaim, the Lottery gathered information prior to responding to Glassmeyer’s FOIA request to determine the capital and human resources

and time that would be required to retrieve, review, redact, and produce responsive records to these three Requests. Def.'s Countercl. at ¶ 66. The Lottery determined Request 5 would cover about 120,000 checks or wire transfers, Request 12 would cover over 8,000 documents, and Request 18 would cover about 3 million emails from the Lottery's 125 employees at the time. *Id.* at ¶¶ 57, 61 & 63. Considering the sheer volume of documents Glassmeyer sought and the potential exemptions and prohibitions that could apply, the Lottery made a good-faith determination that Requests 5, 12, and 18 were simply too overly broad, unduly burdensome, and improper. Even then, it invited Glassmeyer to revise these improper requests. All to no avail.

As expert John Nichols explains, at least nine exemptions may apply to the records sought in Requests 5, 12, and 18. Ex. J to Def.'s Countercl. at ¶ 23. He asserts it would take around "2,000 hours to review and redact 120,000 checks and wire transfers responsive to Requests 5" at a cost of \$300,000³ to \$400,000. *Id.* at ¶ 28. As for Request 12, he states it would take around 134 hours to review and redact responsive documents, to the tune of \$20,100 to \$26,800. *Id.* at ¶ 29. Turning to Request 18, Nichols opines it would take "around 50,000 hours to review and redact the roughly 3 million emails received, sent, or forwarded by" the Lottery's employees and would cost approximately \$7,500,000 to \$10,000,000. *Id.* at ¶ 30.

The Lottery faced two options if forced to respond to these requests. First, it could retrieve, review, redact, and produce documents in-house, using only Lottery employees. But because the Lottery does not have enough resources within the agency to engage in this Herculean task, doing so would require the Lottery to halt its operations in the meantime. *See id.* at ¶ 31. Second, the Lottery could outsource these tasks to a law firm and pay an exorbitant amount of money to satisfy

³ Nichols used modest and reasonable rates of \$150 to \$200 per hour to estimate the cost of outsourcing the review and redaction of responsive documents to a law firm. *Id.* at ¶ 27.

Glassmeyer's requests. As Nichols concluded, it would cost approximately \$7,820,100 to \$10,426,800 for a law firm to review, redact, and produce all records responsive to Requests 5, 12, and 18. *Id.* at ¶ 31. This number could be even higher, depending on the hourly rates of attorneys working on the matter. Not to mention it would take an inordinate amount of time to complete these tasks and comply with the Requests.

A state agency cannot be required to endure such undue hardships simply because a frequent FOIA requester "in part" has a baseless and unparticularized hunch "about possible continuing embezzlement of public funds within [the] agency." Ex. A to Pl.'s Compl. This "case has all of the earmarks of a fishing expedition, an enterprise" our supreme court "has time and again stated that it does not favor." *Royster v. Unity Life Ins. Co.*, 193 S.C. 468, 472, 8 S.E.2d 875, 877 (1940). If these requests do not qualify as overly broad, unduly burdensome, and otherwise improper, it is difficult to imagine what would. *Cf. Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 380, 389, 692 S.E.2d 920, 925 (2010) (noting the party's discovery requests were "oppressive" and finding it "abused the discovery process with its scorched-earth approach").

Yet Glassmeyer's only response is that the Lottery did not approach him about a reasonable timetable for production as contemplated under section 30-4-30(C) of the South Carolina Code.⁴ For one, this after-the-fact offer was never made during discussions between Garfield and Glassmeyer, and it is at odds with Glassmeyer trying to call time on the Lottery in other respects, *see infra* Section IV. For another, Glassmeyer's argument misses the point. The Lottery could not discuss any deadline extension because the retrieval, review, redaction, and production—in

⁴ S.C. Code Ann. § 30-4-30(C) ("The various response, determination, and production deadlines provided by this subsection are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld.").

and of itself—would have drained the agency’s resources regardless. Incurring millions of dollars over the course of a year does not ease the sting any more than losing that amount of money in 30 days. Nor does halting a state agency’s operations to respond to an unfounded hunch. Where, as here, complying with the requests would serve only to satisfy a frequent litigant engaged in a fishing expedition, the Lottery simply cannot justify the expenditure. The General Assembly created the Lottery to fund scholarships for South Carolina’s youth so they could pursue their dreams in higher education, not to satisfy the musings of George Glassmeyer. FOIA is not a sport.

Even when viewing the facts in a light most favorable to Glassmeyer, no genuine issue of material fact exists, and the Lottery is entitled to judgment as a matter of law that Glassmeyer’s Requests 5, 12, and 18 are overly broad, unduly burdensome, and otherwise improper and the Lottery deserves relief from such requests. *See* S.C. Code Ann. § 30-4-110(A).

II. The Lottery properly withheld the names of lottery prize winners.

Next, the Lottery properly declined to furnish information about lottery prize winners—and thus did not breach the settlement agreement or violate FOIA—because the Proviso prohibited it from doing so when the response came due. To the extent the agreement provided otherwise (it did not), the Lottery was excused from performing in a way that was illegal or violated public policy as expressed by the General Assembly.

To establish a breach of contract, a plaintiff must prove (1) the existence of a binding contract; (2) breach of the terms of the contract; and (3) damage suffered by the plaintiff as a result of the breach. *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010).

Every year, the General Assembly is required to provide “for all expenditures in a general appropriations act . . . to fund the ordinary expenses of state government and to direct the

expenditure of these funds.” *Amisub of S.C., Inc. v. S.C. Dep’t of Health & Env’t Control*, 407 S.C. 583, 592, 757 S.E.2d 408, 413 (2014). As part of the General Assembly’s “duty and authority to appropriate money as necessary for the operation of the agencies of government,” it “has the right to specify the conditions under which the appropriated monies shall be spent.” *Edwards v. State*, 383 S.C. 82, 90, 678 S.E.2d 412, 416 (2009). Those conditions are enacted as law through budget provisos of the Appropriations Act. And “[e]xecutive agencies are required to comply with the General Assembly’s enactment of a law until it has been otherwise declared invalid.” *Id.* at 91, 678 S.E.2d at 417.

On June 14, 2023, the General Assembly ratified the 2023–2024 Annual Appropriations Act, including a proviso specifically addressing the issue of disclosure of lottery winner information. Proviso 3.5 provides,

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner’s name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

This Proviso—indeed the entire Appropriations Act and its provisions not vetoed by the Governor on June 20, 2023—took effect on July 1, 2023.

Although Proviso 3.5 was in full force and effect on July 5 when the Lottery provided its final determination and when the Lottery provided responsive records later, Glassmeyer complains that the Lottery breached its settlement agreement with Glassmeyer by not disclosing “the full names” of “lottery prize claimants.” Pl.’s Compl. at ¶ 31. But case law and public policy say otherwise. While Proviso 3.5 became effective July 1, it was original to the first draft of the

Appropriations Act introduced by the House of Representatives Ways and Means Committee on March 7, 2023. It remained in the later drafts of the Act, and the General Assembly ratified it in the final 2023–2024 Appropriations Act on June 14. Thus, by the time the Lottery received Plaintiff’s FOIA request on June 21, the General Assembly had clearly expressed its intent that lottery winners’ names and other personal information shall not be disclosed.

Nevertheless, the language of the settlement agreement provides that, if the General Assembly does not enact legislation on the issue, the Lottery will provide lottery winners’ names “*in response to FOIA requests after*” May 31, 2023. Ex. 1 (emphasis added). Despite Plaintiff’s allegation to the contrary, the Lottery’s “duty to perform (i.e., provide Plaintiff with prize claimants’ full names)” was not triggered “upon receipt” of Plaintiff’s FOIA request. See Pl.’s Compl. at ¶ 28. Rather, any “duty” did not arise until the Lottery’s “response” to Plaintiff’s FOIA request came due. This is not an unfamiliar concept under the law. See, e.g., Loc. Civ. R. 16.02(D)(1) (D.S.C.) (“Discovery requests are timely if served in time for the response to be served by the discovery deadline set by the scheduling order.”). When the time came to respond to Plaintiff’s FOIA request here, Proviso 3.5 was in full force and effect. And it prevented the Lottery from disclosing winners’ names and personal information.

It is well-settled that “[w]hen a contract is originally legal, but performance becomes illegal due to a change in the law, any subsequent performance is against public policy and the party who has agreed to perform is excused from doing so.” *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004). Some courts consider this situation as “impossibility of performance, although performance is not literally ‘impossible’ because it could be done if it were legal. Other courts simply conclude that the duty to perform is excused or discharged because

performance would violate public policy as expressed in constitutional provisions, statutes, or judicial decisions.” *Id.*

Whether the Court considers disclosure impossible or against public policy makes no difference. The bottom line is the Lottery would have to violate state law—or the public policy as expressed by the General Assembly—to comply with the disclosure agreed to in the settlement agreement in 2022. Yet “[a]n appropriation act, though generally in duration temporary, has equal force and effect as a permanent statute for the time being.” *State ex rel. McLeod v. Mills*, 256 S.C. 21, 27, 180 S.E.2d 638, 641 (1971). After July 1, the Lottery was thus excused from any “duty” to disclose lottery winners’ names in response to Plaintiff’s latest FOIA request because South Carolina law—Proviso 3.5—prohibits such disclosure. The Lottery is entitled to judgment as a matter of law that it did not breach the settlement agreement by declining to provide lottery winners’ names as required by the Proviso.

What is more, after double-checking, the Lottery did not even receive claims from prize winners for \$1 million or more between June 1 and June 15, 2023. *See* Aff. of Dolly Garfield (to be filed separately). As the settlement agreement provides, “the parties agree[d] that the South Carolina Lottery Commission’s current FOIA policy governing the disclosure of personal information under the unreasonable invasion of privacy exemption to FOIA, S.C. Code Ann. § 30-4-40(a)(2),” was to “remain in full force until May 31, 2023.”⁵ *See* Ex. 1. Glassmeyer cannot challenge that policy now. By agreeing it could remain in full force in consideration for the Lottery’s payment of his attorney’s fees, Glassmeyer waived any challenge through May 31, 2023.

⁵ If the Court determines it must look at the validity of that policy—or whether the information falls under the unreasonable-invasion-of-privacy exemption—then that issue must be tried pursuant to our supreme court’s previous ruling. *See S.C. Lottery Comm’n v. Glassmeyer*, 433 S.C. at 252, 857 S.E.2d at 893 (“Without a trial on the issues to develop a factual record, there is no evidence on which the circuit court could base its judgment.”).

Thus, under the agreement, June 1–15, 2023 is the only period for which Glassmeyer could seek the information in his most recent FOIA request. And, again, no information exists for that period.

In all events, as the Court previously recognized, this is a breach of contract claim, not one arising under FOIA. So even if the Court finds the Lottery did breach the contract (it did not), Glassmeyer cannot recover attorney’s fees because the settlement agreement did not provide for it. *See Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997) (“Attorney’s fees are not recoverable unless authorized by contract or statute.”). And the Lottery is entitled to withhold information through May 31, 2023 under the agreement and its policy regarding the unreasonable-invasion-of-privacy exemption to FOIA. *See* S.C. Code Ann. § 30-4-40(a)(2) (stating “[a] public body may but is not required to exempt from disclosure . . . [i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy”). As noted above, the Lottery has no responsive records from June 1–15 because it received no claims for \$1 million or more during that period. So Glassmeyer is not, and would not be, a “prevailing party” under FOIA, S.C. Code Ann. § 30-4-100(B), and cannot recover attorney’s fees.

III. *Plaintiff’s conclusory challenge to one redacted record lacks merit.*

Glassmeyer generally complains about receiving records responsive to Request 11 with one page redacted “under no lawful claim of authority.” Pl.’s Compl. at ¶ 25. Request 11 sought “[a] complete copy of all current SCEL policies and any and all amendments to same issued between June 30, 2021 and June 15, 2023, not otherwise provided in response to Item #10 above.” Ex. A to Pl.’s Compl. He also states he may possibly—at some unknown time in the future—seek in camera review of “allegedly over-redacted or improperly redacted information.” *Id.* at ¶ 38.

For starters, this is too conclusory to state a claim for a violation under FOIA. At any rate, as Garfield explained to Glassmeyer when producing records responsive to Request 11, “Certain

information relating to security plans and devices proposed, adopted, installed, or utilized by SCEL is confidential and required to be closed to the public, as defined in S.C. Code Ann. § 30-4-20 (FOIA).” Ex. 3, July 29, 2023 Production Letter.

Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, *is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.*

S.C. Code Ann. § 30-4-20(c) (emphasis added).

Without knowing the exact page to which Glassmeyer is referring—he didn’t attach any records to his conclusory complaint—the Lottery narrowed the records responsive to Request 11, and the redaction was indeed pursuant to section 30-4-20(c). Contrary to his contention, the Lottery redacted the records responsive to Request 11 because, pursuant to FOIA, the redacted information “is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.” S.C. Code Ann. § 30-4-20(c). To remove all doubt about the validity of this exception, the Lottery is submitting the record to the Court for in camera review.

Still, no genuine issue of material fact exists as to the redaction of the records responsive to Request 11, and the Lottery is entitled to judgment as a matter of law.

IV. *Plaintiff was not prejudiced by the Lottery’s barely tardy production on three requests.*

Last, Glassmeyer’s complaint includes a throwaway claim that the Lottery violated FOIA by not timely producing responsive documents to Requests 8, 13, and 14—the productions were six, twelve, and twelve days late, respectively. Pl.’s Compl. at ¶¶ 21 & 22. The Court should dismiss this moot claim and, in all events, decline to award attorney’s fees to Glassmeyer for unnecessarily adding one sentence to his complaint.

“Before a court may render a declaratory judgment, an actual, justiciable controversy must exist.” *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). A declaratory judgment is inappropriate solely to adjudicate past conduct or proclaim one party is liable to another. *Trevillyan v. APX Alarm Sec. Sys.*, No. 2:10-1387-MBS, 2011 U.S. Dist. LEXIS 694, at *26 (D.S.C. Jan. 3, 2011). “Its purpose is to settle and to afford relief from *uncertainty* and insecurity with respect to rights, status[,] and other legal relations.” S.C. Code Ann. § 15-53-130 (emphasis added). Likewise, “[t]he purpose of an injunction is to preserve the status quo and *prevent* possible irreparable injury to a party pending litigation.” *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009) (emphasis added).

Glassmeyer’s claim is moot. See *Mathis v. S.C. State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.”). In its answer, the Lottery admitted that, based on a mix-up regarding two provisions of FOIA, it produced responsive records several days late.⁶ Def.’s Answer at ¶¶ 18–19. The Lottery mistakenly calendared the final production date as August 16, 2023, which excepted “Saturdays, Sundays, and legal public holidays” as provided for the final *determination* but not the *production* of records. *Id.* The Lottery admits the production deadline was August 4, 2023 and apologizes for the error.

But Glassmeyer already received all the documents to which he was entitled in response to Requests 8, 13, and 14 well before he filed this lawsuit. He does not contend otherwise. And the Lottery admits it unintentionally provided those documents to him late. Accordingly, there is no

⁶ Subsection 30-4-30(C) provides the final determination of availability of records must be made within “ten days (*excepting* Saturdays, Sundays, and legal public holidays)” of receipt of the FOIA request. (emphasis added). The records, however, must be produced “no later than thirty *calendar days* from the date on which the final determination was provided.” *Id.* (emphasis added). The calculation was an honest mistake on behalf of the Lottery.

justiciable controversy. *See Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (stating “once the requested documents are produced, a justiciable controversy no longer exists”). A declaratory judgment would be “purely academic,” *id.* at 26, 630 S.E.2d at 478, and an injunction would “accomplish nothing in this case,” *S.C. Lottery Comm’n v. Glassmeyer*, 433 S.C. at 250, 857 S.E.2d at 892.

Glassmeyer never brought this issue to the Lottery’s attention prior to receiving the documents. A party cannot file a superfluous and gratuitous lawsuit on a moot issue just to demand attorney’s fees. *Cf. Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011) (“When a public body frustrates a citizen’s FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed.”). The Lottery did not frustrate his request, and he experienced no prejudice from a “minimum . . . delay,” S.C. Code Ann. § 30-4-15, in receiving loads of documents at no cost. This is a mere gotcha.

Exercising its discretion, the Court should thus find—under these unique circumstances—that Glassmeyer is not entitled to attorney’s fees for this minor mistake that caused him zero harm. *See* S.C. Code Ann. § 30-4-100(B) (“If a person or entity seeking relief under this section prevails, he *may* be awarded reasonable attorney’s fees and other costs of litigation specific to the request.” (emphasis added)); *see also Robertson*, 276 S.C. at 358, 278 S.E.2d at 771 (“Ordinarily, ‘may’ signifies permission and generally means the action spoken of is optional or discretionary.”); *Litchfield Plantation Co. v. Georgetown Cnty. Water & Sewer Dist.*, 314 S.C. 30, 33, 443 S.E.2d 574, 576 (1994) (emphasizing the statute’s use of the word *may* and finding “the special referee did not abuse his discretion” by declining to award fees despite finding public body’s untimely response did not comply with FOIA).

CONCLUSION

In sum, the Court should grant summary judgment in favor of the Lottery on Glassmeyer's breach of contract claim and to the extent his claim for a FOIA violation is based, in part, on the Lottery's refusal to disclose such information. Further, the Court should grant summary judgment in favor of the Lottery on the rest of Glassmeyer's claim for FOIA violations because the Lottery properly redacted information in records responsive to Request 11 pursuant to a valid exception to public records under FOIA. And the Court should decline to grant Glassmeyer attorney's fees based on a minor temporal violation of FOIA that did not prejudice him. Finally, the Court should grant summary judgment in favor of the Lottery on its counterclaim because Requests 5, 12, and 18 were unduly burdensome, overly broad, and otherwise improper under FOIA.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
December 22, 2023

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
South Carolina Lottery Commission,	)	Civil Action No. 2014-CP-40-02926
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>FULL AND FINAL</u>
George S. Glassmeyer,	)	<u>SETTLEMENT AGREEMENT</u>
	)	
Defendant.	)	
	)	

FOR AND IN CONSIDERATION of the payment to George S. Glassmeyer, or his designee, of the total sum of Eighty-One Thousand, Six Hundred Ninety-Three and 87/100 Dollars (\$81,693.87) by February 25, 2022, on behalf of Plaintiff South Carolina Lottery Commission, the receipt and sufficiency of which is herewith acknowledged, Defendant George S. Glassmeyer hereby releases, acquits, and forever discharges the South Carolina Lottery Commission, the South Carolina Education Lottery, its commissioners, agents, apparent agents, servants, employees, related entities, former employees, officers, former officers, board members, former board members, and their heirs, successors, and assigns and all other persons, firms, entities, insurers of and from any claim, suits, debts, rights, actions, demands, damages, costs, causes of action, or counterclaims, including but not limited to those arising under the South Carolina Freedom of Information Act (FOIA) and those sounding in abuse of process, actual and punitive damages, or otherwise, known or unknown, which George S. Glassmeyer has or may in the future be entitled to have, arising out of or as a result of the Complaint filed in the Court of Common Pleas for Richland County, South Carolina, under Civil Action No. 2014-CP-40-02926.

The South Carolina Lottery Commission further agrees, as a condition of this settlement, to pay mediation costs to Karl A. Folkens for the February 15, 2022 mediation.

NC7. Keen GSG AGD

As a further condition of settlement, the South Carolina Lottery Commission will disclose to George S. Glassmeyer by February 25, 2022 only the full names, cities, and states of the claimants identified in Exhibit A, attached hereto, but such list will specifically exclude the names of any claimants who obtained injunctive relief against the South Carolina Lottery Commission as of February 25, 2022.

As a further condition of settlement, the parties agree that the South Carolina Lottery Commission's current FOIA policy governing the disclosure of personal information under the unreasonable invasion of privacy exemption to FOIA, S.C. Code Ann. § 30-4-40(a)(2), shall remain in full force until May 31, 2023. If the South Carolina General Assembly does not enact legislation addressing this specific issue by such date, then the South Carolina Lottery Commission will provide the full names, cities, and states of lottery prize claimants in response to FOIA requests after that date.

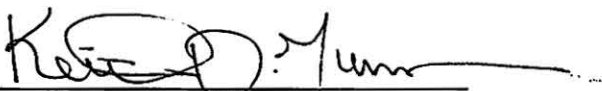
George S. Glassmeyer agrees not to submit, directly or indirectly, any FOIA requests to the South Carolina Lottery Commission through May 31, 2023 seeking information regarding claimants and/or prize winners through that date.

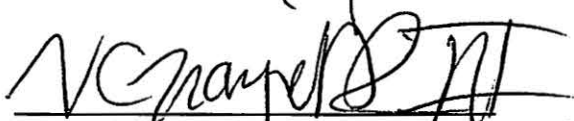
In consideration of the above payment, George S. Glassmeyer agrees that this settlement is the compromise of disputed claims—arising under FOIA and sounding in abuse of process—and that the payment made in settlement thereof is not, and is not to be construed as, an admission of liability on the part of the party or parties hereby released, or their agents, officers, or employees, and the party or parties hereby released, as well as their agents, officers, or employees, deny liability of any nature or kind to the undersigned.

The attorneys for the undersigned are hereby granted full and complete authority to enter into a stipulation of dismissal, with prejudice, to forever end the above-titled action and shall do

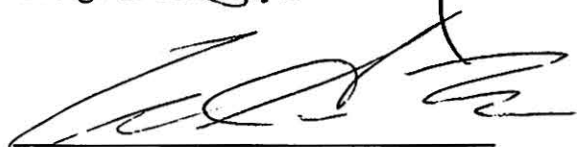
so no later than February 25, 2022. Further, the undersigned have read and fully understand the foregoing General Release.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal at Columbia, South Carolina, this 15th day of February, 2022.


For South Carolina Lottery Commission


Counsel for South Carolina Lottery Commission


George S. Glassmeyer


Counsel for George S. Glassmeyer

VC1 Ray GSC XGR

EXHIBIT A

Exhibit A

City	State	Date	Claim Total	Game info
Myrtle Beach	SC	3/12/2013	\$2,000,000.00	PowerBall
Cottageville	SC	3/25/2013	\$1,000,000.00	PowerBall
Travelers Rest	SC	4/4/2013	\$1,000,000.00	Money Money Millionaire
Jonesville	SC	4/16/2013	\$1,000,000.00	Money Money Millionaire
Columbia	SC	4/22/2013	\$1,000,000.00	MegaMillions
Statesville	NC	5/1/2013	\$500,000.00	MegaMillions
Hamer	SC	5/1/2013	\$500,000.00	MegaMillions
Kannapolis	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Mint Hill	NC	5/21/2013	\$83,333.33	PowerBall
Gastonia	NC	5/21/2013	\$83,333.33	PowerBall
Fort Mill	SC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Pineville	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.36	PowerBall
Concord	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Monroe	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Clover	SC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Fayetteville	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Bethune	SC	7/29/2013	\$1,000,000.00	PowerBall
Spartanburg	SC	8/21/2013	\$1,000,000.00	PowerBall
N Charleston	SC	10/15/2013	\$1,000,000.00	PowerBall
Eutawville	SC	1/8/2014	\$1,000,000.00	Money Money Millionaire
Hickory Grove	SC	2/11/2014	\$2,000,000.00	PowerBall
Taylors	SC	2/21/2014	\$1,000,000.00	PowerBall
Irmo	SC	3/14/2014	\$1,000,000.00	Millionaire Madness

* Successive claims of \$83,333.33 represent a \$2 million prize split among 23 claimants

Kay NG GSG ASR

Exhibit A

City	State	Date	Claim Total	Game info
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Irmo	SC	9/16/2013	\$1,000,000.00	PowerBall
W Columbia	SC	11/7/2013	\$1,000,004.00	PowerBall

copy NC7 GGG XSR

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No. 2022-CP-40-01769
	)	
Plaintiff,	)	
	)	
vs.	)	<u>ORDER</u>
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court on the parties' cross-motions for summary judgment. After carefully considering the evidence and arguments of counsel, the Court grants summary judgment in favor of Defendant South Carolina Lottery Commission (the Lottery).

I. BACKGROUND

Plaintiff George S. Glassmeyer filed a verified complaint in this Court on April 4, 2022, claiming the Lottery violated the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-4-10 through -165, by not posting a fee schedule to its website. *See* S.C. Code Ann. § 30-4-30(B). The Lottery filed an answer denying liability.

Shortly thereafter, the Lottery filed an affidavit on behalf of Hogan Brown. Brown has been employed by the Lottery since its inception in 2001. He first served as general counsel and is now executive director. According to Brown, the Lottery does not charge—and has never charged—members of the public to search, retrieve, and redact public records in response to FOIA requests. Because no fees are charged, Brown avers the Lottery has no fee schedule to develop.

On September 15, 2022, Plaintiff moved for summary judgment. The Lottery filed a cross-motion for summary judgment on October 25, 2022. In support of its motion, the Lottery filed

another affidavit on behalf of Brown. The Court held a hearing on the parties' motions via WebEx on March 9, 2023. Accordingly, the matter is now ripe for review.

II. STANDARD

"Where cross motions for summary judgment are filed, the parties concede the issue before [the court] should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). "The issue of interpretation of a statute is a question of law for the court." *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

III. ANALYSIS

In their briefs and at the hearing, the parties agreed that no genuine issue of material fact exists. So the only question before the Court is whether the Lottery violated subsection 30-4-30(B) of the South Carolina Code by not posting a fee schedule to its website.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]." *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). "If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning." *Creswick v. Univ. of S.C.*, 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021).

Courts "must give the words found in the statute their 'plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.'" *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007)). But courts do "not concentrate on isolated phrases within the statute" and, instead, "read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.* at 74, 716 S.E.2d at 881.

As to the purpose underlying FOIA, the General Assembly has articulated the following:

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. Put simply, “[t]he essential purpose of the FOIA is to protect the public from secret government activity.” *Glassmeyer v. City of Columbia*, 414 S.C. 213, 219, 777 S.E.2d 835, 839 (Ct. App. 2015).

In 2017, the General Assembly amended the fee provision in subsection 30-4-30(B) to provide that a public body “*may* establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records.” 2017 S.C. Act No. 67, § 1 (emphasis added).

The statute, in full, now provides as follows:

The public body may establish and collect fees as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person

requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

S.C. Code Ann. § 30-40-30(B).

Put simply, the statute provides that a public body may establish and collect fees as provided for in this section. But if the public body does in fact charge such fees, it must post a fee schedule online for the public. Conversely, when a public body does not post a fee schedule to its website for the public, the public body cannot collect any fees. Here, the Lottery undisputedly does not charge any fees for “the search, retrieval, and redaction of records,” *id.*, in response to FOIA requests. “In construing a statute, th[e] Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the [General Assembly].” *Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Def.*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008). To find the Lottery violated FOIA by not charging fees, in the Court’s view, would lead to an absurd result. *Cf.* S.C. Code Ann. § 30-4-15 (stating purpose to provide public records “at a minimum cost or delay to persons seeking access to public documents”).

IV. CONCLUSION

In sum, because the Lottery does not charge the public for responding to FOIA requests, the Lottery had no fee schedule to develop and post to its website. Accordingly, the absence of a fee schedule on the Lottery’s website did not violate FOIA. The Court therefore grants summary

judgment in favor of the Lottery. Plaintiff's motion for summary judgment is denied, and the complaint is dismissed with prejudice.

AND IT IS SO ORDERED.

R. Farrell Cothran, Jr., Presiding Judge
Court of Common Pleas for Richland County
Fifth Judicial Circuit of South Carolina

Manning, South Carolina
March __, 2023



Richland Common Pleas

Case Caption: George S Glassmeyer vs South Carolina Lottery Commission

Case Number: 2022CP4001769

Type: Order/Summary Judgment

So Ordered

R. Ferrell Cothran, Jr.

Electronically signed on 2023-03-31 10:42:00 page 6 of 6

EXHIBIT 3



July 29, 2023

Mr. George S. Glassmeyer
Post Office Box 661
Irmo, South Carolina 29063

RE: Request for Information Pursuant to the South Carolina Freedom of Information Act

Dear Mr. Glassmeyer:

In response to your request for information pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* (FOIA) listed in **Item 11**, please see the enclosed redacted records. Certain information relating to security plans and devices proposed, adopted, installed, or utilized by SCEL is confidential and required to be closed to the public, as defined in S.C. Code Ann. § 30-4-20 (FOIA).

If you have any questions or concerns, please feel free to contact me. My direct phone line is 803-737-3941 and my email address is dolly.garfield@sclot.com. If I do not hear from you further, I will assume this information satisfies your request.

Sincerely,

A handwritten signature in blue ink that reads "Dolly J. Garfield".

Dolly J. Garfield
General Counsel

Enclosure

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF</u>
	)	<u>DOLLY J. GARFIELD</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Dolly J. Garfield, who first being duly sworn, deposes and states as follows:

1. I am a resident of South Carolina over 18 years of age. I have personal knowledge of the truth of the facts set forth in this affidavit.

2. I am the General Counsel for the South Carolina Education Lottery (the Lottery), which is government by the South Carolina Lottery Commission, the Defendant in this case.

3. Starting in 2003, the Lottery had a policy of notifying lottery claimants whenever it received a FOIA request for their identifying information. But in those times, the Lottery would disclose the information if the lottery claimant did not take legal action to prevent disclosure.

4. On April 11, 2014, the Lottery's executive committee unanimously voted to adopt a new policy authorizing the executive director to determine an appropriate response to pending and future Freedom of Information Act requests.

5. That policy has stayed in effect since 2014, and the Lottery has refused disclosure of lottery claimant's personal identifying information under the unreasonable-invasion-of-privacy exemption to FOIA, S.C. Code Ann. § 30-4-40(a)(2), due to the safety and financial risks disclosure could cause to those winners.

6. Based on my experience, safety of lottery participants and winners is a significant issue, especially when winners' personal identifying information is released to the public. The Lottery has been made aware of instances throughout the country in which lottery winners have been attacked and even killed after claiming their prizes.

7. The Lottery is aware of—and was concerned with—the major data breach at the South Carolina Department of Revenue in 2012 that put thousands of South Carolinians' personal information at risk of misuse.

8. The Lottery is also aware of articles and news reports from numerous media outlets regarding threats of and actual harm to lottery winners. *See, e.g., Woman who killed \$30 million lottery winner back Florida bill that would keep names secret: "It puts a target on them"*, CBS NEWS (last updated Mar. 2, 2022 at 10:32 AM), <https://www.cbsnews.com/news/florida-lottery-winners-bill-convicted-killer-dee-dee-moore-support/>; Rebecca Nelson, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Jan. 9, 2013 (Lottery winner's death from cyanide the day after his lump sum check was issued treated as homicide), <https://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lotterys-unluckiest-winners/slide/urooj-khan/>; Ron Dicker, *Virginia Lottery Winner Who Uses Wheelchair Robbed After Chasing Ticket*, HUFF POST (last updated Feb. 8, 2013), https://www.huffpost.com/entry/virginia-lottery-winner-wheelchair-robbed-ticket_n_2638978; Nick Carbone, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Nov. 27, 2012 (Lottery winner murdered in robbery plot), <https://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lotterys-unluckiest-winners/>.

9. South Carolina lottery winners have approached the Lottery on numerous occasions expressing concerns on the release of their personal identifying information for fear of their safety.

10. I am aware of one South Carolina citizen who frequently plays the lottery that always meets the USPS delivery person at the end of her driveway when she expects to receive a claim payout for fear that the winnings will be stolen or she will be unsafe.

11. Further, lottery winners have reasonable and logical concerns that they will be scammed or extorted for their prize money should their personal identifying information be disclosed to the public.

12. The Lottery is aware of winners experiencing fraud too. Unfortunately, the infamous "Lottery Lawyer" hit South Carolina. *See Eric Connor, Feds say 'lottery lawyer' stole \$70 million from Upstate SC client's \$1.5 billion jackpot*, POST AND COURIER, (Aug. 19, 2020), https://www.postandcourier.com/greenville/news/feds-say-lottery-lawyer-stole-70-million-from-upstate-sc-clients-1-5-billion-jackpot/article_cafc0518-e256-11ea-be31-835fd4ca3fbc.html.

13. Based on reports of all this, the Lottery decided to take significant strides to protect the personal identifying information of lottery participants and winners. Enforcing the policy adopted in 2014 was critical to protecting lottery claimants.

14. On February 15, 2022, the Lottery and George S. Glassmeyer executed an agreement to settle the previous declaratory judgment action brought by the Lottery against Glassmeyer.

15. In that agreement, the parties agreed the Lottery's policy was to remain in full force and effect until May 31, 2023.

16. Glassmeyer sent a FOIA Request to the Lottery, seeking disclosure of documents containing lottery claimants/winners' personal identifying information from June 30, 2021, to June 15, 2023.

17. I responded to that request on July 5, 2023, informing Glassmeyer that the Lottery could not disclose lottery claimants/winners' names and other personal identifying information pursuant to Proviso 3.5 of the 2023–2024 South Carolina Appropriations Act.

18. In addition, under the Lottery's policy—which the parties agreed was in full force and effect through May 31, 2023—the Lottery could exempt information from disclosure between June 30, 2021, to May 31, 2023, because disclosure “would constitute unreasonable invasion of personal privacy” under subsection 30-4-40(a)(2).

19. The Lottery received no claims by prize winners for one million dollars or more from June 1–15, 2023.

FURTHER AFFIANT SAYETH NOT.

Dolly J. Garfield
Dolly J. Garfield

SWORN to and subscribed before
me this 24th day of December, 2023

Robert D Garfield
Notary Public for South Carolina
My Commission expires: 11/29/2026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>NOTICE OF FILING OF AFFIDAVIT</u>
	)	<u>IN SUPPORT OF MOTION FOR</u>
South Carolina Lottery Commission,	)	<u>SUMMARY JUDGMENT</u>
	)	
Defendant.	)	
	)	

Defendant South Carolina Lottery Commission, by and through the undersigned counsel, submits the Affidavit of Dolly Garfield, General Counsel for the South Carolina Education Lottery, attached as Exhibit A, in support of its motion for summary judgment.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
December 26, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>SUPPLEMENTAL AFFIDAVIT OF</u>
	)	<u>DOLLY J. GARFIELD</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Dolly J. Garfield, who first being duly sworn, deposes and states as follows:

1. I am a resident of South Carolina over 18 years of age. I have personal knowledge of the truth of the facts set forth in this affidavit.
2. I am the General Counsel for the South Carolina Education Lottery (the Lottery), which is governed by the South Carolina Lottery Commission, the Defendant in this case.
3. I previously provided an affidavit in this case, and it has come to my attention that Plaintiff George S. Glassmeyer has taken issue with a statement in that affidavit.
4. In Paragraph 5 of my December 24, 2023 affidavit, which was filed with the Court on December 26, 2023, I stated the following: "That policy has stayed in effect since 2014, and the Lottery has refused disclosure of lottery claimant's personal identifying information under the unreasonable-invasion-of-privacy exemption to FOIA, S.C. Code Ann. § 30-4-40(a)(2), due to the safety and financial risks disclosure could cause to those winners."
5. I still attest that the statement in Paragraph 5 is true and accurate. The Lottery has refused disclosure of lottery claimant's personal identifying information pursuant to that exemption for those reasons.

6. To clarify, that statement does not mean that the Lottery has *always* refused disclosure of lottery claimant's personal identifying information under the unreasonable-invasion-of-privacy exemption to FOIA. Nor does it mean the Lottery has *never* produced such information.

7. The Lottery has disclosed the names of prize winners before. As is self-evident from the Settlement Agreement the Lottery filed with this Court as Exhibit 1 to its Partial Motion to Dismiss, the Lottery was required to "disclose to George S. Glassmeyer by February 25, 2022 only the full names, cities, and states of the claimants" identified in an exhibit to the Agreement.

8. Further, it has come to my attention that Mr. Glassmeyer has pointed out one instance of the Lottery's disclosure of winners' names in one document provided in a separate and subsequent FOIA request concerning a human resources matter received on July 29, 2023, in addition to the hundreds of documents produced in response to his eighteen FOIA requests that gave rise to this litigation.

9. Glassmeyer's counsel emailed that document to the Lottery's counsel, and I have reviewed it.

10. I can confirm the disclosure of lottery claimants' personal identifying information in that document was inadvertent. I intended to redact that information pursuant to Proviso 3.5 of the 2023–2024 Appropriations Act as well as any other applicable exemptions. The Lottery will move for a confidentiality order, seek to have the names designated confidential pending resolution of this case, and ask the Court to replace the document currently on file in the Clerk's office with a document including redacted names.

FURTHER AFFIANT SAYETH NOT.


Dolly J. Garfield

SWORN to and subscribed before
me this 3 day of January, 2024



Notary Public for South Carolina

My Commission expires: 12/5/27

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>NOTICE OF FILING OF</u>
	)	<u>SUPPLEMENTAL AFFIDAVIT IN</u>
South Carolina Lottery Commission,	)	<u>SUPPORT OF MOTION FOR</u>
	)	<u>SUMMARY JUDGMENT</u>
Defendant.	)	
	)	

Defendant South Carolina Lottery Commission, by and through the undersigned counsel, submits the Supplemental Affidavit of Dolly Garfield, General Counsel for the South Carolina Education Lottery, attached as Exhibit A, in support of its motion for summary judgment.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
January 3, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>MOTION FOR ENTRY OF</u>
	)	<u>CONFIDENTIALITY ORDER</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Lottery Commission (the Lottery), by and through the undersigned counsel, will move before the Honorable Daniel M. Coble, Presiding Judge of the Court of Common Pleas for Richland County, in the Fifth Judicial Circuit of South Carolina, for entry of a Confidentiality Order pursuant to Rule 26(c), SCRCP.

Specifically, the Lottery seeks a Confidentiality Order to designate lottery claimants' names as confidential and to prevent disclosure of such information pending the resolution of this case in compliance with Proviso 3.5 of the 2023–2024 South Carolina Annual Appropriations Act (the Proviso). The Proviso provides the following:

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner's name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

As the Court is aware, the Lottery contends the Proviso prohibits it from disclosing lottery claimants' personal identifying information, including their names, and the Lottery therefore could not disclose that information in response to Plaintiff George S. Glassmeyer's June 2023 Freedom

of Information Act (FOIA) Request. That issue is pending with the Court on the parties' cross-motions for summary judgment. But the Court need not decide it now for purposes of this motion. The Lottery is simply asking the Court to enter the proposed Confidentiality Order, attached as Exhibit A, to protect disclosure of lottery claimants' names pending the resolution of the case and the ultimate decision of the Court as to whether the Lottery can refuse to disclose such information.

Further, the Lottery respectfully requests that the Court direct the Clerk's Office to replace Exhibit E to the Lottery's Verified Counterclaim currently on file with a redacted version of the document, attached to this motion as Exhibit B. The Lottery inadvertently disclosed lottery claimants' names in that document, which was produced in response to a separate and subsequent FOIA request from Glassmeyer concerning a human resources matter, in addition to the scores of documents the Lottery produced in response to Glassmeyer's eighteen FOIA requests that gave rise to this litigation. The Lottery intended to redact lottery claimants' names in that previously filed exhibit—and in its production to Glassmeyer—and apologizes for the error. Both disclosures were inadvertent, and the Lottery maintains it was not a waiver or failure to comply with its obligations to prevent disclosure of such information under the Proviso. *Cf.* S.C. Code Ann. § 30-4-30(C) ("Exemptions from disclosure as set forth in Section 30-4-40 or by other state or federal laws are not waived by the public body's failure to respond as set forth in this subsection.").

Therefore, for good cause shown, the Lottery respectfully requests the Court enter the proposed Confidentiality Order, designate lottery claimants' names confidential pending resolution of this case, and direct the Clerk's Office to replace the above referenced document currently on file with the redacted version of the document attached as Exhibit B.

Pursuant to Rule 11, SCRCP, the undersigned counsel consulted with opposing counsel prior to filing this motion but has not yet received Plaintiff's final position on this matter. Because

Plaintiff's counsel just made the Lottery aware of the inadvertent disclosure and the Lottery wishes to protect this information, it needed to move forward with filing this motion as quickly as possible. Thus, upon information and belief, Plaintiff's counsel will articulate his own position to the Court.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400 Telephone
(803) 929-0300 Fax
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
January 3, 2024

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>CONFIDENTIALITY ORDER</u>
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court on Defendant South Carolina Lottery Commission's (the Lottery) motion for entry of a Confidentiality Order to protect and prevent disclosure of lottery claimants' names pending the resolution of this case. For good cause shown, the Court finds all documents containing lottery claimants' names may be redacted under this Order pending final disposition. The Lottery also requests permission to replace a document it previously filed that inadvertently disclosed lottery claimants' names. The Court grants this request for good cause shown, as well, and directs the Clerk's Office to replace Exhibit E attached to the Lottery's Verified Counterclaim with the redacted version attached as Exhibit B to the Lottery's motion for entry of this Confidentiality Order.

The Lottery may designate documents containing lottery claimants' names as confidential by redacting such information under this Order, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain lottery claimants' names the Lottery contends are protected from disclosure pursuant to Proviso 3.5 of the 2023–2024 South Carolina Appropriations Act (the Proviso). The Proviso provides as follows:

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner's name, address, telephone number, date

of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

The parties and counsel for the parties shall not disclose or permit the disclosure of lottery claimants' names under the terms of this Order to any other person or entity pending resolution of this case. No counsel shall in any manner, directly or indirectly, transfer any unredacted document containing lottery claimants' names, or copies of the same, or communicate orally or in writing any lottery claimant's name contained in the same to any person pending resolution of this case.

All copies, duplicates, extracts, summaries, descriptions, or portions of unredacted documents containing lottery claimants' names which are protected as Confidential under this Order in the possession of Plaintiff George S. Glassmeyer or his counsel shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All lottery claimants' names in such copies shall be afforded the full protection of this Order. Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of unredacted documents containing lottery claimants' names which are protected as CONFIDENTIAL under the terms of this Order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to such documents.

If either party seeks to file any document containing lottery claimants' names subject to protection under this Order with the Court, that party shall take appropriate action to ensure that the documents receive proper protection from public disclosure including: (1) filing a redacted version of the document; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to such

rule or procedure as may apply. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document to be filed under seal. Documents may be filed under seal only with the permission of the Court after proper motion.

Pending the outcome of this case, including any appeal, Plaintiff George S. Glassmeyer and his counsel shall destroy any unredacted document containing lottery claimants' names. Counsel shall affirmatively state in writing full compliance with this provision if requested by opposing counsel in writing. Sanctions, including discipline of counsel by this Court, may be warranted should this Court find any party in breach of the terms of this Order.

Nothing in this Order shall be deemed to preclude the parties from seeking and obtaining additional protection or modification with respect to the confidentiality of documents or other material. Inadvertent or unintentional production of unredacted documents containing lottery claimants' names shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential and redact lottery claimants' names as otherwise allowed by this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that lottery claimants' names shall remain confidential during the pendency of this litigation, including any appeal; the Clerk's Office shall replace Exhibit E attached to the Lottery's Verified Counterclaim with a redacted version which is attached as Exhibit B to the Lottery's motion for entry of this Confidentiality Order; and unredacted documents containing lottery claimants' names shall be destroyed or returned to counsel for the Lottery pending resolution of the case.

AND IT IS SO ORDERED.

Honorable Daniel M. Coble
Richland County Court of Common Pleas
Fifth Judicial Circuit of South Carolina

Columbia, South Carolina
January ____, 2024

EXHIBIT B

EXHIBIT E

From: [Garfield, Dolly](#)
To: [George Glassmeyer](#)
Subject: RE: Misconduct Complaint
Attachments: [S. Berry.pdf](#)

Hey George, please see the HR notes regarding Mr. Berry's separation of employment in the attachment. The information contained therein should satisfy your request. Please let know if I can provide anything further, and have a great weekend.

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>

Sent: Tuesday, August 1, 2023 3:45 PM

To: Garfield, Dolly <Dolly.Garfield@sclot.com>

Subject: Re: Misconduct Complaint

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Hey Dolly,

That will be fine. Thank you.

George

On Tuesday, August 1, 2023 at 03:24:25 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

George,

In reference to your request for information regarding Mr. Berry, I am in receipt of the request and deem it a request submitted pursuant to the SC FOIA Act and is subject to disclosure. A response will be provided in a timely manner.

Thank you!

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Saturday, July 29, 2023 2:39 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Re: Misconduct Complaint

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Hi Dolly,

Thanks so much for your reply, especially as you took the time and effort to reply on a Saturday.

I appreciate the followup investigative efforts, and the clarity provided as to the \$3.00 difference between the two payouts.

As to the employment status of Mr. Scott Berry, you report that he is no longer employed by SCEL. I note that his name appears on the latest of the personnel salary listings that you provided to me pursuant to Item #6 of my FOIA request, indicating that he was employed by SCEL at least as recently as June 1, 2023. Please advise what his last day of employment was and whether his employment terminated as a result of a voluntary resignation, disciplinary action, or resignation in lieu of disciplinary action. If Mr. Berry was ever the subject or target of any disciplinary action, please provide the relevant details.

I get that this issue seems to be an onion with infinite layers, but I am hopeful that we are nearing the end. Again, thanks for your responsive and timely efforts.

Enjoy your time with your family.

All the best,

George Glassmeyer

On Saturday, July 29, 2023 at 02:13:30 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

Hey George,

I hope you are having a nice weekend. I shared your concerns below with SCEL's Security Department, and further investigation ensued. Please see the attached supplemental investigative report. The findings should explain the lack of documentation as well as the \$3 difference in the prize money won by the two Conway winners.

Mr. Scott Berry is no longer employed with SCEL.

Please do not hesitate to reach out to me for anything further. I am leaving tomorrow for a family vacation so responses may be delayed.

Enjoy the rest of your weekend,

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (803-737-2002), and return the original message to us at P.O. Box 11949, Columbia, SC 29211-1949 via the U.S. Postal Service. Thank you.

From: George Glassmeyer <scverdict@aol.com>
Sent: Tuesday, July 25, 2023 4:47 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Re: Misconduct Complaint

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Hi Dolly,

Thanks for providing the investigative report. After examining it, I have a few remaining concerns and questions.

First, while I did not suggest that both payouts went to the same person, I certainly did not rule it out. Nonetheless, I am mystified as to how two winners' payouts for the same gross prize amount, made within three days of each other, were for a different amount. I understand that various taxes and possible setoffs are deducted from the gross prize amount prior to payment to a claimant, but I doubt that the tax tables were revised during the three days at issue. Kindly explain this discrepancy.

Also, as I noted in my complaint, I found it suspicious that two winners' checks, for nearly identical amounts were presumably issued to two claimants, both presumably residing in the relatively small city of Conway, SC when your office reported only a total of 30 million dollar plus winners over a nearly two year period. While I understand that your investigators determined that both claims were separate and legitimate, my suspicion remains.

I additionally noted that the prize amount, claim number, and date were also absent from the bottom of the 10-25-2022 claim form. Your investigative report fails to address these concerns.

Finally, please advise what, if any, disciplinary action has been, or will be, imposed against Scoot Berry for failing to follow SCEL procedures as noted above.

Thanks again,

George

On Tuesday, July 25, 2023 at 03:13:40 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

Dear George,

Please find the attached investigative report regarding the incident reported July 20, 2023. Please let me know if you need anything further.

Thank you!

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Thursday, July 20, 2023 12:30 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Misconduct Complaint

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Dear Ms. Garfield:

In my below email to you dated July 18, 2023, I reference a copy of a lottery winner's claim form which you provided to me in response to my FOIA request of June 16, 2023. I noted that this form did not bear an authorized signature, or an official's name. Additionally, the prize amount, claim number, and date in the lower right corner are also absent.

Upon review of the checks that you provided in response to Item #4 of my FOIA request, that were presumably issued to the winners who submitted the claim forms that you provided, it is clear that one or more SCEL employees authorized disbursement, allowed disbursement, or disbursed at least \$690,000.00 in public funds without following established SCEL protocol or procedure. I also find it somewhat suspicious that two winner's checks for virtually the same amount were both issued to a payee in Conway, SC within 3 days of each other.

As a South Carolina citizen, resident, and taxpayer all of these facts cause me great concern as I suspect wrongdoing by one or more SCEL employees, and potential embezzlement of public funds. I ask that you immediately cause an internal investigation to be undertaken and to appraise me of the results of same. Should your office determine that criminal activity may have occurred, I request that you immediately notify the State Law Enforcement Division (SLED).

I ask that you consider this email as a formal complaint by me. I remain available to cooperate with your investigative staff as may be required.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

----- Forwarded Message -----

From: George Glassmeyer <scverdict@aol.com>

To: Dolly Garfield <dolly.garfield@sclot.com>

Sent: Tuesday, July 18, 2023 at 08:54:08 PM EDT

Subject: FOIA Request, Items #2 and #4

Dear Ms. Garfield:

I am in receipt of your responses to Item #2 and Item #4 of my FOIA request dated June 16, 2023.

Neither response satisfies my respective requests.

As to Item #2, the authorized signature and official's name has been redacted on all copies, except one, of claim forms that you have provided. The claim form dated 10-25-22, presumably submitted by a resident of Conway, SC is absent an authorized signature, or an official's name, and that portion of the form has no redaction. Please provide copies of all requested claim forms with the respective authorized signatures and official's names clearly visible.

As to Item #4, the signatures of the drawer, and/or drawers, has been redacted on all copies of the front of the checks that you have provided. Please provide copies of all requested checks with the respective drawer(s) signature(s) clearly visible.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

Employee(s): Scott Berry
Event: Poor Work Performance
Disposition: Termination

Date	Notes
3/22/2023	Scott is working mail in claims when he gets a ticket from Claimant, [REDACTED]. The ticket to be cashed has a partial name scratched out on the back. The SOP for processing a claim for a ticket with any discrepancy is to first, have the ticket investigated by SCEL Security. Scott claims he was working too quickly and missed the scratch out. He issued a claim check in the amount of \$935 to the claimant without having the ticket verified by SCEL Security.
3/22/2023	Scott is working mail in claims when he gets a ticket from Claimant, [REDACTED]. The ticket to be cashed has an address covered in white out and written back over. The SOP for processing a claim for a ticket with white out is to send to SCEL Security. Additionally, the address on the claim form and the address on the back of the ticket do not match. Scott mails the claimant's check to the address on the back of the ticket - not the claim form. Claimant calls claims center to ensure that check is mailed to address on the claim form - not his home address. Scott issues the check to his home address, even after assuring the claimant it would be mailed to the address on the form.
6/26/2023	Scott issues a check for claim # 23062666413 to [REDACTED] - \$935 Scott gives this check to claimant [REDACTED] [REDACTED] claims # was 23062666414 - \$832 [REDACTED] does not notice the mistake when she is handed the check and goes to her bank to deposit. She, then, realizes the check is not hers. She brings the check back to the Claims Center and her correct check is provided to her. Scott did not complete the mail in Claim for [REDACTED] before starting the walk-in claim for [REDACTED].
6/29/2023	Scott was assisting a walk-in claimant. He grabbed a check off of the printer and did not verify that the check belonged to the person for whom he was serving. The claimant also, did not notice that the check was not written to them. The claimant presented the check at the bank and realized they had the wrong check. The claimant brought the check back - which belonged to a mail-in claimant - [REDACTED]. Scott had to retrieve the walk-in claimant's check from the mail (in the incorrect envelope) to provide the walk-in claimant with the correct check. Mr. [REDACTED] check was voided and reissued and sent to him via mail. Tracey took Scott to the back to advise him that this error was not acceptable, especially on the heels of a very similar incident a couple of days prior.
7/18/2023	Dolly Garfield is made aware that a \$1M claim, dating back to 10/2022 did not have the proper authorized signature or official's name, pursuant to review of materials provided to a FOIA request.

It was discovered that this was an error made by Scott Berry.

7/21/2023 Hogan is made aware of the lack of signature with the \$1M claim, dating back to 10/2022. Hogan, JoAnn, Brian & Dolly discuss this mistake, and paired with most recent errors in March/June, they place Scott on administrative leave until I am back in the office on Monday. (I was out of office on Annual Leave.)

7/24/2023 Scott reports to the Columbia Business Office. He is brought into a meeting with Brian Ford and me. Scott is advised that since our last meeting in January, multiple errors have occurred on his part: March 2023 (2), June 2023 (2) and one from October 2022 that was just discovered the week of July 10th. His carelessness is no longer a risk that SCEL can assume, and therefore he is terminated.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2023-CP-40-04854

George S. Glassmeyer,
Plaintiff,
vs.
South Carolina Lottery Commission,
Defendant.

**MOTION FOR LIMITED
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that Plaintiff George S. Glassmeyer moves before this court pursuant to Rules 56 SCRPC56(a) and (d), and Chapter 4 of Title 30 of the South Carolina Code of Laws (hereinafter “FOIA”), as well as pursuant to all other applicable law, for summary judgment on some of Plaintiff’s claims in the above-captioned action an order denying the counterclaims and defense of Defendant South Carolina Lottery Commission in the above-captioned action as stated in Defendant’s Answer and Counterclaim paragraphs 54 through 87 and generally as the “unduly burdensome, overly broad, and an otherwise improper request” defense. This motion is made as a cross motion for summary judgment on the grounds stated in both motions as the parties are in agreement there are no issues of material fact and these grounds may be decided as a matter of law. Any such ground not addressed in both of these motions is either not yet ripe for consideration by the Court or is otherwise to be addressed by the parties at a later hearing or trial of this matter.

The Plaintiff so moves on the following grounds:

1. Defendant is not entitled to relief from Plaintiff’s Requests 5, 12, and 18 as production of this responsive information would be “unduly burdensome, overly broad, and otherwise improper”, under S.C. Code Ann. §30-4-110(A), for it to provide, as urged in Defendant’s filed counterclaim and defense in this matter. Instead, Plaintiff is entitled to summary

judgment, a declaration that Defendant violated FOIA when it failed to supply responsive information to these requests, and an injunction to require Defendant to supply the responsive information within a reasonable timeline and manner, pursuant to S.C. Code Ann. §30-4-110(A).

2. Plaintiff is entitled to summary judgment that Defendant breached the mediation agreement when it failed to furnish information about lottery prize winners in response to Plaintiff's contemplated FOIA request. Additionally, Plaintiff is entitled to summary judgment that Defendant violated FOIA when it failed to furnish the lottery prize winner information within the statutorily required period identified in S.C. Code Ann. §30-4-30(C). Finally, Plaintiff is requesting either specific performance of the requested information or an injunction to provide it as contemplated by §30-4-110(A). In the event Plaintiff prevails on both of these causes of action, he will elect his remedy as required by state law.
3. Plaintiff is entitled to summary judgment that Defendant violated FOIA when it responded to Request 11 with one page entirely redacted under no lawful claim of authority. Plaintiff requests a declaration that Defendant violated FOIA in this manner and an injunction to supply non-exempt(or excepted) information within the record.
4. Plaintiff is entitled to summary judgment that Defendant violated FOIA when it responded to Requests 8, 13 and 14 after the statutorily required period of disclosure. Plaintiff requests a declaration that Defendant violated FOIA in this manner.
5. This motion is also based on all applicable statutory law, case law, common law, and the record in this action.

Summary Judgment Standard

Under South Carolina law, “summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

When “cross motions for summary judgment are filed, the parties concede the issue before [the Court] should be decided as a matter of law.” Wiegand v. U.S. Auto. Ass’n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). As cross motions have been filed in this matter on identical grounds, the parties have indeed conceded these grounds should be decided as a matter of law on the limited issues identified.

The issues before the Court on these cross motions for limited summary judgment are whether Defendant had a legal duty to supply information, pursuant to FOIA and/or the common law of the state, and whether Defendant’s failure to do so – or not do so in a timely manner – is a violation of law. If the Court determines such a legal duty exists under the statute, then summary judgment as to the declaratory judgment and injunction (or specific performance) is appropriate in Plaintiff’s favor.

“This Court’s primary function in interpreting a statute is to ascertain the intent of the legislature.” State v. Baker, 310 S.C. 510, 427 S.E.2d 670 (1993). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Id. “Generally, statutes are to be construed with reference to the whole system of law of which they form a part.” See 82 C.J.S. Statutes § 362 (1953). “In construing a statute, this Court is constrained to avoid an absurd result.” South Carolina Tax Comm’n v. Gaston

Copper Recycling Corp., 316 S.C. 163, 447 S.E.2d 843 (1994). This matter concerns the South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. §30-4-10, et. seq., which unlike many other South Carolina statutory schemes, has a codified purpose:

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. “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (S.C. 2001)(citing South. Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978)).

Summary Judgment Application

If the statutory purpose is to be realized in this proceeding, then “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” must be given life. See S.C. Code Ann. § 30-4-15. That is, if a member of public were trying to learn how the Lottery Commission operates in fielding SCFOIA requests, then § 30-4-100(A) must be read to require the Defendant to disclose information.

1. Defendant is not entitled to relief from Plaintiff’s Requests 5, 12, and 18 as production of this responsive information would be “unduly burdensome, overly broad, and otherwise improper”, under S.C. Code Ann. §30-4-110(A), for it to provide, as urged in Defendant’s filed counterclaim and defense in this matter. Instead, Plaintiff is entitled to summary judgment, a declaration that Defendant violated FOIA when it failed to supply responsive

information to these requests, and an injunction to require Defendant to supply the responsive information within a reasonable timeline and manner, pursuant to S.C. Code Ann. §30-4-110(A).

The record of this matter is silent as to any attempt by Defendant to ask Plaintiff whether his requests (5, 12, 18) may be limited in (a) quantity of responsive information provided, or (b) time regarding when it would be provided, or (c) scope generally that would affect either the quantity of records produced or the duration of when it might be produced. Instead, the Defendant indicated in its written determinations for each (S.C. Code Ann. § 30-4-30(C)) that “SCEL determines that the requested information ... is unduly burdensome, overly broad and is an otherwise improper request.” Verified Complaint Exhibit B. In each written determination, Defendant then provides approximations of how many records would be responsive to each of the requests and concludes the information would not be provided to Plaintiff.

The South Carolina Freedom of Information affords public bodies, like Defendant, the ability to defray the costs associated with their statutory duties of transparency under the Act. “The public body may establish and collect fees as provided for in this section.” S.C. Code Ann. § 30-4-30(B). In fact, Defendant “may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records.” Id. Notably, this record and prior litigation between the parties (2022-CP-40-01769) shows that Defendant does not collect fees associated with FOIA requests. At this point, Defendant in this matter is judicially estopped from changing this position (not that it is doing so), but even if the Court agreed that Defendant could change its position and require a reasonable deposit of the expected charges of Mr. Glassmeyer’s request here, that would afford more

transparency (despite Mr. Glassmeyer's personal cost) than what Defendant is requesting in this case. The record reveals that Defendant wants to maintain publicly that it does not charge for FOIA requests, but then when a FOIA requester, like Plaintiff, submits a request for responsive information Defendant possesses, the Lottery Commission and public bodies like them can now simply say 'No, the information would be unduly burdensome, overly broad, and otherwise improper' to provide. Defendant should be praised for its stance of not charging for FOIA requests, but it cannot say to requesters like Plaintiff that it would simply cost too much in time or resources to supply responsive information upon meeting some arbitrary and private threshold.

Plaintiff seeks a declaration that requests 5, 12, 18 are not unduly burdensome, overly broad, and otherwise improper where Defendant does not charge for FOIA requests and then makes no effort to seek some agreement to otherwise change the scope of a request. Plaintiff's declaratory judgment request is indeed narrow in this respect but he does then ask for an injunction, pursuant to S.C. Code Ann § 30-4-100 to supply the responsive information within a reasonable time.

2. Plaintiff is entitled to summary judgment that Defendant breached the mediation agreement when it failed to furnish information about lottery prize winners in response to Plaintiff's contemplated FOIA request. Additionally, Plaintiff is entitled to summary judgment that Defendant violated FOIA when it failed to furnish the lottery prize winner information within the statutorily required period identified in S.C. Code Ann. §30-4-30(C). Finally, Plaintiff is requesting either specific performance of the requested information or an injunction to provide it as contemplated by §30-4-110(A). In the event Plaintiff prevails on both of these causes of action, he will elect his remedy as required by state law.

The mediation settlement agreement (attached to Defendant's motion for summary judgment as Exhibit 1) provides in the pertinent sections:

As a further condition of settlement, the parties agree that the South Carolina Lottery Commission's current FOIA policy governing the disclosure of personal information under the unreasonable invasion of privacy exemption to FOIA, S.C. Code Ann. § 30-4-40(a)(2), shall remain in full force until May 31, 2023. If the South Carolina General Assembly does not enact legislation addressing this issue by such date, then the South Carolina Lottery Commission will provide the full names, cities, and states of lottery prize claimants in response to FOIA requests after that date.

George S. Glassmeyer agrees not to submit, directly or indirectly, any FOIA requests to the South Carolina Lottery Commission through May 31, 2023 seeking information regarding claimants and/or prize winners through that date.

Mediation Settlement Agreement 2.

Plaintiff's verified complaint and exhibit establishes that he submitted a request for information on June 16, 2023 (acknowledged as received by Defendant on June 21, 2023 in exhibit B) seeking information regarding lottery prize claimants/winners from Defendant. The Court can take judicial notice and the parties stipulate to the dates that Proviso 3.5 (as contained in H.4300, the 2023-2024 Annual Appropriations Act) took effect. The legislative record establishes that this proviso did not become law until July 1, 2023. The parties specified in the above passage of its agreement that after May 31, 2023, the Plaintiff could request information that Defendant would then provide "[i]f the General Assembly does not enact legislation addressing the issue by such date." The General Assembly had passed the proviso at issue (June 14) by the time Plaintiff submitted his FOIA request (June 16) or it was received by Defendant (June 21) but either way Plaintiff's request was received before the legislation was signed (June 26) or became effective, i.e. the day of enactment, on July 1, 2023.

Defendant's construction of when its duty to supply a written determination to Plaintiff began is misplaced. FOIA is clear that the duty to respond with a written determination

begins upon receipt of the request. See S.C. Code Ann. § 30-4-30(C)(“Each public body, upon written request for records made under this chapter, shall within ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request, notify the person making the request of its determination and the reasons for it...”)) Defendant may have had ten days excepting weekends and public holidays to fulfill its duty and supply the written determination before it became a violation of SCFOIA, but it makes no sense to say it did not have the duty of performance or FOIA compliance until after the proviso became effective. The Defendant’s duties under the agreement or the FOIA can be abrogated because it willfully chose to wait until the law has changed. Plaintiff is entitled to summary judgment that Defendant violated the settlement agreement and FOIA by not supplying the information responsive to its duties under the agreement and FOIA.

3. Plaintiff is entitled to summary judgment that Defendant violated FOIA when it responded to Request 11 with one page entirely redacted under no lawful claim of authority. Plaintiff requests a declaration that Defendant violated FOIA in this manner and an injunction to supply non-exempt(or excepted) information within the record.

This issue is not ripe for consideration by the Court for the following reason. Plaintiff explicitly reserved the right in paragraph 38 of his verified complaint to have an in-camera review of any allegedly over-redacted or improperly redacted information provided to him in this controversy. Plaintiff complains that Defendant’s production of an entirely redacted page of information was under no lawful claim of authority because the law requires that redactions be used to separate the exempt information from what can be released. See S.C. Code Ann. § 30-4-40(b)(“If any public record contains material which is not exempt under

subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.”) Defendant claims to have properly redacted this one page using a single claim of authority regarding information related to security plans and devices that excepted from the definition of a public record in S.C. Code Ann § 30-4-20(c) but crucially only applies to “information”. It is highly unlikely that every use of punctuation, article or conjunction within this one page is such “information” but that is not yet before the Court as it has not yet been provided to the Court in unredacted form and described sufficiently to Plaintiff’s counsel so a hearing can be had regarding whether the underlying redactions are proper under Defendant’s authority.

4. Plaintiff is entitled to summary judgment that Defendant violated FOIA when it responded to Requests 8, 13 and 14 after the statutorily required period of disclosure. Plaintiff requests a declaration that Defendant violated FOIA in this manner.

Plaintiff’s verified complaint and the admission by Defendant establish that Defendant violated FOIA when it failed to supply responsive information pursuant to Requests 8, 13, and 14 within the statutory period of time. Defendant’s motion confuses what is mooted when a FOIA cause of action for declaration is brought alongside an injunction. If the records are provided during the course of the litigation, it is proper for the Court to consider the request for an injunction of those records has been mooted. However, a declaration can be appropriate, indeed useful, where unlike the Sloan cases cited, there are additional violations of FOIA being litigated, including potential injunctions, and a declaration as to these instances would not be academic.

This motion is also based on all applicable statutory law, case law, common law, and the record in this action.

Respectfully submitted,

s/Taylor Smith
Taylor M. Smith IV
S.C. Bar No. 101584
MERIWETHER LAW
923 Calhoun Street
Columbia, South Carolina 29201
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@meriwetherfirm.com (email)
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
January 4, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>AFFIDAVIT OF</u>
	)	<u>DOLLY J. GARFIELD</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Dolly J. Garfield, who first being duly sworn,
deposes and states as follows:

1. I am a resident of South Carolina over 18 years of age. I have personal knowledge of the truth of the facts set forth in this affidavit.
2. I am the General Counsel for the South Carolina Education Lottery (the Lottery), which is governed by the South Carolina Lottery Commission, the Defendant in this case.
3. I have reviewed the Affidavit filed by Plaintiff George S. Glassmeyer, which states his “concern[s] about potential mismanagement of lottery revenue, to include embezzlement and employee misconduct.”
4. The Lottery employs an internal auditor who conducts regular audits of the Lottery’s operations and management, including reviews of the Lottery’s Claim’s Center. Audit engagements include evaluating the risk of fraud, noncompliance with state and federal laws, and financial mismanagement. The findings of these internal audits are reported directly to the Board of Commissioners.
5. The Lottery is also subject to numerous audits as a public body and an instrumentality of the State of South Carolina.

6. Under the South Carolina Education Lottery Act, for instance, the Legislative Audit Council (LAC) conducts a full audit of the Lottery every 3 years or at the request of 5 members of the House of Representative or 5 members of the Senate. *See* S.C. Code Ann. § 59-150-30(B).

7. Further, the Lottery, as a component unit of the State of South Carolina, undergoes an independent financial audit every year. *See* S.C. Code Ann. § 11-7-20(A). Currently, the firm of Maudlin & Jenkins, Certified Public Accountants—under contract with the South Carolina Office of the State Auditor—conducts this independent financial audit.

8. The Inspector General of South Carolina has the power to “examine the records, reports, audits, reviews, papers, books, recommendations, contracts, correspondence, or any other documents maintained by” the Lottery. S.C. Code Ann. § 1-6-50(A)(4).

9. And the State Law Enforcement Division (SLED) has plenary authority to conduct any criminal investigations into alleged financial crimes involving the Lottery. *See* S.C. Code Ann. § 23-3-15(B).

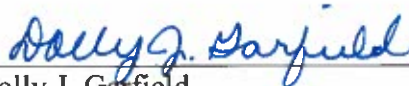
10. Financial audit reports are publicly available on the Lottery’s website, the independent audit reports are likewise publicly available on the State Auditor’s website, and the LAC reports are publicly available on the LAC’s website. Moreover, the Lottery’s audit committee meeting minutes are posted on the Lottery’s website.

11. Additionally, the Lottery engages in routine Systems and Organization Controls (SOC 2) (Type 1 and Type 2) audits every 3 years. SOC 2 Type 1 audits evaluate whether controls are designed properly at a point of time, whereas SOC 2 Type 2 audits evaluate whether controls are designed and functioning as intended over a specific period. SOC 2 audits are conducted in accordance with best business practices. Most state agencies do not conduct such audits, but the Lottery operates as a business and stores outside parties’ personal identifying information and

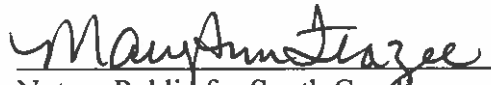
banking information within its information systems. The Lottery's systems communicate with third parties such as vendors and retailers. Therefore, it is imperative to ensure information security is safeguarded.

12. I am not aware of any specific allegations or findings of embezzlement at the Lottery as it relates to lottery claims.

FURTHER AFFIANT SAYETH NOT.


Dolly J. Garfield

SWORN to and subscribed before
me this 16th day of January, 2024


Notary Public for South Carolina

My Commission expires: 3-22-2031

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANT’S SUPPLEMENTAL</u>
	)	<u>MOTION FOR SUMMARY</u>
South Carolina Lottery Commission,	)	<u>JUDGMENT</u>
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Lottery Commission (the Lottery), by and through the undersigned counsel, will move before the Honorable Daniel M. Coble, Presiding Judge of the Court of Common Pleas for Richland County, in the Fifth Judicial Circuit of South Carolina, for an Order granting summary judgment in favor of the Lottery on Plaintiff’s claim related to the redaction of “drawers’ signatures [and] winners names” pursuant to Rule 56, SCRCF. The parties agreed in the January 5, 2024 hearing on their cross-motions for summary judgment to submit this question on the briefs. For the reasons below, as well as those raised in the Lottery’s previous motion and briefing, the Court should grant summary judgment in favor of the Lottery and dismiss the complaint with prejudice.

BACKGROUND

On June 21, 2023, Glassmeyer served 18 voluminous Freedom of Information Act (FOIA) requests on the Lottery. Ex. A to Pl.’s Compl. As relevant here, in Request No. 4, Glassmeyer sought “[c]opies of all checks (front and back) and/or wire transfers issued to all persons identified in Item #1 above.” *Id.* Request No. 1, of course, sought “[t]he first and last name, and city and state of residence, of all persons who submitted bona fide claims for gross lottery winnings (i.e., before any tax withholding or setoff(s)) equal to or exceeding one million dollars from June 30,

2021 through June 15, 2023, inclusive.” *Id.* On July 5, 2023, the Lottery’s general counsel, Dolly Garfield, responded to Glassmeyer’s FOIA Request with a good-faith determination on the FOIA request, including on Request 4. Ex. B. to Pl.’s Compl. That same day, the Lottery produced redacted records responsive to Request 4. *See Exhibit 1.* On August 16, 2023, the Lottery sent a letter to Glassmeyer, conveying it had provided all responsive records subject to disclosure in response to his FOIA request. Ex. I to Countercl. Less than three weeks later, he filed this lawsuit, alleging “Defendant did respond with some records pursuant to Item 4; however failed to provide unredacted information concerning drawers’ signatures or winners[’] names in violation of FOIA.” Pl.’s Compl. at ¶ 24. This motion follows.

STANDARD

The purpose of summary judgment is “to expedite disposition of cases which do not require the services of a factfinder.” *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). When “cross motions for summary judgment are filed, the parties concede the issue before [the Court] should be decided as a matter of law.” *Wiegand v. U.S. Auto. Ass’n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

ARGUMENT

To be sure, “FOIA is remedial in nature and should be liberally construed to carry out its purpose.” *Evening Post Publ’g Co. v. Berkeley Cnty. Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011) (quoting *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001)). But it is equally true that “[e]xecutive agencies are required to comply with the General Assembly’s enactment of a law until it has been otherwise declared invalid.” *Edwards v. State*, 383 S.C. 82, 91, 678 S.E.2d 412, 417 (2009). “An appropriation act, though generally in duration temporary, has equal force and effect as a permanent statute for the time being.” *State ex*

rel. McLeod v. Mills, 256 S.C. 21, 27, 180 S.E.2d 638, 641 (1971). And as the Court is aware, the General Assembly enacted a budget proviso with which the Lottery was required to comply:

Pursuant to Section 30-4-40, the South Carolina Freedom of Information Act, the Lottery Board of Commissioners is prohibited from disclosing a winner's name, address, telephone number, date of birth, social security number, electronic address, and any copy of the forms of identification provided to the board unless consent is given by the winner. In response to a request, the board only may allow the release of the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner.

2023 S.C. Act No. 84, Part I.B, § 3, Proviso 3.5 (citing S.C. Code Ann. § 30-4-40).

Glassmeyer, however, complains generally that the Lottery “failed to provide unredacted information concerning drawers’ signatures or winners[’] names in violation of FOIA” in response to Request No. 4. Pl.’s Compl. at ¶ 24. For starters, this is too conclusory to state a claim for a violation under FOIA. *See Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 468 (2003) (finding although “a verified pleading may substitute for an affidavit at the summary judgment stage,” one with “an abundance of conclusory allegations” does not meet “Rule 56(e)’s requirements”); Rule 56(e), SCRCF (stating “an adverse party may not rest upon the mere allegations . . . of his pleading”); *see also Jeffers v. LaFarge N. Am., Inc.*, 622 F. Supp. 2d 303, 314 (D.S.C. 2008) (“The non-moving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment.”).

At any rate, as Garfield explained to Glassmeyer, the Lottery could not disclose “drawers’ signatures or winners[’] names” because Proviso 3.5 of the 2023–2024 Annual Appropriations Act (the Proviso) prohibited it from doing so. This determination was identical to its determination for Glassmeyer’s Request No. 1. Thus, the Lottery provided responsive documents but redacted lottery winners’ names and signatures. To the extent Glassmeyer is trying to distinguish between

a printed name and a signature, that is a distinction without a difference. The General Assembly enacted the Proviso to prohibit disclosure of lottery winners' names, period, regardless of whether they are in print or in cursive. Any argument to the contrary is silly and would produce an absurd result. *See, e.g., Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) ("In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose."); *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the [General Assembly] or would defeat the plain legislative intention.").

Rather than rehash its prior arguments on why the Proviso prohibits the Lottery from disclosing this information, the Lottery incorporates them from its initial motion for summary judgment. There is one distinction though: Glassmeyer's claim related to Request No. 4 is *not* for a breach of contract like the claim relating to Request No. 1. It is for a violation of FOIA. Therefore, regardless of the Court's determination on whether the Lottery breached the settlement agreement by refusing to disclose lottery winners' names (it didn't), the Court should still find the Lottery did not violate FOIA because the Proviso prohibited it from disclosing lottery winners' names—including in the form of their signatures—in response to Request No. 4.

On that note, the Proviso is unambiguous about *when* the Lottery's duty regarding this information arises under this Request. It specifically states that "[i]n *response* to a request," the Lottery may release only "the date of the claim and draw, game played, amount of prize won, retailer location where the ticket was sold, and the hometown of the winner." 2023 S.C. Act No. 84, Part I.B, § 3, Proviso 3.5 (emphasis added). When the Lottery's *response* to Glassmeyer's FOIA request came due, the Proviso was in full force and effect, and it prevented disclosure of

“drawers’ signatures or winners['] names.” *Id.* The Lottery therefore did not violate FOIA by redacting such information pursuant to the Proviso, which prohibited the Lottery from providing winners’ names in response to FOIA requests.

Indeed, finding the Lottery is required to disclose this information would lead to an “utterly illogical” result. *Sherman v. Reavis*, 273 S.C. 542, 545, 257 S.E.2d 735, 737 (1979). The House Ways and Means Committee publicly and properly introduced the 2023–2024 Appropriations Act, including the Proviso, and pushed it through both houses of the General Assembly by May 9, 2023, with the General Assembly adopting the final budget on June 14, 2023. Glassmeyer cannot, “by merely” waiting and submitting a FOIA request a week later on June 21, 2023—20 days after the settlement agreement expired—“compel” the Lottery to disclose protected information “which he either knew or could have known would be forbidden by [the Proviso], and by so doing nullify the entire work of the [General Assembly].” *Id.* (finding the “pending ordinance doctrine” prohibited property owners from seeking to compel the City of Charleston to allow billboards on their property when a zoning regulation forbidding the intended use was pending at the time and subsequently enacted).

Alternatively, the Lottery could withhold this information because it is information of a personal nature, the disclosure of which would constitute an unreasonable invasion of personal privacy. *See* S.C. Code Ann. § 30-4-40(a)(2). After all, the Family Privacy Protection Act, S.C. Code Ann. § 30-2-10 *et seq.*, provides that information “that identifies or describes an individual,” including an individual’s signature, is considered personal information. S.C. Code Ann. § 30-2-30(1); *see also Glassmeyer v. City of Columbia*, 414 S.C. 213, 222, 777 S.E.2d 835, 840 (Ct. App. 2015) (considering the Family Privacy Protection Act in determining whether “home addresses,

personal telephone numbers, and email addresses of the applicants [for city manager] are information in which the applicants have a privacy interest”).

To the extent Glassmeyer thinks having access to lottery winners’ signatures would somehow relieve his unparticularized concerns about “embezzlement,” the Lottery respectfully disagrees. The Lottery is unaware of any allegation of or investigation into embezzlement in the Lottery’s claims process. As Garfield explains, the Lottery has several checks and audits, both internal and independent, on its processes and finances. **Exhibit 2.** Even though this issue would have to be tried under our supreme court’s previous ruling, *see* Def.’s Mot. for Summ. J, at 15 n.5, the Lottery appropriately redacted this information and Glassmeyer would not be entitled to relief.

CONCLUSION

In sum, the Court should grant summary judgment in favor of the Lottery on Glassmeyer’s conclusory, one-sentence FOIA claim related to its redaction of “drawers’ signatures or winners[’] names” because the Proviso required the Lottery to redact the information.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
January 18, 2024

STATE OF SOUTH CAROLINA**COUNTY OF RICHLAND****IN THE COURT OF COMMON PLEAS****CASE NO. 2023-CP-40-04854****George S. Glassmeyer,****Plaintiff,****vs.****South Carolina Lottery Commission,****Defendant.****MOTION FOR LIMITED
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that Plaintiff George S. Glassmeyer moves before this court pursuant to Rules 56 SCRPC56(a) and (d), and Chapter 4 of Title 30 of the South Carolina Code of Laws (hereinafter "FOIA"), as well as pursuant to all other applicable law, for summary judgment on paragraph 24 of Plaintiff's verified complaint claims in the above-captioned action seeking an order that Defendant South Carolina Lottery Commission violated FOIA by redacting the drawer's signatures on records provided to Plaintiff. This motion is made as a cross motion for limited summary judgment on the grounds stated in both motions as the parties are in agreement there are no issues of material fact, and these grounds may be decided as a matter of law. Any such ground not addressed in both of these motions is either not yet ripe for consideration by the Court, is to be addressed by the parties at a later hearing or trial of this matter or is otherwise under consideration by the Court at this time. Plaintiff seeks general incorporation of all arguments made of record or at either of the two hearings in this matter and also with specific incorporation of arguments concerning winner names, the settlement agreement, and the budget proviso at issue.

The Plaintiff so moves on the following grounds:

1. Plaintiff is entitled to summary judgment that Defendant that Defendant South Carolina Lottery Commission violated FOIA by redacting the drawer's signatures on records

provided to Plaintiff. Additionally, Plaintiff is requesting an injunction to provide these unredacted signatures on such records, as contemplated by §30-4-110(A).

2. This motion is also based on all applicable statutory law, case law, common law, and the record in this action.

Summary Judgment Standard

Under South Carolina law, “summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

When “cross motions for summary judgment are filed, the parties concede the issue before [the Court] should be decided as a matter of law.” Wiegand v. U.S. Auto. Ass’n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). As cross motions have been filed in this matter on identical grounds, the parties have indeed conceded these grounds should be decided as a matter of law on the limited issues identified.

The issues before the Court on this cross motion for limited summary judgment are whether Defendant had a legal duty to supply information, pursuant to FOIA and/or the common law of the state, and whether Defendant’s failure to do so is a violation of law. If the Court determines such a legal duty exists under the statute, then summary judgment as to the declaratory judgment and injunction is appropriate in Plaintiff’s favor.

“This Court’s primary function in interpreting a statute is to ascertain the intent of the legislature.” State v. Baker, 310 S.C. 510, 427 S.E.2d 670 (1993). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and

policy of the lawmakers.” Id. “Generally, statutes are to be construed with reference to the whole system of law of which they form a part.” See 82 C.J.S. Statutes § 362 (1953). “In construing a statute, this Court is constrained to avoid an absurd result.” South Carolina Tax Comm'n v. Gaston Copper Recycling Corp., 316 S.C. 163, 447 S.E.2d 843 (1994). This matter concerns the South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. §30-4-10, et. seq., which unlike many other South Carolina statutory schemes, has a codified purpose:

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. “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (S.C. 2001)(citing South. Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978)).

Summary Judgment Application

If the statutory purpose is to be realized in this proceeding, then “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” must be given life. See S.C. Code Ann. § 30-4-15. That is, if a member of public were trying to learn how the Lottery Commission operates in fielding SCFOIA requests, or (in this specific motion: spending public funds), then § 30-4-100(A) must be read to require the Defendant to disclose information.

1. Plaintiff is entitled to summary judgment that Defendant that Defendant South Carolina Lottery Commission violated FOIA by redacting the drawer's signatures on records provided to Plaintiff.

In Item 4 of Plaintiff's FOIA request he seeks "[c]opies of all checks (front and back) and/or wire transfers issued to all persons identified in Item #1." Plaintiff's Verified Complaint Exhibit A. Defendant's written determination, supplied as Exhibit B to the Verified Complaint, provided in response to Item 4 of Plaintiff's request: "Please see SCCL's response to Items 1 and 2." In the first paragraph of Defendant's written determination regarding Item 1, it provides that a recent budget proviso prohibits disclosure of winners names. Id. This argument applies to this particular limited ground on cross motion for summary judgment regarding the winners names in these redacted records provided in response to Item 4, but it does not apply to redactions issued in redacted records purportedly being the signatures of drawers. Instead, Defendant provides this explanation regarding the authority to redact the drawer signatures:

Further, the Family Privacy Protection Act, S.C. Code Ann. § 30-2-10 *et seq.*, requires public officials to redact public records that contain personal information. "'Personal information' means information that identifies or describes and individual including, but not limited to, an individuals photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, education level financial status, bank account numbers, account or identification number issued by or used, or both, by any federal or state governmental agency or private institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit records or reports."

Among other things, "personal identifying information" includes but is not limited to, driver's license numbers; social security numbers; dates of birth; current names, when combined with, and linked to, other identifying information; current addresses, when combined with, and linked to, other identifying information. S.C. Code Ann. § 16-13-510(D) (Personal Financial Security Act).

Consistent with these laws, the Supreme Court of South Carolina revised a 2007 Order further clarifying that personal identifying information should be redacted in appellate court filings and amended Rule 41.2, S.C.R.C.P., to require redaction of personal identifying information in court filings. *See In re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, App. No 2013-002681, Order No. 4-04-15-02, at 1-2 (S.C. Sup. Ct. filed Apr. 15, 2014).

SCEL cannot intentionally communicate or otherwise make available to the general public an individual's personal information or personal identifying information. Thus, consistent with the law and policy expressed by the legislative and judicial branches of government, SCEL shall provide the city and state of residence of all persons who submitted bona fide claims for gross lottery winnings (i.e. before tax withholding or set-off) equal to or exceeding one million dollars from June 30, 2021 through June 15, 2023.

Defendant's Written Determination (dated July 5, 2023), Exhibit B to Verified Complaint

Family Privacy Protection Act

Defendant's citation to the Family Privacy Protection Act, S.C. Code Ann. § 30-2-10 et seq., is meaningful for its general obligations regarding the custody and control of "personal identifying information," but fails to describe lawful authority to withhold the signature of a public official on a public record at issue in this controversy. Chapter 2 of Title 30 (FOIA is Chapter 4) fails to address or specifically define "individual" for purposes of its provisions, nor does it contemplate whether it is specifically exempted from requests made under Chapter 4. Essentially, if Defendant's authority for the redaction of the public official's signature was to apply to FOIA, then it would have said so explicitly. A plain reading of the entire Family Privacy Protection Act reveals no applicability to FOIA requests.

Defendant's written determination ("SCEL cannot intentionally communicate or otherwise make available to the general public ...") seems to closely track the language of S.C. Code § 30-2-310(A)(1)(e). "Except as provided in Sections 30-2-320 and 30-2-330 of this article

a public body, as defined in Section 30-1-10(B), may not: ... (e) intentionally communicate or otherwise make available to the general public an individual's social security number or a portion of it containing six digits or more or other personal identifying information.” Id. Before this court, as a matter of first impression (no state appellate court decision has interpreted this section) is whether in responding to a FOIA request (pursuant to S.C. Code Ann. § 30-4-30(c)), a public body has “intentionally communicate[d]” or “otherwise made available to the general public” the information Chapter 2 seeks to protect. FOIA provides that the public body must “notify the person making the request” and then must furnish the record to that individual. In no way does compliance with a specific, individual FOIA request mean the public body has made a record available to the general public. Additionally, the furnishing of information (public records) under FOIA fits within the statutory duty encompassed therein. It cannot be said to be an “intentional communication” as the duty to supply records is independent and separate from a public body’s willingness or intention to supply records. This interpretation fits within what 30-2-310(A)’s other subsections seek to prohibit: (a) “collect” certain information, (b) “fail ... to segregate” certain information “so that the social security number may be easily redacted **pursuant to a public records request**,” (c) “fail ... to provide ... a statement of the purpose” for the collection and use of certain information, (d) “use” the information for an unstated purpose, (f) “intentionally print or imbed an individual’s [information] ... on a card required for the individual to access government services”, (g) “require an individual to transmit the individual's ... [information] ... over the Internet,” (h) “require an individual to use the [information] ... to access an Internet web site,” (i) “print an individual's [information] ... on materials that are mailed.” S.C. Code Ann § 30-2-310(A)(1)(a)-(i)(emphasis added). If

the General Assembly had intended (e) to swallow all of Title 30, Chapter 4 then it would have at least alluded to “public records requests” as was done in subsection (b).

Personal identifying information

The “personal identifying information” of S.C. Code § 30-2-310(A)(1)(e) is further defined “as used in this section, has the same meaning as ‘personal identifying information’ in Section 16-13-510, except that it does not include electronic identification names, including electronic mail addresses, or parent’s legal surname before marriage.” *Id.* Even if the Court determines that Section 310(A)(1)(c) can concern production pursuant to FOIA requests, the signature of a public official on a public record is not properly considered “personal identifying information” in this context. The Personal Financial Security Act, S.C. Code Ann § 16-13-500 et. seq., provides the criminal penalties for financial identity fraud. The definition of “personal identifying information” in Section 510 includes several types of information, including social security numbers and other “information issued by a governmental or regulatory entity that uniquely will identify an individual or an individual's financial resources.” Notably, “signatures” are not specifically included. The General Assembly specifically included “digital signatures” but did not include the type of information that appears on a government check, which this case concerns. *Id.* The personal financial security of either the person signing a check from Defendant or endorsing the back of it are not compromised if disclosed pursuant to a FOIA request. But if the financial security of a particular check signer or endorser were actually compromised, Defendant would still not have liability for the disclosure of information. *See Bellamy v. Brown*, 408 S.E.2d 219 (S.C. 1991). The S.C. Supreme Court ruled that even if information identifying

an individual came within one of the statutory exceptions to mandatory disclosure, a citizen identified in the record had no claim against the government for privacy invasion. Id. at 221.

The FOIA creates an affirmative duty on the part of public bodies to disclose information. The purpose of the Act is to protect the public by providing for the disclosure of information. However, the exemptions from disclosure contained in §§ 30-4-40 and -70 do not create a duty not to disclose. These exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure. No legislative intent to create a duty of confidentiality can be found in the language of the Act. We hold, therefore, that no special duty of confidentiality is established by the FOIA.

Bellamy at 221.

Unreasonable Invasion of Personal Privacy

Finally, Defendant raises in its motion that it would be an unreasonable invasion of personal privacy to release these signatures. It would not be.

The signature of the drawer on the check, a person authorized to provide public funds (lottery winnings) to claimants (winners), is what binds Defendant to a particular negotiation of money. Defendant's providing of winnings to claimants is at the core of their public purpose¹ and is quintessential government activity in this sphere. In Burton v. York County Sheriff's Dept., the S.C. Court of Appeals ruled that records concerning the performance of sheriff's deputies was of "large and vital" interest to the public "that outweighs their desire to remain out of the public eye". Burton, 358 S.C. 339, 594 S.E.2d 888 (S.C. App., 2004).

Our Supreme Court has defined the "right to privacy" as the right of an individual to be let alone and to live a life free from unwarranted publicity. Sloan v. South Carolina Dep't of Pub. Safety, 355 S.C. 321, 586 S.E.2d 108 (2003). However, "one of the primary limitations placed on the right of privacy is that it does not

¹ S.C. Code Ann. § 30-4-50(B) provides the only improper purpose for sending a FOIA request: commercial solicitation.

prohibit the publication of matter which is of legitimate public or general interest." Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 566, 324 S.E.2d 313, 315 (1984) (quoting Meetze v. Associated Press, 230 S.C. 330, 95 S.E.2d 606 (1956)). Indeed, the Court has held that, as a matter of law, "if a person, whether willingly or not, becomes an actor in an event of public or general interest, `then the publication of his connection with such an occurrence is not an invasion of his right to privacy.'" Doe v. Berkeley Publishers, 329 S.C. 412, 414, 496 S.E.2d 636, 637 (1998) (quoting Meetze, 230 S.C. at 337, 95 S.E.2d at 609).

Burton at S.C. 352.

It is of legitimate and important interest to the public – and specifically, to the Plaintiff as stated in his affidavit on record in this matter – whether the signer of a Defendant check is a person authorized to do so. To the extent that the person signing the check has an expectation of privacy in the signature they apply to a check (they do not), any expectation is outweighed by public's right to know that information.

Any signature of a claimant/winner on these records is also not an unreasonable invasion of privacy to disclose in this matter. If Defendant possesses the signature on a check or other record within its custody or control then it must have sought it from claimant for some public purpose. There is no obligation for a claimant to collect winnings. It is the collection and payment of these winnings that is of vital interest to the public whether Defendant is fulfilling its statutory mandate. When a claimant signs the record, that apparently Defendant seeks, the claimant is becoming an "actor in an event of public or general interest" such that there cannot be an unreasonable invasion of privacy to disclose the signature. Burton at S.C. 352.

This motion is also based on all applicable statutory law, case law, common law, and the record in this action.

Respectfully submitted,

s/Taylor Smith

Taylor M. Smith IV
S.C. Bar No. 101584
MERIWETHER LAW
923 Calhoun Street
Columbia, South Carolina 29201
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@meriwetherfirm.com (email)
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
January 19, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANT'S SECOND</u>
	)	<u>SUPPLEMENTAL CROSS-MOTION</u>
South Carolina Lottery Commission,	)	<u>FOR SUMMARY JUDGMENT</u>
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Lottery Commission (the Lottery), by and through the undersigned counsel, will move before the Honorable Daniel M. Coble, Presiding Judge of the Court of Common Pleas for Richland County, in the Fifth Judicial Circuit of South Carolina, for an Order granting summary judgment in favor of the Lottery on the claim related to the redaction of “drawers’ signatures” pursuant to Rule 56, SCRCP. The parties agreed in the January 5, 2024 hearing to submit the remaining issues on the briefs. Accordingly, the Lottery filed a supplemental motion for summary judgment on January 18, 2024, as to the redaction of “winners[’] names.” Pl.’s Compl. at ¶ 24. At that time, the Lottery did not believe redaction of “drawers’ signatures” was still an issue. After Plaintiff George S. Glassmeyer filed his supplemental motion for summary judgment the next day, however, the Lottery realized he still wishes to proceed on that portion of the one-sentence claim too. This second supplemental cross-motion for summary judgment follows. For the reasons below, as well as those raised in the Lottery’s prior filings, the Court should grant summary judgment in favor of the Lottery.

BACKGROUND

On June 21, 2023, Glassmeyer served 18 voluminous Freedom of Information Act (FOIA) requests on the Lottery. Ex. A to Pl.’s Compl. As relevant here, in Request No. 4, Glassmeyer

sought “[c]opies of all checks (front and back) and/or wire transfers issued to all persons identified in Item #1 above.” *Id.* Request No. 1, of course, sought “[t]he first and last name, and city and state of residence, of all persons who submitted bona fide claims for gross lottery winnings (i.e., before any tax withholding or setoff(s)) equal to or exceeding one million dollars from June 30, 2021 through June 15, 2023, inclusive.” *Id.* On July 5, 2023, the Lottery’s general counsel, Dolly Garfield, responded to Glassmeyer’s FOIA Request with a good-faith determination on the FOIA request, including on Request 4. Ex. B. to Pl.’s Compl. That same day, the Lottery produced redacted records responsive to Request 4. *See* Ex. 1 to Def.’s Supp. Mot. for Summ. J.

On July 18, 2023, Glassmeyer emailed Garfield, asking for unredacted copies of the responsive checks “with the respective drawer(s) signature(s) clearly visible.” *See Exhibit A.* In response, on July 21, 2023, Garfield explained “signatures are not subject to disclosure and are considered private information under the Family Privacy Protection Act, S.C. Code Ann. § 30-2-10 *et seq.*, which requires public officials to redact records that contain such personal information.” *Id.* She continued, however, explaining that “[t]he respective drawers of the checks were completed by the SCEL’s CFO and the CFO that preceded him” and providing a chart of the CFOs’ names with each corresponding check. *Id.* Glassmeyer responded that same day, stating “[t]hanks for your prompt and comprehensive response” and asking whether “disbursement checks payable to lottery winners only require one drawer signature (i.e., the Lottery CFO)?” *Id.* Garfield responded in the affirmative several days later. **Exhibit B.**

The Lottery did not hear from Glassmeyer any further regarding “drawers’ signatures.” On August 16, 2023, the Lottery sent a letter to Glassmeyer, conveying it had provided all responsive records subject to disclosure in response to his FOIA request. Ex. I to Countercl. Less than three weeks later, he filed this lawsuit, alleging “Defendant did respond with some records pursuant to

Item 4; however failed to provide unredacted information concerning drawers' signatures or winners['] names in violation of FOIA." Pl.'s Compl. at ¶ 24. This final partial motion for summary judgment follows as to Glassmeyer's claim relating to "drawers' signatures," and the case is now ripe for full disposition by the Court.

STANDARD

The purpose of summary judgment is "to expedite disposition of cases which do not require the services of a factfinder." *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). When "cross motions for summary judgment are filed, the parties concede the issue before [the Court] should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

ARGUMENT

At the outset, Glassmeyer complains generally that the Lottery "failed to provide unredacted information concerning drawers' signatures . . . in violation of FOIA" in response to Request No. 4. Pl.'s Compl. at ¶ 24. This is too conclusory to state a claim for a FOIA violation. *See Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 468 (2003) (although "a verified pleading may substitute for an affidavit at the summary judgment stage," one with "an abundance of conclusory allegations" does not meet "Rule 56(e)'s requirements"); Rule 56(e), SCRCF ("an adverse party may not rest upon the mere allegations . . . of his pleading"); *see also Jeffers v. LaFarge N. Am., Inc.*, 622 F. Supp. 2d 303, 314 (D.S.C. 2008) ("The non-moving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment."). In any event, Glassmeyer's claim for a FOIA violation based on the Lottery's redaction of drawers' signatures in documents responsive to Request 4 fails because the claim is moot—he already received the information he seeks—and because a valid exemption applies.

I. *Glassmeyer's claim relating to the drawers' signatures is moot.*

“Before a court may render a declaratory judgment, an actual, justiciable controversy must exist.” *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). A declaratory judgment is inappropriate solely to adjudicate past conduct or proclaim one party is liable to another. *Trevillyan v. APX Alarm Sec. Sys.*, No. 2:10-1387-MBS, 2011 U.S. Dist. LEXIS 694, at *26 (D.S.C. Jan. 3, 2011). “Its purpose is to settle and to afford relief from *uncertainty* and insecurity with respect to rights, status[,] and other legal relations.” S.C. Code Ann. § 15-53-130 (emphasis added). Likewise, “[t]he purpose of an injunction is to preserve the status quo and *prevent* possible irreparable injury to a party pending litigation.” *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009) (emphasis added).

Glassmeyer's conclusory claim regarding drawers' signatures on checks produced as responsive to Request 4 is moot. *See Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.”). While the form may have been different—printed instead of cursive—Glassmeyer has already received the drawers' names from Garfield. After receiving redacted records in response to Request 4, Glassmeyer emailed Garfield, asking for this exact information. *See Exhibit A*. In response, Garfield maintained the propriety of the redaction but still explained “[t]he respective drawers of the checks were completed by the SCEL's CFO and the CFO that preceded him.” *Id.* She even provided Glassmeyer a chart of the CFOs' names (*i.e.*, the drawers) with each corresponding check. *Id.* Glassmeyer responded that same day, stating “[t]hanks for your prompt and comprehensive response” and asking whether “disbursement checks payable to lottery winners only require one drawer signature (*i.e.*, the Lottery CFO)?” *Id.* Garfield responded in the affirmative several days later. **Exhibit B**.

Glassmeyer already received the information he was after—the names of the Lottery’s employees who wrote checks to million-dollar winners—in response to Request 4 well before he filed this lawsuit. This satisfies the purpose of FOIA because Glassmeyer is fully able “to learn and report fully” on the Lottery’s fulfillment of claims.¹ S.C. Code Ann. § 30-4-15. Accordingly, there is no justiciable controversy. *See Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (stating “once the requested documents are produced, a justiciable controversy no longer exists”). A declaratory judgment would be “purely academic,” *id.* at 26, 630 S.E.2d at 478, and an injunction would “accomplish nothing in this case,” *S.C. Lottery Comm’n v. Glassmeyer*, 433 S.C. 244, 250, 857 S.E.2d 889, 892 (2021).

The Lottery did not violate FOIA. If the Court, however, somehow determines Glassmeyer was entitled to signatures instead of the names of the drawers, the Court—exercising its discretion—should find Glassmeyer is not entitled to attorney’s fees for his moot claim that elevates form over substance and caused him zero harm. *See* S.C. Code Ann. § 30-4-100(B) (“If a person or entity seeking relief under this section prevails, he *may* be awarded reasonable attorney’s fees and other costs of litigation specific to the request.” (emphasis added)); *see also Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981) (“Ordinarily, ‘may’ signifies permission and generally means the action spoken of is optional or discretionary.”); *Litchfield*

¹ To the extent Glassmeyer contends he needs a signature to avail himself of the fair report privilege, this argument is misplaced. *See West v. Morehead*, 396 S.C. 1, 8, 720 S.E.2d 495, 499 (Ct. App. 2011) (stating under the fair report privilege, “[f]air and impartial reports in newspapers of matters of public interest are qualifiedly privileged” (quoting *Jones v. Garner*, 250 S.C. 479, 487, 158 S.E.2d 909, 913 (1968))); *see also Tharp v. Media Gen., Inc.*, 987 F. Supp. 2d 673, 685 (D.S.C. 2013) (“The ‘fair report privilege shields news organizations from defamation claims when publishing information originally based upon government reports or actions.” (quoting *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703 (4th Cir. 1991))). First, Glassmeyer is not a news organization. Second, Garfield has now confirmed in an affidavit that the drawers she identified in the chart in **Exhibit A** are, in fact, the Lottery employees who signed each respective check. *See Exhibit C*.

Plantation Co. v. Georgetown Cnty. Water & Sewer Dist., 314 S.C. 30, 33, 443 S.E.2d 574, 576 (1994) (emphasizing statute’s use of may and finding “special referee did not abuse his discretion” by declining to award fees despite finding untimely response did not comply with FOIA).

II. A valid exemption applies to drawers’ signatures.

In all events, the Lottery properly exempted the drawers’ signatures from disclosure under FOIA and the Family Privacy Protection Act of 2002. As Garfield explained to Glassmeyer in her July 5, 2023 determination letter and in response to his July 18, 2023 follow up email, signatures constitute personal identifying information that the Lottery cannot intentionally disclose or otherwise make available to the public.

Under section 30-4-40(a)(4) of the South Carolina Code, a public body may exempt from disclosure “[m]atters specifically exempted from disclosure by statute or law.” Section 30-2-310(A)(1)(e) states a public body may not “intentionally communicate or otherwise make available to the general public an individual’s . . . personal identifying information.” To have any effect, this statute must apply equally to intentional disclosure through a response to a FOIA request as it does to intentional disclosure through another avenue, such as the media. *Cf. Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008) (“The Court must presume the [General Assembly] intended its statutes to accomplish something and did not intend a futile act.”). Further, it makes no difference that disclosure through a FOIA request may be only to one member of the general public instead of the public at large. To be sure, FOIA doesn’t make such a distinction. *See, e.g., Evening Post Publ’g Co. v. City of N. Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (stating the purpose of FOIA is “to *guarantee the public* reasonable access to certain activities of the government” (emphasis added) (citation omitted)).

Thus, pursuant to these authorities, the Lottery could not disclose “drawers’ signatures.” Subsection 30-2-310(e) refers to section 16-13-510 of the South Carolina Code to define “personal identifying information,” which in turn states, “‘personal identifying information’ includes, *but is not limited to*: . . . (9) digital signatures.” S.C. Code Ann. § 16-13-510(D)(9). While section 16-13-510(D) does not specifically mention handwritten signatures, it makes no sense to distinguish between a “digital signature” and a cursive signature, especially considering section 16-13-510(D) is not exhaustive. *See* S.C. Code Ann. 16-13-510(D) (stating “personal identifying information” “includes, *but is not limited to*” (emphasis added)).

After all, the Family Privacy Protection Act provides that “personal information” includes an individual’s “signature.” S.C. Code Ann. § 30-2-30(1); *see also Glassmeyer v. City of Columbia*, 414 S.C. 213, 222, 777 S.E.2d 835, 840 (Ct. App. 2015) (considering the Family Privacy Protection Act in determining whether “home addresses, personal telephone numbers, and email addresses of the applicants [for city manager] are information in which the applicants have a privacy interest”). Reading these statutes together, as the Court must, the Lottery properly exempted its CFOs’ signatures from the checks produced to Glassmeyer. *See, e.g., Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (“It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result.”).

To the extent Glassmeyer thinks having access to the Lottery’s current and former CFOs’ signatures—rather than just their names—would somehow relieve his unparticularized concerns about “embezzlement,” the Lottery respectfully disagrees. As explained, Glassmeyer received the names of the persons who wrote checks to million-dollar lottery winners. Providing their cursive signatures will not increase transparency to the public. Nor would it protect the public from secret

government activity. *See Perry v. Bullock*, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014) (stating “FOIA’s essential purpose is to protect the public from secret government activity”). In fact, providing the Lottery’s current and former CFOs’ signatures could increase embezzlement or fraud against the government. **Exhibit C.** The Lottery—specifically its CFO—handles hundreds of millions of dollars every year. *Id.* His signature is critical tool in the Lottery’s operation and, more importantly, in the Lottery’s safeguarding of public funds. *Id.* Nevertheless, the Lottery will provide the unredacted checks to the Court for *in camera* review should Glassmeyer need more verification of the drawers’ names than the Lottery’s word.

Even so, the Lottery complied with FOIA by appropriately redacting drawers’ signatures from records produced in response to Request 4 and then providing Glassmeyer the requested information in a different format. *See Exhibit A.* Glassmeyer’s claim is without merit.

CONCLUSION

In sum, the Court should grant summary judgment in favor of the Lottery on Glassmeyer’s FOIA claim on the redaction of “drawers’ signatures.” Glassmeyer already received the names of the drawers, and their signatures are exempt from disclosure. In all events, the Court should decline to award attorney’s fees to Glassmeyer for unnecessarily adding one sentence to his complaint on this hypertechnical issue when he received the names of the drawers who signed the checks and, thus, was able “to learn and report fully the activities of,” S.C. Code Ann. § 30-4-15, the Lottery. The Court should dismiss his complaint, in full, with prejudice.

(Signature page to follow)

Respectfully submitted,

/s/Vordman Carlisle Traywick, III

Vordman Carlisle Traywick, III (102123)

Sarah C. Frierson (104643)

ROBINSON GRAY STEPP & LAFFITTE, LLC

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

ltraywick@robinsongray.com

sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
January 25, 2024

EXHIBIT A

From: [George Glassmeyer](#)
To: [Garfield, Dolly](#)
Subject: Re: FOIA Request, Items #2 and #4
Date: Friday, July 21, 2023 2:34:35 PM
Attachments: [Printed Official Names Claim Forms Redacted.pdf](#)
[Drawer - Prize Checks.pdf](#)

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Hi Dolly,

Thanks for your prompt and comprehensive response.

I have reviewed your attached claim forms and the following forms appear to continue to redact the printed name of the processing official:

08-27-21, Greenville, SC claimant

02-17-23, Columbia, SC claimant

Kindly provide a supplemental response that provides copies of these forms showing the printed names, or, in the alternative, a copy of the respective form (indicating the absence of a printed name) and advise me of the name of the official who signed these particular forms if no printed name exists on the original form.

Finally, do disbursement checks payable to lottery winners only require one drawer signature (i.e., the Lottery CFO)? If not, kindly advise the name(s) of persons who also signed these checks as drawers.

Thanks again,

George

On Friday, July 21, 2023 at 12:59:45 PM EDT, Garfield, Dolly <dolly.garfield@sclot.com> wrote:

George,

Thank you for your response and further clarification.

As to Item 2, SCEL will provide the claim forms, redacted, with the **printed name** of the personnel/official that processed the claim. Please see attached. Please note a printed name was not included on each claim form. If you would like a particular official identified, please let me know. However, in response to request for signatures for Items 2 and 4, signatures are not subject to disclosure and are considered private information under the Family Privacy Protection Act, S.C. Code Ann. § 30-2-10 *et seq.*, which requires public officials to redact records that contain such personal information. The respective drawers

of the checks were completed by SCEL's CFO and the CFO that preceded him. Those names with each corresponding check will be provided. Please see attached.

The claim form dated 10-25-22 submitted by a winner from Conway, SC does not contain an authorized signature and is believed to be inadvertent. In an abundance of caution, and as a response to your e-mail from yesterday (7/20/2023) reporting a formal complaint of misconduct, SCEL will refer this matter to the SCEL Security Department for further review. The findings of this review will be made available when completed.

Thank you and have a great weekend,

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Tuesday, July 18, 2023 8:54 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: FOIA Request, Items #2 and #4

CAUTION: This email message is from an external sender. Do not click links or open attachments unless you know the sender and verify that the attachment and content is safe.

Dear Ms. Garfield:

I am in receipt of your responses to Item #2 and Item #4 of my FOIA request dated June 16, 2023.

Neither response satisfies my respective requests.

As to Item #2, the authorized signature and official's name has been redacted on all copies, except one, of claim forms that you have provided. The claim form dated 10-25-22, presumably submitted by a resident of Conway, SC is absent an authorized signature, or an official's name, and that portion of the form has no redaction. Please provide copies of all requested claim forms with the respective authorized signatures and official's names clearly visible.

As to Item #4, the signatures of the drawer, and/or drawers, has been redacted on all copies of the front of the checks that you have provided. Please provide copies of all requested checks with the respective drawer(s) signature(s) clearly visible.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

Check Number	Drawer Name
2000510217	Joseph Boyle
2000514145	Joseph Boyle
2000519201	Brian E. Ford
2000519966	Brian E. Ford
2000525606	Brian E. Ford
2000529406	Brian E. Ford
2000534860	Brian E. Ford
2000548861	Brian E. Ford
2000550108	Brian E. Ford
2000553099	Brian E. Ford
2000556581	Brian E. Ford
2000568269	Brian E. Ford
2000572300	Brian E. Ford
2000577635	Brian E. Ford
2000578307	Brian E. Ford
2000581755	Brian E. Ford
2000581780	Brian E. Ford
2000590449	Brian E. Ford

2000595352	Brian E. Ford
2000595711	Brian E. Ford
2000596935	Brian E. Ford
2000599314	Brian E. Ford
2000599542	Brian E. Ford
2000600242	Brain E. Ford
2000600398	Brian E. Ford
2000601109	Brian E. Ford
2000601934	Brian E. Ford
2000604525	Brian E. Ford
2000608925	Brian E. Ford
2000609116	Brian E. Ford

EXHIBIT B

From: [Garfield, Dolly](#)
To: [George Glassmeyer](#)
Subject: RE: FOIA Request, Items #2 and #4
Attachments: [2-17-23 Columbia, SC.pdf](#)

Hello George,

The Greenville claim form dated 8-27-21 was processed by Ann Cromer. She provided her signature in the "printed" section and therefore her signature appears twice on the form, thus it being redacted.

The lottery official information on the Columbia claim form dated 2-17-23 was redacted inadvertently. Please see attached.

Finally, disbursement checks payable to lottery winners only require one drawer signature (SCEL's CFO).

Thanks!

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

1333 Main Street, Suite 400

Columbia, S.C. 29201

O: 803-737-3941

C: 803-413-8684

F: 803-737-2005

Dolly.Garfield@sclot.com

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From: George Glassmeyer <scverdict@aol.com>
Sent: Friday, July 21, 2023 2:27 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: Re: FOIA Request, Items #2 and #4

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Thanks again,

George

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The claim form dated 10-25-22 submitted by a winner from Conway, SC does not contain an authorized

signature and is believed to be inadvertent. In an abundance of caution, and as a response to your e-mail from yesterday (7/20/2023) reporting a formal complaint of misconduct, SCEL will refer this matter to the SCEL Security Department for further review. The findings of this review will be made available when completed.

Thank you and have a great weekend,

Dolly

Dolly J. Garfield

General Counsel

South Carolina Education Lottery

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From: George Glassmeyer <scverdict@aol.com>
Sent: Tuesday, July 18, 2023 8:54 PM
To: Garfield, Dolly <Dolly.Garfield@sclot.com>
Subject: FOIA Request, Items #2 and #4

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Dear Ms. Garfield:

I am in receipt of your responses to Item #2 and Item #4 of my FOIA request dated June 16, 2023.

Neither response satisfies my respective requests.

As to Item #2, the authorized signature and official's name has been redacted on all copies, except one, of claim forms that you have provided. The claim form dated 10-25-22, presumably submitted by a resident of Conway, SC is absent an authorized signature, or an official's name, and that portion of the form has no redaction. Please provide copies of all requested claim forms with the respective authorized signatures and official's names clearly visible.

As to Item #4, the signatures of the drawer, and/or drawers, has been redacted on all copies of the front of the checks that you have provided. Please provide copies of all requested checks with the respective drawer(s) signature(s) clearly visible.

Please acknowledge receipt of this email.

Sincerely,

George S. Glassmeyer

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF</u>
	)	<u>DOLLY J. GARFIELD</u>
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Dolly J. Garfield, who first being duly sworn,
deposes and states as follows:

1. I am a resident of South Carolina over 18 years of age. I have personal knowledge of the truth of the facts set forth in this affidavit.
2. I am the General Counsel for the South Carolina Education Lottery (the Lottery), which is governed by the South Carolina Lottery Commission, the Defendant in this case. I am also currently serving as Interim Executive Director.
3. On July 21, 2023, I emailed a chart to George S. Glassmeyer that contained a list of checks issued to all persons who submitted bona fide claims equal to or exceeding one million dollars to the Lottery during the requested period.
4. In that chart, I also included the name of the drawer who signed each check. The chart is the last two pages of Exhibit A attached to the Lottery's Second Supplemental Cross-Motion for Summary Judgment.
5. I personally reviewed each check listed in that chart to determine the respective drawer's signature.
6. I attest the chart accurately depicts the respective drawer with each check listed.

7. The Lottery's Chief Financial Officer, currently Brian Ford, handles hundreds of millions of dollars every year. His electronic signature is printed on each check issued to lottery winners. His predecessor, Joseph Boyle, did the same.

8. It is important for the CFO's signature to be protected to reduce the chance of fraud by way of false checks issued on behalf of the Lottery.

9. I have personally experienced similar fraud. Someone once stole a check from me, and duplicated my signature on a fraudulent check and attempted to cash the fraudulent check as if it were executed by me.

10. Considering it is the Lottery's responsibility to safeguard hundreds of millions of dollars in public funds every year, the vast majority of which help pay for South Carolinians to pursue to their dreams in higher education, I redacted—pursuant to a valid exemption—our CFO's signature on checks supplied in response to Glassmeyer's recent FOIA request.

FURTHER AFFIANT SAYETH NOT.


Dolly J. Garfield

SWORN to and subscribed before
me this 25 day of January, 2024


Notary Public for South Carolina

My Commission expires: 12/5/27

STATE OF SOUTH CAROLINA**COUNTY OF RICHLAND****IN THE COURT OF COMMON PLEAS****CASE NO. 2023-CP-40-04854****George S. Glassmeyer,****Plaintiff,****vs.****South Carolina Lottery Commission,****Defendant.****MOTION FOR LIMITED
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that Plaintiff George S. Glassmeyer moves before this court pursuant to Rules 56 SCRPC56(a) and (d), and Chapter 4 of Title 30 of the South Carolina Code of Laws (hereinafter "FOIA"), as well as pursuant to all other applicable law, for summary judgment on paragraph 24 of Plaintiff's verified complaint claims in the above-captioned action seeking an order that Defendant South Carolina Lottery Commission violated FOIA by redacting the drawer's signatures on records provided to Plaintiff. This motion is made as a cross motion for limited summary judgment on the grounds stated in Defendant's Second Supplemental Cross-Motion for Summary Judgment, dated January 25, 2024, as the parties are in agreement there are no issues of material fact, and these grounds may be decided as a matter of law. Plaintiff's previously filed limited motion for summary judgment discussed in length the drawer signature issue addressed by Defendant. Consequently, this brief motion should be considered in conjunction with Defendant's January 25, 2024 Second Supplemental Cross-motion and any arguments made previously regarding these issues is expressly incorporated herein. Any such ground not addressed in both of these motions is either not yet ripe for consideration by the Court, is to be addressed by the parties at a later hearing or trial of this matter or is otherwise under consideration by the Court at this time.

The Plaintiff so moves on the following grounds:

1. Plaintiff is entitled to summary judgment that Defendant that Defendant South Carolina Lottery Commission violated FOIA by redacting the drawer's signatures on records provided to Plaintiff. Plaintiff request is not moot, and production of these signatures would serve the important purposes of providing an understanding of the activities of these public officials and could cloak Plaintiff's reporting of these activities within recognized qualified privilege.
2. This motion is also based on all applicable statutory law, case law, common law, and the record in this action.

Summary Judgment Standard

Under South Carolina law, "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

When "cross motions for summary judgment are filed, the parties concede the issue before [the Court] should be decided as a matter of law." Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). As cross motions have been filed in this matter on identical grounds, the parties have indeed conceded these grounds should be decided as a matter of law on the limited issues identified.

The issues before the Court on this cross motion for limited summary judgment are whether Defendant had a legal duty to supply information, pursuant to FOIA and/or the common law of the state, and whether Defendant's failure to do so is a violation of law. If the Court determines such a legal duty exists under the statute, then summary judgment as to the declaratory judgment and injunction is appropriate in Plaintiff's favor.

“This Court's primary function in interpreting a statute is to ascertain the intent of the legislature.” State v. Baker, 310 S.C. 510, 427 S.E.2d 670 (1993). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Id. “Generally, statutes are to be construed with reference to the whole system of law of which they form a part.” See 82 C.J.S. Statutes § 362 (1953). “In construing a statute, this Court is constrained to avoid an absurd result.” South Carolina Tax Comm'n v. Gaston Copper Recycling Corp., 316 S.C. 163, 447 S.E.2d 843 (1994). This matter concerns the South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. §30-4-10, et. seq., which unlike many other South Carolina statutory schemes, has a codified purpose:

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. “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (S.C. 2001)(citing South. Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978)).

Summary Judgment Application

If the statutory purpose is to be realized in this proceeding, then “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” must be given life. See S.C. Code Ann. § 30-4-15. That is, if a member of the public were trying to learn how the Lottery Commission operates in fielding

SCFOIA requests, or (in this specific motion: spending public funds), then § 30-4-100(A) must be read to require the Defendant to disclose information.

1. Plaintiff is entitled to summary judgment that Defendant that Defendant South Carolina Lottery Commission violated FOIA by redacting the drawer's signatures on records provided to Plaintiff for reasons provided in his motion for limited summary judgment filed January 19, 2024. As Plaintiff indicates in that motion, there is not a valid exemption claim for the signatures that appear on the records disputed.
2. Plaintiff's ongoing request for the signatures on Item #4 of his FOIA request is not mooted by the Defendant asserting what information was beneath the redactions, rather than revealing the information, pursuant to the request.

Defendant claims that Plaintiff's request for the signatures beneath these redactions was mooted because the then general counsel of Defendant separately emailed Plaintiff and told him the information that was beneath it. Defendant wrongly claims that a declaratory judgment would be "purely academic", and the injunction would "accomplish nothing in this case." Citing Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d, 474, 478; S.C. Lottery Comm'n v. Glassmeyer, 433 S.C. 244, 250, 857 S.E.2d 889, 892 (2021). The un-redaction of the records before the Court would establish that Defendant improperly applied an exemption to this information and would afford Plaintiff an understanding of how these records were created and (perhaps) negotiated with lottery claimants, at the core of Defendant's statutory function and plainly and activity of public officials.

Additionally, there is a meaningful legal difference between receiving the information beneath the redactions before the Court and through separate representations and documents from Defendant. If Mr. Glassmeyer were able to receive the information

beneath the improper redactions and were to publish that information truthfully and accurately, such publication would be cloaked in a qualified privilege against any claims made about that information. “The privilege extends only to a report of the contents of the public record and any matter added to the report by the publisher, which is defamatory of the person named in the public records, is not privileged.” Jones v. Garner, 250 S.C. 479, 487, 158 S.E.2d 909, 913 (S.C. 1968). If Plaintiff were to rely on the statements of Garfield regarding the identity of the presently hidden signatures, then the most protected statement he could make that would be privileged would be ‘General Counsel for the South Carolina Lottery Commission said that [the CFO] signed the check and provided a chart of the names of drawers with corresponding check numbers that matched the check in my possession.’ The privilege would not extend to a statement that a particular person signed a check (or that a particular claimant endorsed it), only production of the information presently under the redactions would afford Mr. Glassmeyer the privilege.

Defendant is wrong to say that Mr. Glassmeyer cannot avail himself of fair reporting privilege. While it is true that many reported decisions in South Carolina, including the Jones case quoted by Defendant, concern newspaper defendants. That has more to do with the fact that newspapers bought ink by the barrel and were the most frequent publishers of information over the last few centuries. Now a publisher can be anyone with a website or smartphone. If South Carolina intended to confine fair reporting privilege to journalists or the news media then it would have done so, but it hasn’t. In fact, Jones cites a case where a nonmedia defendant’s use of the privilege was upheld. “We find the trial court properly submitted to the jury the factual questions of whether Appellants abused the fair report privilege.” Jones at 487 (citing Cullum v. Dun & Bradstreet, Inc., 228 S.C. 384, 90 S.E.2d 370 (S.C. 1955). In Cullum, Cullum Motor Sales appealed the directed verdict issued in

Dun and Bradstreet’s favor “upon the ground that the testimony admitted of no reasonable inference other than the communication in question was published on a qualified occasion, and there was no evidence of malice.” Cullum at 387. The Court found that Dunn and Bradstreet was a “mercantile agency” and that after some discussion, provided a ruling that there was not sufficient evidence to take the case to the jury concerning malice, such that the fair report privilege controlled the case as a matter of law. Id. at 391.

Plaintiff is entitled to the benefit of the privilege if he is to report on his findings from these FOIA requests, but he cannot do that until he is provided with the whole records Defendant possessed in handling its statutory duties. This case is not mooted by Defendant telling Plaintiff what is in the records that they are choosing to hide from him.

This motion is also based on all applicable statutory law, case law, common law, and the record in this action.

Respectfully submitted,

s/Taylor Smith
Taylor M. Smith IV
S.C. Bar No. 101584
MERIWETHER LAW
923 Calhoun Street
Columbia, South Carolina 29201
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@meriwetherfirm.com (email)
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
February 6, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANT'S RESPONSE IN</u>
	)	<u>OPPOSITION TO PLAINTIFF'S</u>
	)	<u>SECOND SUPPLEMENTAL CROSS-</u>
South Carolina Lottery Commission,	)	<u>MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT</u>
Defendant.	)	
	)	

Defendant South Carolina Lottery Commission (the Lottery) submits this response in opposition to Plaintiff George S. Glassmeyer's latest motion for limited summary judgment. For the reasons below, as well as those raised in prior briefing, the Court should deny Glassmeyer's motions for summary judgment and grant summary judgment in favor of the Lottery.

On January 25, 2024, the Lottery filed its second supplemental cross-motion for summary judgment related to Request 4 of Glassmeyer's Freedom of Information Act (FOIA) request with the understanding Glassmeyer may file a response in opposition sometime before the deadline to file competing proposed orders with the Court. But at 4:13 P.M. on February 6, 2024, the day proposed orders were due, Glassmeyer filed another cross-motion for summary judgment on the issue instead. And he did not submit a proposed order as the Court requested. In any event, because he raised new issues, the Lottery wishes to briefly respond with three primary points.

First, Glassmeyer's claim that unredacted records "would afford [him] an understanding of how these records were created and (perhaps) negotiated with lottery claimants" is puzzling. He already received "[c]opies of all checks (front and back) and/or wire transfers issued to all persons identified in Item #1 above." Being able to see the Lottery's Chief Financial Officers' signatures—rather than understanding they signed the checks as attested by the Lottery's general

counsel Dolly Garfield—won’t provide Glassmeyer with anymore “understanding” than what he already has. They signed the checks in his possession. End of story.

Second, Glassmeyer’s claim that he could only avail himself of the fair report privilege if he had the full unredacted records responsive to Request 4 is still unavailing. For one, as the Lottery argued during the hearing, Glassmeyer “cannot manufacture standing merely by inflicting harm on [himself] based on [his] fears of hypothetical future harm that is not certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 416 (2013). After all, his argument “rests upon a ‘highly attenuated chain of possibilities’ and ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *South Carolina v. United States*, 912 F.3d 720, 731 (4th Cir. 2019) (quoting *Clapper*, 568 U.S. at 410; *Scoggins v. Lee’s Crossing Homeowners Ass’n*, 718 F.3d 262, 270 (4th Cir. 2013)).

Glassmeyer’s argument, for example, assumes that (1) he will report on checks issued to lottery claimants; (2) the check drawers as represented by Dolly Garfield will be false and defamatory; (3) someone (it’s unclear who) will sue him for that report; and (4) he will attempt to avail himself of the fair report privilege. But if Glassmeyer defamed anyone, it would logically have to be a Lottery employee. Does he really think the Lottery would or could argue its sworn representation about who signed the check was false to prove a defamation claim? *Cf. Cothran v. Brown*, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004) (delineating “requirements for the application of judicial estoppel”). Respectfully, that makes no sense. This is merely a red herring designed to confuse the issues at the eleventh hour. And it is insufficient to defeat summary judgment. *See, e.g., Garrard v. Charleston Cnty. Sch. Dist.*, 439 S.C. 596, 599, 890 S.E.2d 567, 568–69 (2023) (affirming “the entry of summary judgment due to [p]etitioners’ failure to present evidence (beyond mere speculation) in proof of their injuries”).

For another, the fair report privilege is inapplicable to Glassmeyer. While it is unclear how or why he intends to “publish that information”¹—check drawers’ signatures—there is no genuine issue of material fact that he is not a member of the press, a journalist, or part of news media. *See* Rule 56(c), SCRCF. Still, Glassmeyer attempts to parse the Lottery’s words, arguing that times have changed and “newspapers [that] bought ink by the barrel” are no longer the most frequent publishers. To be sure, the Lottery is aware of the various multi-media platforms now available to the press and other reporting members of the public. But that’s a straw man, for Glassmeyer is still not one of those platforms. The media does not encompass any person with a smartphone.

As Glassmeyer admitted, “many reported decisions in South Carolina” considering the fair report privilege concern news publishers. From the Lottery’s review, however, *all* reported decisions concern news publishers. The one case Glassmeyer cites to support his unfounded position, *Cullum v. Dun & Bradstreet, Inc.*, 228 S.C. 384, 90 S.E.2d 370 (1955), while cited in *Jones v. Garner*, 250 S.C. 479, 158 S.E.2d 909 (1968), appears to apply the common interest qualified privilege to defamation, not the fair report privilege. *See Cullum*, 228 S.C. 384, 389, 90 S.E.2d 370, 372 (1955) (stating “qualified privilege is available to a mercantile agency in respect of reports on the credit and financial standing of an individual or business concern communicated confidentially, and in good faith, to a subscriber having an interest in the particular matter”).²

¹ Notably, Glassmeyer’s arguments are at war with each other on this issue. In one breath, he says he is not “the general public” to escape application of the Family Privacy Protection Act. In the next breath, however, he wants to invoke a privilege available only to the media to publish this very same information. He cannot have it both ways. *Cf. King v. Herbert J. Thomas Mem’l Hosp.*, 159 F.3d 192, 196 (4th Cir. 1998) (preventing parties from “blowing hot and cold as the occasion demands”) (cleaned up).

² *See McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 562, 698 S.E.2d 845, 853 (Ct. App. 2010) (“When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. The statement,

Third, Glassmeyer will be able to truthfully state with certainty “that a particular person signed a check.” Garfield swore in an affidavit that the redacted drawers’ signatures belong to the people she already identified in her July 21, 2023 email to Glassmeyer and accompanying chart. Specifically, the Lottery’s current and former CFOs signed the respective checks Glassmeyer now has in his possession. And truth, of course, is an absolute defense to a defamation claim. *See Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976). As for Glassmeyer’s comment that he would not be able to state whether “a particular claimant endorsed [a check]” due to the redactions, that’s because claimant’s signatures—just like their typed names—fall under the prohibition from disclosure in Proviso 3.5 of the 2023–2024 Appropriations Act.

* * *

Because this matter is now ripe for final disposition, the Court should grant summary judgment in favor of the Lottery, deny Glassmeyer’s cross-motions for summary judgment, and dismiss the complaint, in full, with prejudice.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
February 7, 2024

however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed.” (emphasis omitted) (quoting *Bell v. Bank of Abbeville*, 208 S.C. 490, 493–94, 38 S.E.2d 641, 643 (1946))).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>JOINT STIPULATION</u>
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

Plaintiff George S. Glassmeyer and Defendant South Carolina Lottery Commission filed several cross-motions for summary judgment in the above-captioned action. The Court heard arguments on those motions on January 5, 2024. On March 4, 2024, the Court denied the motions and ordered the parties to proceed to a bench trial on March 8, 2024, to present any additional arguments or evidence in support of their respective claims and defenses.

The parties hereby agree and stipulate that all evidence, including documents and written testimony, produced and presented in this case thus far is authentic and admissible under the South Carolina Rules of Civil Procedure and the South Carolina Rules of Evidence. The Parties stipulate that this evidence should be admitted into the trial record in this case.

(Signature page to follow)

WE SO STIPULATE:

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

Counsel for South Carolina Lottery Commission

WE SO STIPULATE:

/s/Taylor Smith
Taylor M. Smith, IV (101584)
MERIWEATHER LAW, LLC
923 Calhoun Street
Columbia, South Carolina 29201
(803) 779-2211
taylor@meriwetherfirm.com

Counsel for George S. Glassmeyer

Columbia, South Carolina
March 7, 2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2023-CP-40-04854

George S. Glassmeyer,

Plaintiff,

vs.

South Carolina Lottery Commission,

Defendant.

MOTION TO RECONSIDER

YOU WILL PLEASE TAKE NOTICE that Plaintiff George Glassmeyer (hereinafter “the Plaintiff”) moves before this court pursuant to Rule 59, SCRCPP, as well as pursuant to any and all other applicable law, in the above-captioned action for an order that reconsiders, alters, amends, or otherwise undoes the order of the Court filed May 6, 2024 that granted the Defendant South Carolina Lottery Commission’s (hereinafter “the Defendant”) motion for summary judgment on all claims. Specifically, the Plaintiff humbly asks this court to deny the Defendant’s motion for summary judgment and grant the Plaintiff’s motion for summary judgment or review the file and reconsider certain findings of law or fact that appropriate. The grounds for this motion are as follows:

1. *Refusal to Provide Lottery Winners’ Names in Response to Request 1 and Other Redactions*

In the court's analysis regarding Glassmeyer's complaint that Lottery improperly refused to provide the names of lottery winners in response to his Request 1, the court conflates two distinct causes of action, those being contract law and FOIA compliance.

As provided in the 2022 settlement agreement between the parties (a contract), it was agreed that if the General Assembly did not enact legislation addressing the disclosure of winners' names by May 31, 2023, that Lottery would provide such names in

response to FOIA requests after that date. It is undisputed that the General Assembly failed to enact such legislation on or before May 31, 2023 as it is also undisputed that Lottery received a FOIA request from Glassmeyer for such names on June 21, 2023. The very moment that Lottery received Glassmeyer's FOIA request all conditions and terms of the agreement had been satisfied and Lottery had an immediate duty to provide the winners' names, as per the contract. The fact that Lottery had 10 business days to respond to the associated FOIA request did not transform the contract into a FOIA request. Rather, the FOIA issues are separate and distinct.

As to the FOIA request, the court correctly states that Lottery had the equivalent of ten business days after receipt of Glassmeyer's request to respond with its determination as to the availability of the public record and that on the tenth day that the referenced budget Proviso had already become effective, which barred Lottery from releasing winners' names. However, it is important to note that Section 30-4-30(C) provides the public body with these ten days to allow it to make a determination as to the public availability of the requested records. Glassmeyer would submit that Lottery did not require, nor should it be allowed, any time to make such a determination as to winners' names as that determination had already been made by mutual consent of the parties in the 2022 settlement agreement. Thus, Lottery could, and should, have notified Glassmeyer that the winners' names were immediately available on or about receipt of his FOIA request which was well before the Proviso became effective.

2. *Claim for Relief under Section 30-4-110(A) in Response to Requests 5, 12, and 18*

The Defendant argues that it would be unduly burdensome to comply with Requests 5, 12, and 18. The cost of responding to those requests is but one consideration. The

Defendant assets, via the Nichols affidavit, that capital, human resources, time, and effort would also be required.

However, the Defendant's problem is one of their own makings. As to the cost, the Defendant had the option to institute and post a FOIA fee schedule to its website. The Plaintiff sued the Defendant in 2022, for failure to post a fee schedule as required by S.C. Code Ann. § 30-4-30(B) "The public body shall develop a fee schedule to be posted online." The Defendant responded in its answer that "Defendant admits that no fee schedule is posed to its website because no such schedule exists. Defendant does not charge, and has never charged, citizens for costs associated with responding to FOIA requests." The court agreed and granted summary judgment to the Defendant applying that rational.

Had the Defendant elected to post a fee schedule, S.C. Code Ann. § 30-3-30(B) provides that the Defendant could have notified the Defendant that the estimated cost to produce the requested documents under FOIA would have been approximately \$10,000,000 (the Plaintiff does not dispute that amount) and that the Defendant would require the Plaintiff submit a deposit equivalent to 25% (\$2,500,000) of the estimated cost before the Defendant would start producing the documents requested. As the Defendant affirmatively elected not to post the fee schedule, it denied itself this option. Ironically, the same statute also states that even if a public body posts a fee schedule, it may still provide documents without a charge at its discretion. The Defendant now complains that providing the Plaintiff with the documents requested would be too costly is inconsistent with the Defendant's insistence that it does not charge the public for FOIA requests now brings the Defendants veracity as to this issue into question.

Give the fact that it is unlikely, to say the least, that the Plaintiff or any potential requesting party, would have the resources to make such a required deposit, the Defendant would have a legitimate reason for denying the Plaintiff's request without incurring any expenditure, and this issue would not be before the court. This, in the final analysis, money is indeed the sole metric that warrants consideration.

3. *Signatures on checks signed by Defendant, a public body*

Glassmeyer stated in the preamble to his FOIA request that he was seeking the information therein because he was concerned about possible continuing embezzlement of public funds. Forgery of checks is a classic method used to embezzle funds and comparing signatures on the checks provided and verifying their authenticity is certainly consistent with a forgery investigation.

In response to Glassmeyer's Request 4, Lottery failed to provide images of drawer(s) signature(s), relying on the Family Privacy Protection Act. Upon receipt of Lottery's documentary response, Glassmeyer promptly replied in his email that Lottery's response did not satisfy him and that he was requesting images of the drawer(s) signatures. Lottery continued to refuse to provide them. Lottery admits that it issues tens of thousands of checks per year. For each of those checks to be negotiable, the drawer(s) signatures must be visible. Given that each payee is at liberty to view, copy, and publish copies of those signatures at will, Lottery's assertion that there is any legitimate privacy concern is clearly without merit.

4. The Plaintiff incorporates herein by reference all previous arguments in this action. Plaintiff appreciates the Court seeking motions and memorandums on issues in this matter. There is much provided in this matter where there was no fact in issue and the Plaintiff would appreciate the Court's view of it again, if possible.

Upon information and belief, consultation with opposing counsel concerning the substance of this motion would not have served any useful purpose.

Respectfully submitted,

/s/ Taylor Smith
Taylor M. Smith IV
S.C. Bar No. 101584
MERIWETHER LAW, LLC
923 Calhoun Street
Columbia, South Carolina 29201
(803) 779-2211
taylor@meriwetherfirm.com (email)
ATTORNEY FOR PLAINTIFF
GEORGE GLASSMEYER

Columbia, South Carolina
May 16, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
George S. Glassmeyer,	)	Civil Action No.: 2023-CP-40-04854
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANT'S RESPONSE IN</u>
	)	<u>OPPOSITION TO PLAINTIFF'S</u>
South Carolina Lottery Commission,	)	<u>MOTION TO RECONSIDER</u>
	)	
Defendant.	)	
	)	

Defendant South Carolina Lottery Commission (the Lottery) submits this response in opposition to Plaintiff George S. Glassmeyer's motion to reconsider under Rule 59(e), SCRCP. For the reasons below, as well as those raised in prior briefing, the Court should deny Glassmeyer's motion and let its well-reasoned order granting summary judgment in favor of the Lottery stand.

Our supreme court has recognized "two basic situations in which a party should consider filing a Rule 59(e) motion." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Under the rule, "[a] party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* And "[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* Neither circumstance is present here. Still, Plaintiff presents three primary arguments in his motion. The Lottery will address each in turn.

First, Plaintiff's new effort to distance FOIA from the settlement agreement is misguided. As Plaintiff recognizes, the settlement agreement said what the Lottery would do "in response to FOIA requests." Pl.'s Mot. to Recons. at 1–2; *see also* Ex.1 to Def.'s Mot. for Summ. J. at 2 ("If the South Carolina General Assembly does not enact legislation addressing this specific issue by

such date, then the South Carolina Lottery Commission will provide the full names, cities, and states of lottery prize claimants *in response to FOIA requests* after that date.” (emphasis added)). Plaintiff served a *FOIA request* on the Lottery. So the provisions of FOIA applied to the Lottery’s “response,” *id.*, to Plaintiff’s FOIA request under the plain and unambiguous language of the settlement agreement. *See Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002) (“Basic contract law provides that when a contract is clear and unambiguous, the language alone determines the contract’s force and effect. It is not the function of the court to rewrite contracts for parties.” (internal citation omitted)).

Where, as here, Plaintiff served the Lottery with 17 other voluminous requests near the July Fourth holiday, his argument that the Lottery was required to instantly respond with its initial determination and production for this one item is misplaced. Nor does the statute require such a piecemeal response. *See* S.C. Code Ann. § 30-4-30(C) (giving public body 10 business days to provide determination and then 30 calendar days to produce). At any rate, the Court already considered and rejected Plaintiff’s argument on this front, and nothing in his motion warrants revisiting those rulings.

Second, Plaintiff insists on misemploying the Lottery’s transparency-driven decision not to charge fees, arguing that somehow waives any objection to his far-reaching requests. Yet nothing in the separate section providing agencies an avenue for relief from harassing FOIA requests predicates that relief on the agency first posting a fee schedule. *See* S.C. Code Ann. § 30-4-110(A). And the Court already found money was not the only consideration. Plaintiff continues to ignore the time and resources the agency would have to devote—regardless of cost—to respond to his “unduly burdensome, overly broad,” and “otherwise improper requests.” *Id.* But the statute does not cabin its applicability to expensive requests only, and the Court should reject Plaintiff’s

invitation to redline the statute to adopt his preferred outcome, which he admits would have given him *less* information than what the Lottery provided here. *See Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (noting a court “cannot rewrite the statute and inject matters into it which are not in the legislature’s language”); *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137, 143 (1999) (“Statutes should not be construed so as to lead to an absurd result.”).

Third, the Court already considered and rejected Plaintiff’s argument about the Lottery CFO’s signature on checks, and he offers nothing for the Court to reconsider. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691–92 (Ct. App. 2001) (“conclusory” assertion with “no supporting authority” “is insufficient to preserve the argument”). And his catchall for “all previous arguments” does not put the Lottery or the Court on notice of any specific ground the Court should “alter or amend.” Rule 59(e), SCRCF; *cf. United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (“Judges are not like pigs, hunting for truffles buried in briefs.”).

In sum, the Court carefully considered the evidence and extensive briefing in this case, holding three hearings along the way. Respectfully, a fourth hearing is unnecessary: Plaintiff’s motion offers nothing new. The Court should instead deny his motion via Form 4 order.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

*Counsel for Defendant South Carolina
Lottery Commission*

Columbia, South Carolina
June 3, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COURT OF COMMON PLEAS

Honorable Daniel Coble

Case No. 2023-CP-40-04854

George S. Glassmeyer..... Appellant,

v.

South Carolina Lottery Commission.....Respondent.

NOTICE OF APPEAL

George S. Glassmeyer appeals from the Court of Common Pleas of the Fifth Judicial Circuit, specifically the Order Denying Plaintiff's Motion for Reconsideration, pursuant to Rule 59(e), SCRCF, filed July 19, 2024, (a copy of which is provided to the Court of Appeals with this notice) that affirmed its Order Granting Defendant's Motion for Summary Judgment dated May 6, 2024 (also provided with this notice).

Appellant received written notice of the entry of this order on the date each order was filed.

August 6, 2024

Respectfully submitted,

/s/ Taylor Smith
Taylor M. Smith IV
SC Bar No. 101584
MERIWETHER LAW
923 Calhoun Street
Columbia, South Carolina 29201
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@meriwetherfirm.com (email)
ATTORNEY FOR APPELLANT

Other Counsel of Record:

Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com
ATTORNEYS FOR RESPONDENT

1 STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 5
2 COUNTY OF RICHLAND) DOCKET NO. 2023-CP-40-04854
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5 _____
6 GEORGE S. GLASSMEYER,)
7 Plaintiff,)
8 versus)
9 SOUTH CAROLINA LOTTERY COMMISSION,)
10 Defendant.)
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14 H E A R I N G
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19 DATE: October 13, 2023
20 LOCATION: South Carolina Circuit Court 5
JUDGE: Daniel Coble
TRANSCRIBED BY: Jeanne Meldrim

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22 LEGAL EAGLE
Post Office Box 5682
23 Greenville, South Carolina 29606
864-467-1373
24 depos@legaleagleinc.com
25

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APPEARANCES:

Taylor M. Smith, Esquire
Meriwether Law
923 Calhoun Street
Columbia, SC 29201
Attorney for the Plaintiff

Lisle Vordman C. Traywick, III, Esquire
Robinson Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211
Attorney for the Defendant

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EXHIBITS

(No exhibits marked)

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

1 THE COURT: Good morning, ladies and gentlemen.
2 We're going to go ahead and get started with the one and
3 only case on the docket this are morning. Glassmeyer
4 versus South Carolina Lottery Commission. This is the
5 defendant's motion --- partial motion to dismiss. I'm
6 happy to hear from you Mr. Traywick.

7 MR. TRAYWICK III: That you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes, sir.

10 MR. TRAYWICK III: Lisle Traywick on behalf of the
11 defendant, South Carolina Lottery Commission.

12 So just to give you a little bit of context for ---
13 for how we got here: In --- over the last decade, Mr.
14 Glassmeyer has been interested in information about the
15 winners and lottery prizes, and served FOIA requests on
16 the agency to that effect.

17 There was some prior litigation between the parties
18 that resulted in some settlement on remand from the
19 Supreme Court of South Carolina. And under that
20 settlement if no action is taken by May 31st and Mr.
21 Glassmeyer submitted FOIA request thereafter, the Lottery
22 Commission would no longer withhold winner information.

23 The session, however, the general assembly has part
24 of its budget process in passing the annual
25 appropriations act, decided that it did not want the

1 Lottery Commission winner information other than
2 information that will certainly give the public notice
3 that these are, in fact, legitimate prizes. And that
4 information includes, the --- where the ticket was
5 purchased, the amount, the date, and other sort of
6 reassuring information that would give the public
7 confidence without invading the privacy of the
8 individuals who won and came into a large sum of money.

9 And so the issue here is really one of when this was
10 served and when a response came due. So the dates were
11 pretty important. The Lottery Commission received this
12 request from Mr. Glassmeyer on June 21, 2023. The budget
13 was ratified on June 14, 2023, and the governor issued
14 his vetoes on June 20, 2023. Those vetoes did not
15 include proviso at 3.5 which is that issue here. And so
16 that budget took effect on July 1, 2023. Now, under the
17 statute, Your Honor, and that's section 30-4-30(c) South
18 Carolina Code, the Lottery Commission gets ten business
19 days to respond and give an initial determination
20 regarding the FOIA request that's received.

21 And let me take a step back for a second because
22 this was not the only information sought in Mr.
23 Glassmeyer's June 2023 FOIA request. It was 118 requests
24 that sought among other things, every e-mail to and from
25 every single agency employee, copies of every check

1 issued or received over a two-year period, and among
2 other things. So this required a robust response from
3 the public body and spent quite a bit of time complying
4 with that to issue an initial determination.

5 And might I remind you of course that it fell over
6 the July 4th holiday when a lot of people are not around
7 the office.

8 So when a response came due under the statute on
9 July 5th, the budget was in force and therefore it was
10 illegal for the Lottery Commission to provide these names
11 as requested. And so thereafter the lottery cited that
12 provision which does not appear in the complaint in
13 support of its decision not to provide the information
14 consistent with the law and the public policy as
15 expressed by the General Assembly in South Carolina.

16 So that brings us to the cause of action and the
17 plaintiff's complaint here which is the one
18 (unintelligible) the breach of contract. So of course
19 the settlement agreement said what it said. And I ---
20 and I mentioned that earlier. But an agreement cannot
21 require a party to perform an act that contravenes the
22 law for the public policy to take. And so therefore, our
23 argument is a simple one. When a response came due on
24 July 5th for providing a determination under FOIA, which
25 we did, the Lottery Commission was without authority to

1 provide this information. And it certainly was without
2 authority to provide the information and produce the
3 documents 30 days later as contemplated under Section
4 30-4-30(c).

5 So therefore when a contract is originally legal,
6 but performance becomes illegal due to a change in law,
7 any subsequent performance is against public policy and
8 the party who has agreed to perform is excused from doing
9 so. And Your Honor, that's from White v J.M. Brown
10 Amusement Company. We've cited it in our brief.

11 And so under that theory, plaintiff fails as a
12 matter of law to say facts sufficient constitute a cause
13 of action sounding breach of contract and the Lottery
14 seeks partial dismissal of the complaint on that basis.

15 I'm happy to answer any questions the Court might
16 have.

17 THE COURT: I was muted. You said partial
18 dismissal, what --- what are you partially --- causes of
19 action or --- or what's the --- what do you --- which
20 cause of action are you seeking to remain, essentially?

21 MR. TRAYWICK III: Sure. Yes, Your Honor. So
22 he --- he seeks a number of other requests with which he
23 takes issue. And I think we're going to get to some of
24 them here. Mr. Smith and I spoke on the phone this
25 morning and --- if it suits, Your Honor, we'd like to

1 take up his motion to dismiss our counterclaim in which
2 we're requesting a hearing from the Court under Section
3 30-4-110(a) of the South Carolina code to seek relief
4 from unduly burdensome or otherwise improper requests
5 under FOIA.

6 So what we're --- to answer your question, what
7 we're seeking dismissal is the breach of contract cause
8 of action and any requests for a determination under FOIA
9 that our agency's refusal to provide the names was ---
10 was con --- con --- in contravention to the law.

11 THE COURT: Okay. Thank you. I'm ---

12 MR. TRAYWICK III: So the remainder of the case
13 would remain.

14 THE COURT: Okay. Thank you. Yes, sir, Mr. Smith.

15 MR. SMITH: Thank you, Judge Coble. Good morning.
16 I represent, as he said, George Glassmeyer, the plaintiff
17 in this action. And so as he said, we're here on a
18 motion to dismiss pursuant to 12(b)(6) concerning
19 facts --- failure for facts sufficient to constitute a
20 cause of action.

21 And so here the argument is that the law changed not
22 before the parties entered into this contract. You can
23 go to paragraph 28 of the complaint, Your Honor, if you
24 want to look more closely what the allegations are that
25 are our concern. But basically, we're trying to say that

1 if we're following the 12(b)(6) standard, the --- the
2 allegations here are true for purposes of your analysis.

3 And therefore if you did not find any law, Your
4 Honor, that would afford relief under these facts, then
5 that would be an appropriate dismissal of this cause of
6 action.

7 Now look, there is definitely going to be in this
8 case, I would imagine, a summary judgment filed later by
9 defendant concerning impossibility as to whether or not
10 they could perform pursuant to what their obligations
11 were under the agreement. But what we're here today on
12 is just have we pled a cause of action for breach of
13 contract. And here, Your Honor, on paragraph 28, if you
14 think we haven't then definitely, it's open for dismissal
15 here.

16 Now further, we don't disagree with their bringing
17 in, if Your Honor wants to construe the --- the
18 settlement agreement. Because on the substance, I can
19 definitely argue about what obligations are here or
20 here --- or --- or there on that and what is due when.
21 But I think, Your Honor, to get into that, that would
22 then require you to go into the defenses that might be at
23 play concerning what performance would be due when, et
24 cetera, et cetera.

25 Here the only point I'm raising, Your Honor, is that

1 just this issue concerning whether or not the proviso was
2 in effect, what was enacted, what was not, et cetera, is
3 something that amounts to them making a defense of
4 impossibility regarding performance which is not ripe on
5 a motion to dismiss.

6 And so Your Honor, that is our first point as a
7 procedural matter on 12(b)(6) that it --- if this states
8 a cause of action, it states a cause of action. And so,
9 which I hope we can address with Your Honor, Mr. Traywick
10 and I would like to establish if we can get a scheduling
11 order in place which the statute requires to complete
12 this action within six months. And we can address, you
13 know, how are we going to handle dealing with that.
14 Because I don't think there are many issues of fact. I
15 think it is largely going to be a legal issue.

16 It's just not ripe on a motion to dismiss, because
17 if they will establish, Your Honor, as a matter of fact,
18 that they could not have --- because the statute was
19 enforced at the time they were to perform, then that
20 would amount to potentially, Your Honor, a issue that
21 meant they could not lawfully. And that would say they
22 have to construe then their duties at that time. That is
23 not in our complaint, that is not what is before the
24 Court on a motion to dismiss. And so I think it's not
25 ripe at this time.

1 Your Honor, I would just also point out that if we
2 are going to jump to the substance of the argument
3 concerning whether or not they could or could not have
4 responded, then we're assuming that this agreement was in
5 force and that they had a duty to respond, and at what
6 time would they have that duty to respond.

7 Well, Your Honor, in our complaint we showed that he
8 was required in that settlement agreement to not supply
9 a --- a request --- a FOIA request to them to get this
10 information, that until May 31, 2023, he was prohibited
11 from doing so. There is no dispute factually as to when
12 the request comes in.

13 And so what we're talking about here is does the
14 allegations of the complaint state that he did comply
15 with his part of this deal? Well, they're not saying he
16 didn't. So it is stated here that what we're doing is
17 we're analyzing after he has performed, because that is
18 the allegations of the complaint, what is it that
19 enactment means pursuant to that settlement agreement.

20 And Your Honor, enactment as Black's Law has pointed
21 out to us as I'm going to just briefly read here from its
22 first definition is to make into law by authoritative
23 act. And so what would be under FOIA, any public body's
24 obligations in responding to a request? Well, you can
25 see from 30-4-30 that they have a duty to make a written

1 determination after receiving your request within ten
2 business days for requests that are younger than two
3 years. The legal obligation for a public body then is
4 after seeing a request to make such a determination.

5 The request was sent on June 16th. This doesn't
6 become law until after June 16th, as Mr. Traywick said,
7 in July. They had a duty to make a written determination
8 beginning on June 16th. To buy the argument that they
9 don't have to perform under this, again, improper, we
10 believe on a 12(b)(6) motion. But to buy the argument
11 that they don't have to perform because of legal
12 impossibility you would have determine that they did not
13 have a legal duty to respond to the request beginning on
14 June 16th. Because otherwise you would be enforcing a
15 policy that if the law does change, what they can do is
16 wait until the law favors them, then say that that's the
17 period they had to respond to the request. And then once
18 they've --- they've done so, what do you know, it's
19 illegal now.

20 These entities contemplated this in the breach --- I
21 mean, excuse me, in the contract. And the reason we're
22 saying that this is a breach of contract case, Your
23 Honor, in addition to a FOIA cases is that he was asked
24 by the Lottery Commission last --- a few --- when this
25 was signed, this agreement, to send in a FOIA request.

1 That's what they asked him to do. And so his performance
2 under the settlement agreement to get what he wanted was
3 to wait one year to agree not to submit a FOIA request
4 for one year. After the one year, because there was no
5 law changed in contemplation of the agreement which the
6 parties discussed in the settlement agreement, which is
7 cited in paragraph 28 of our complaint.

8 It is at that point he files a FOIA request pursuant
9 to his contractual abilities to do so under the
10 settlement agreement. They had not enacted a law at the
11 time that his request is isn't in to change the position.
12 It is enacted after he sends in his FOIA request. But
13 crucially, Your Honor, for purposes of this motion, these
14 allegations constitute facts sufficient to say that he
15 performed under the contract as contemplated between the
16 parties and their failure to do so is the breach.

17 THE COURT: Thank you. Any response, Mr. Traywick?

18 MR. TRAYWICK III: Sure, if I might briefly in
19 reply, Your Honor. In terms of --- of, you know,
20 reviewing facts sufficient to constitute a cause of
21 action, all we're asking you to do here is to review a
22 contract and some statutes. These are all the questions
23 of law that are readily discernable and --- and decidable
24 on a motion to dismiss even under 12(b)(6). As Mr. Smith
25 conceded you can consider the settlement agreement.

1 That's (unintelligible) of law, that's --- and --- and
2 all the correspondence between the parties.

3 Also the facts are not in dispute in terms of what
4 the timeline is. That's established in all the pleadings
5 and then under Brazell v. Windsor, and that's 384 SC
6 (unintelligible) 16. You can consider the settlement
7 agreement that's been incorporated by reference.

8 Also, duty is a question of law for the Court.
9 There have never been any facts there have never been any
10 facts (unintelligible) to decide to --- to render a
11 decision here. All we're asking you to do is just
12 dismiss the complaint, say we did not violate FOIA or the
13 contract by not providing information the law forbade us
14 from providing.

15 And --- and while he wants to quibble about what the
16 proper time frame is, again, that's a question of law for
17 the Court. And we certainly did not ask him to send FOIA
18 requests as --- as Mr. Smith indicated. The --- the
19 settlement agreement said that he would not send FOIA
20 requests while this matter was submitted to the General
21 Assembly for its consideration on what the public policy
22 in South Carolina should be. (Unintelligible) spoke on
23 that.

24 It's not like he submitted this FOIA request on
25 June 1st and a response would have come due within the

1 time frame predating their special public policy or the
2 enactment of the State budget that --- that forbade us
3 after July 1st from doing it. Instead he sent this out
4 on the 16th, and we didn't get it till the 21st. And by
5 then the General Assembly and the governor had already
6 taken action and said this is the public policy in South
7 Carolina.

8 And when a response came due right after the
9 July 4th holiday and to this request as well as the 17
10 others, the law didn't allow us to provide this
11 information. So the --- the timing really is a product
12 of Mr. Glassmeyer's influences with --- with the state.

13 We think this --- this issue is readily resolvable
14 by the Court (unintelligible) we would ask that you would
15 appropriately limit the case so that we can focus on the
16 other issues and enter an order of partial
17 (unintelligible) thank you.

18 MR. SMITH: Your Honor, briefly, if I may, just in
19 response to that. I was thinking that this was going to
20 apply primarily to our breach of contract action, but it
21 seems he's expanded this to our FOIA act. I would say
22 that to the extent now you think that the proviso does
23 deal in some way with the applicability of any law that
24 would say that we did not provide a FOIA request and they
25 had a duty to respond to that, then I think

1 (unintelligible) also, but that's just simply not
2 possible. I mean, this proviso have applied
3 (unintelligible) winners names, it would not apply to all
4 other responses, information pursuant to the request,
5 which concern numerous times of information.

6 So Your Honor, I --- I think it would ever be
7 appropriate to construe even if Your Honor agrees with
8 Mr. Traywick's able argument concerning when the proviso
9 was enacted that that would also apply to dismissal of
10 the FOIA cause of action. To the extent we're talking
11 about winner's name, Your Honor, perhaps under the
12 proviso, this case concerns more than just one
13 (unintelligible).

14 MR. TRAYWICK III: Judge Coble, I --- I didn't
15 mean --- I --- I think he might have misconstrued my
16 argument. I --- our argument is just as it relates to
17 the winner information. I'm not talking about the other
18 claims. The argument is that the proviso prevented us
19 from providing that information so we're seeking
20 dismissal (technical difficulty) cause of action and to
21 the extent as I read the complaint it (unintelligible)
22 violation of FOIA.

23 MR. SMITH: And I'm sorry about that, Your Honor, if
24 I mischaracterized what he said. I just --- I finally
25 want to point out that the duty to respond to a FOIA

1 begins after you receive the request. It is unlawful
2 after the 10th business day from when you received the
3 question to (unintelligible). So the duty begins that
4 day.

5 THE COURT: Okay. Well, y'all give me a lot to
6 think about. So what I'm going to do for the partial
7 motion to dismiss, I'm going to take that under
8 advisement, review the memos in support and what --- what
9 has been provided.

10 Now, Mr. Smith, I'm reviewing procedurally, with
11 this case. It looks like it was filed mid-September and
12 I saw you requested expedited hearing. My question,
13 though, procedurally, because it's a breach of contract
14 and a FOIA, breach of contract, does that take you
15 outside of the statute because they give you an expedited
16 hearing? Because I could hear the FOIA, but there's a
17 breach of contract, we can't --- there's different
18 damages there.

19 MR. SMITH: Your Honor, it could. To be honest with
20 you, I don't know. I know that if this was a pure FOIA
21 case, then I'm with you. The applicability would be that
22 when the request is made, the timeline is triggered under
23 the statute. Because this does concern a --- a breach of
24 contract though, that is triggered by a FOIA request then
25 that is something that I think is novel.

1 So Your Honor, Mr. Traywick and I, I think have come
2 to kind of an agreement that we hope that we can expedite
3 this action. And so I don't think he's in objection to
4 us trying the breach of contract faster necessarily than
5 the FOIA. If he is, I think we could work out in a
6 different timeline to appease Your Honor.

7 THE COURT: I'm reading through the compliant, it
8 looks like what you're seeking --- or essentially the ---
9 for the breach of contract and the FOIA, your --- your
10 prayer for relief is the same thing that you find under
11 FOIA, which is attorney's fees, and costs, and this
12 information. So it's the same --- whether it's breach of
13 contract, you're not seeking contractual remedies
14 necessarily that you're seeking the FOIA remedies either
15 way?

16 MR. SMITH: I think if we were to succeed on
17 everything, Your Honor, we definitely have to elect our
18 remedies. And to the extent you title that is specific
19 performance providing winner's names, or you call it an
20 injunction under FOIA, that's not material here. Because
21 you're right. That --- it's just the attorney's fees
22 under FOIA (unintelligible).

23 MR. TRAYWICK III: And --- and I want, Your Honor,
24 to the extent that he is seeking attorney's fees, as you
25 well know South Carolina follows American rule. Our

1 settlement did not provide.

2 Anyway for attorney's fees stemming from a breach
3 thereof.

4 THE COURT: The attorney's fees would come through
5 the statute then only --- the FOIA statute?

6 MR. SMITH: Correct, Your Honor. Correct.

7 THE COURT: If --- if you were to win? When it
8 comes to scheduling and the --- the ten-day expedite.
9 You haven't had the hearing --- I mean, this got put on
10 the --- the docket before the --- the ten-day hearing
11 essentially, correct, Mr. Smith?

12 MR. SMITH: It --- it did. You're right, Your
13 Honor. But I --- it did after my request within the ten
14 days. I did comply with the statute. So I --- this is
15 the initial hearing is the way I'm regarding this Your
16 Honor. If what we can do from this and I understand your
17 authority, Your Honor. And you might be constrained. If
18 we can at least work to establish a scheduling order
19 today concerning what is left after Your Honor's decision
20 regarding whether or not for instance we even have breach
21 of contract cause of action, because you grant a motion
22 to dismiss, for instance. These are the kinds of things
23 that we --- that Mr. Traywick and I were hoping this
24 initial hearing could help solve.

25 THE COURT: Only thing I can do is --- well, first

1 and foremost, I can make a decision on this partial
2 motion to dismiss and give you some clarification there.

3 As to scheduling, the only thing I can try to help
4 you out with is I put you back on the next time I'm --- I
5 have common pleas for Richland County. Common pleas
6 non-jury. I think the next time I have that is in
7 mid-December. I mean, I could go ahead and schedule
8 y'all for mid-December and y'all can tell me what you
9 want to do at a hearing whether it's virtually or in
10 person. Or you can --- if I can't help you there, then
11 you --- you have to go to the chief administrative judge.

12 If it's all about consent, you know, we can kind of
13 do as we see fit. But if it's --- if it's not, you're
14 going to have to go to that --- the chief.

15 MR. TRAYWICK III: Your Honor, one --- one practical
16 issue. My wife is due December 19th so I'm a little ---

17 (Simultaneous speaking)

18 THE COURT: --- sounds like.

19 MR. TRAYWICK III: That's right. I'm a little
20 hesitant to schedule anything in December. But --- but I
21 agree with Mr. Smith and --- and we had a great
22 conversation earlier and --- and we're of course willing
23 to expedite this and try to get it all finished within
24 the six months as contemplated under the statute
25 regardless of whether (unintelligible) breach of contract

1 or under FOIA. But I --- I certainly understand Your
2 Honor's point regarding limitations on what can do what
3 with scheduling.

4 I think, you know, in an ideal world we would look
5 for another hearing depending on Your Honor's ruling
6 maybe by the end of November. But, you know, the bottom
7 line is that under the statute the six months is
8 March 15th, so we really just need to work back from
9 that. So I think we have some time here. But I
10 would --- I would appreciate some protection to mid ---
11 mid-December.

12 THE COURT: All right. I understand the --- those
13 circumstances. So I --- this is what we'll do. We're
14 going to take this under advisement. After I rule on the
15 motion I'll probably get a proposed order from the
16 prevailing party and then I'll let you reach out to the
17 chief administrative judge, or you can reach out --- back
18 out to me if there's something I can do to help you, but
19 otherwise, the chief administrative judge. You let them
20 know what y'all's issues are that you need to be
21 scheduled. And I'm more than happy to get it put back on
22 the next time I have Common Pleas non-jury, you know,
23 if --- if that's appropriate.

24 But let me take this under advisement and I'll have
25 a decision to you relative --- relatively shortly, next

1 week or two.

2 MR. TRAYWICK III: Thank you, Your Honor. And ---
3 and if it --- if it pleases the Court, I know Mr. Smith
4 last week filed a motion to dismiss and strike our
5 counterclaim. And if Your Honor has time, I understand
6 you've got the --- you know, the Richland County event
7 coming up soon, but if Your Honor has time this morning,
8 I believe we're both prepared to move forward on that.

9 THE COURT: In y'all are ready to forward, I'm happy
10 to hear it.

11 MR. SMITH: Your Honor. I mean, I can --- I can ---
12 we can go ahead and do that right now if that works for
13 you.

14 THE COURT: All right. Tell me what motion this is.

15 MR. SMITH: So Your Honor, this is our --- our
16 motion that we filed last week. This concerns an
17 argument that we're making pursuant to 12(b)(6) and
18 12(f). Concerning their counterclaim and defense
19 regarding it being unduly burdensome, overly broad, or
20 otherwise improper for them to respond to some of these
21 requests.

22 THE COURT: What's the --- what's the counterclaim?

23 MR. SMITH: That --- that --- that is the
24 counterclaim, Your Honor. (Unintelligible). If you go
25 to --- I'm sorry, I want to make sure I give you the

1 exact citation to their document, Your Honor. Or
2 actually, I do not have that up. Hold on a second here.

3 MR. TRAYWICK III: If I can help move this along.

4 THE COURT: Yeah, sure.

5 MR. TRAYWICK III: So the counterclaim is a request
6 for relief and a hearing under Section 30-4-110(a). For
7 remedy ---

8 (Simultaneous speaking)

9 MR. TRAYWICK III: --- from the --- from that ---
10 those requests and it concerns three requests.

11 MR. SMITH: That's right, Your Honor. And so to
12 give you specific page, that is page 14 paragraph 55
13 through 77 as to their complaint. The counterclaim,
14 excuse me --- in their --- their answer. So Your Honor,
15 what we're doing here is we're saying that if you go to
16 the --- the statute that concerns this matter, that being
17 FOIA, and you're looking at what is 30-4-110(a), which is
18 where you have that language concerning what they have to
19 do. The language provides that they have to request a
20 hearing. Specifically it reads: A public body may file
21 a request for a hearing with the Circuit Court to seek
22 relief from unduly burdensome, overly broad, vague,
23 repetitive, otherwise improper requests, or where if
24 received a request was unable to make a good faith
25 determination as to whether the information is exempt

1 from disclosure.

2 Your Honor, this is a --- one of the 2017 revisions
3 to FOIA. You're not going to find a reported decision
4 yet on this. So this is novel as to its use as a
5 counterclaim in the terms of there not being a reported
6 decision about whether it's proper or not.

7 It is my point, Your Honor, that if you were to look
8 at the statute, specifically 30-4-15 and its codified
9 purpose which we cite in our verified compliant. It
10 reads that there is the stated purpose of FOIA to make
11 sure that it is vital in a democratic society that public
12 business be performed in an open and public manner. And
13 that public --- and that citizen shall be advised of the
14 warrants of public officials and decisions that are
15 reached in public policy in the formulation of public
16 policy.

17 And so importantly, Your Honor, and this is
18 codified: Toward this end, provisions must be construed
19 to make it possible for citizens or their representatives
20 to learn and report fully the activities of their public
21 officials at minimum cost or delay to the person seeking
22 access to public documents or meetings. And that FOIA
23 has been construed and by our Supreme Court to be
24 remedial, Your Honor, and that it has to be liberally
25 construed towards that purpose that's codified.

1 So the question before Your Honor is in a case in
2 which a defendant in a FOIA case has said that it's
3 unduly burdensome for them to make a --- a response to a
4 request at the point at which a requester has hired
5 counsel or has brought an action themselves, pro se, is
6 it not more delay and/or cost for a plaintiff in that
7 case to actually litigate that issue. This is not to say
8 that they can never use the statute, Your Honor, but it's
9 just to say that to use the statute would be to put that
10 front and center such that they then have to make that
11 determination initially in the case because they sued the
12 requester.

13 You have to now, Court, tell them, that it's unduly
14 burdensome for us to respond. That's what 110
15 contemplates. Because a public body it says, may file a
16 request for a hearing. That never happened in this case.
17 Instead, pursuant to again, what was in the contract
18 about how he would need to make a request
19 (unintelligible) that being a FOIA request. And through
20 making a FOIA request, he has triggered duties for them
21 to respond.

22 They did say at that point it would be unduly
23 burdensome. But at no point between when the request is
24 made and when this action is filed do they seek a hearing
25 before the Court concerning that.

1 Now, Mr. Glassmeyer has to defend a counterclaim
2 brought by the public body against him in a case he
3 brought to say --- to say that they violated FOIA by not
4 providing responsive information.

5 It might be appropriate, Your Honor, to use as a
6 defense, but we don't believe that's the case either.
7 What it's certainly not proper for is this to be a
8 counterclaim that then potentially puts the public body
9 in the position of arguing that they can succeed in a
10 lawsuit against a citizen of the state on seeking
11 information of the public body that a limit in
12 determination regarding what is transparency, how to make
13 decisions in our democracy.

14 And so the public policy nor 110, allow for this to
15 be used in this manner because theoretically, what it
16 could do is it would allow public bodies to sit back and
17 wait until they're sued and then turn around and muddy
18 litigation to the point in which they're now saying this
19 is unduly burdensome for us to respond. Now you have to
20 defend the counterclaim in addition to seeing if you
21 prevail, rather than just sitting back and relying on a
22 defense.

23 Regarding a defense, Your Honor, then that just
24 comes out of our pure and procedural argument under
25 12(f). This has to be struck as a defense because there

1 is not a hearing sought at any point in this
2 counterclaim. You can look at it, they're not saying
3 they sought a hearing. They're saying that this is a
4 counterclaim in this action. And so you can strike this
5 as a defense because they have indicated that they have
6 not exercised 30-4-110 in the manner that is required.

7 And so, Your Honor, that's our motion to dismiss and
8 motion to strike regarding their counterclaim.

9 THE COURT: Let me ask you this is I understand the
10 FOIA statute, but does this --- do I not have to --- if
11 I'm to agree with you, do I have to also make the
12 finding --- maybe not --- their counterclaim is
13 permissive and not compulsive, because if --- I mean,
14 would they lose this if they don't file it? Because ---

15 MR. SMITH: They ---

16 THE COURT: --- everything you're saying --- I
17 understand what you're saying is that you fear well
18 what's to stop them if I say you can't do the
19 counterclaim from them just filing a lawsuit?

20 MR. SMITH: I think if they filed a lawsuit, Your
21 Honor, and then that would be something that we join in
22 with the action because that was appropriate under the
23 statute, again that inquiry would have to be along the
24 same lines we're doing now which is is it minimum cost or
25 delay. You know what I mean? For us to combine these

1 inquiries, because this is a statutory creature and it is
2 remedial.

3 And so I think either way, Your Honor, I --- I see
4 where you're going with this. I mean, if it is
5 permissive, then yes, we would have to allow it. If it's
6 compulsive, is there where the legislature made this
7 determination what is it that they're trying to uphold?
8 And I'm pointing out that by not getting them to put the
9 action about whether or not it is their performance to
10 their duties under FOIA, unduly burdensome, you know we
11 can't do it, then that would need to be the issue before
12 the Court and front and center.

13 Now what it might be used as if allowed, is a way to
14 further say, you know what? Go ahead and sue us, but
15 you're going to have to deal with us suing you also. And
16 so that is something that we're saying that if you don't
17 do it, if you don't sue, if you do not ask for a initial
18 hearing, Your Honor, maybe even there's a procedure by
19 the way which means you don't sue, you just ask for a
20 hearing. I'm not saying --- I don't want to be defending
21 on this. I'm just pointing out that like if that exists,
22 they didn't do that either. And so that's why we're
23 saying it can't be used as a counterclaim and can't be
24 used as a defense.

25 THE COURT: Thank you, Mr. Smith.

1 MR. TRAYWICK III: Thank you, Your Honor. Just to
2 take some of those issue in order, I'll read from
3 paragraph 83 of our counterclaim. Pursuant to Section
4 30-4-110(a) of the South Carolina Code SCEL, hereby
5 requests a hearing with this Court to seek relief from
6 unduly burdensome, overly broad, and otherwise improper
7 requests made by Glassmeyer in his FOIA requests 5, 12
8 and 18. So we could request a hearing and we did request
9 relief. But let's (unintelligible) for a second and
10 think about what we're what talking about. We're looking
11 at requests 5, 12 and 18. Request 5 saw copies of all
12 checks front and back and wire transfers issued by SCEL
13 from June 31, 2021, through June 15, 2023.

14 Your Honor, that was 120,000 checks. Request 12
15 sought a copy of all bills, invoices, and statements
16 submitted by any vendor. That was in the thousands too.
17 And then request 18 saw copies of all e-mails sent,
18 received or forwarded by any and all SCEL employees from
19 June 30, 2021, through June 15, 2023, inclusive. For 125
20 employees, Your Honor, that was 3 million e-mails.

21 In response to these requests yes, we cited the
22 statute, but we also made multiple overtures to Mr.
23 Glassmeyer to --- they wrote the requests for, you know,
24 can you provide us search terms as in the normal course
25 of discovery. I've done a lot of heavy, intensive

1 document review in big cases with large volumes of
2 documents. I have to say I have never seen anyone not
3 agree to provide certain terms. The purpose of FOIA of
4 course is to shine sunlight on the activities of agency,
5 but it is not to give the agency third-degree burns. And
6 that's what these requests do, with all due respect.

7 So when you look to our counterclaim, we certainly
8 state facts sufficient to constitute a cause of action.
9 The statute as Mr. Smith I think concedes, is silent on
10 both the time and the method. But it's a practical
11 matter to request a hearing, you got to have a caption.
12 So on the one hand he's saying you are not ever allowed
13 to offensively sue me. That's not available, but on the
14 other hand this remedy's not available to you because you
15 didn't go do that on the (unintelligible). That's a
16 heads I win, tails you lose approach. And it would
17 totally defeat the General Assembly's purpose here which
18 is to recognize that there certain situations in which
19 the agency needs protection from overly burdensome and
20 improper requests. That's all we're doing here is
21 stating that. And I might --- I might add that in
22 addition to our counterclaim we've provided verified
23 facts. And we also attached to it an affidavit from John
24 Nicholas that went through all of the issues here and how
25 much time and expense it would have taken for the Lottery

1 Commission to comply with these requests which I would
2 respectfully submit to you was in the neighborhood of
3 \$10 million.

4 That's not the purpose of FOIA. It's not a sport.
5 It is to provide information to the public regarding the
6 agency's activities and that's what we've done and the
7 counterclaim also indicate the that Dolly Garfield,
8 general counsel from the Lottery Commission spent over
9 100 hours alone responding to these (technical
10 difficulty) requests.

11 So all we're seeking to do here is to get relief
12 from the Court on this issue and (technical difficulty).
13 That's all we're asking. We didn't ask for attorney's
14 fees, we didn't ask for any other relief. We've just
15 answered the mail with the statute provided. And so you
16 can't read a timing request into it.

17 But --- but I want to look for a second if we can,
18 at 110(a), because it's instructive. It says a public
19 body may --- may --- that's permissive --- file a request
20 for a hearing with the Circuit Court to seek relief. And
21 then it says or where it has received a request but is
22 unable to make a good faith determination as to whether
23 information is exempt from disclosure.

24 Now, that is the only portion of the statute that
25 even remotely (technical difficulty). That's when you

1 cannot make a determination and that determination is
2 defined under the law, correct? It's got to be provided
3 within ten business days under (technical
4 difficulty)-4-30(c). So if you're unable to make it
5 (technical difficulty) you got to seek relief from the
6 Court.

7 And by the way as Mr. Glassmeyer I think remembers
8 from the party's prior litigation, the Circuit Court of
9 South Carolina has held that an agency --- or in that
10 case, the Lottery Commission in particular, was
11 (unintelligible) to file a declaratory judgment action
12 against him to seek clarification regarding its duties
13 under FOIA.

14 So if a DJ is allowed, I don't understand why it's
15 offensive here for us to assert a counterclaim which in
16 our view under 13(a), was compulsory and we didn't want
17 to waive that right. And by putting it all at issue,
18 that's what we've done.

19 And --- and in terms of this waiting, I don't think
20 that contravenes the General Assembly's intention at all.
21 We didn't go out and affirmatively sue him here. In
22 fact, we have multiple correspondence with Mr. Glassmeyer
23 in which Ms. Garfield said, hey, you know, we are willing
24 to consider any potential narrowing of the request. And
25 that --- that repeatedly went unanswered. And so in ---

1 in the absence of him saying even from the very last
2 letter on August 16th, no, you have to give me
3 everything. Why would we go sue on that? Did he give
4 up? We didn't know. The only thing we heard was when he
5 filed this lawsuit on September 5th. And so at that
6 point, we said okay, well we have to make this request as
7 allowed under the law. And so to --- to adopt Mr.
8 Smith's interpretation of the statute, you've got ---
9 you've got to read things into it or out of it that ---
10 that are not there. You got to rewrite it and you've got
11 to interpret it in a way that leads to (technical
12 difficulty). That is offensive to the most fundamental
13 cans of statutory construction and respectfully submit it
14 would contraband the General Assembly's intent.

15 So we believe that when (technical difficulty)
16 and --- and most favorable to us is the counterclaim
17 plaintiff, we've certainly stated facts sufficient to
18 constitute a cause of action and a motion to dismiss and
19 to strike our defense all together, which I think is
20 telling that he doesn't even want us to assert at all,
21 (technical difficulty).

22 THE COURT: All right. Thank you.

23 MR. SMITH: Your Honor, may I briefly, real quick?

24 THE COURT: It's your motion, you can have last
25 word.

1 MR. SMITH: Okay. Thank you, Your Honor. And so
2 the --- he did bring up the prior litigation and I just
3 want to address that real quick. I mean, there is a
4 (unintelligible) which Your Honor can look at.

5 THE COURT: I've gotten very familiar with this
6 case. I had a all-day FOIA case on Monday and this case
7 was cited over and over again. And then when I saw on my
8 docket on Friday, I thought I was seeing things. And so
9 I am familiar with the original Supreme Court opinion.

10 MR. SMITH: Yeah. That's right, Your Honor. And so
11 in --- in --- in that matter, there was a change in
12 statute to allow for this particular remedy. I mean so
13 that was something the Court at that time was having to
14 construe back when that request was made in 2013, 2014,
15 that was not the law that occurs now if you're looking at
16 in 30-4-110, which was ratified in 2017.

17 Having said that, Your Honor, I believe that opinion
18 refers to the Declaratory Judgment Act to the extent that
19 that case was about whether or not declaratory relief was
20 sought. According to the Supreme Court in this case, it
21 was done pursuant to the Declaratory Judgment Act, not
22 30-4-100(a), which cites for a declaratory judgment.
23 The --- the purpose, Your Honor, of course, that I
24 brought up earlier, confines the use of a declaratory
25 judgment in 30-4-15(x)(x), so that entire chapter. And

1 so that is a different declaratory judgment the Court was
2 considering in that case.

3 Your Honor, what I want to go back to though, is the
4 substance that they bring up concerning being unduly
5 burdensome. Again, we're pointing out the reasons why
6 this shouldn't be allowed to be asserted now. They could
7 have asserted it before, but they can't now and if you
8 want get into the substance of it, which I don't think is
9 appropriate for this moment, but this is something that
10 Mr. Glassmeyer, if you look back through everything
11 they've attached in their affidavits and all of that, you
12 would need to just see at what point did they offer to
13 work on a timeline for production or look into any
14 extension of statutory guidelines concerning when
15 production would need to occur. That is never sought by
16 the Lottery Commission. This case is not about Mr.
17 Glassmeyer being unreasonable concerning when they
18 purported millions of records would need be to provided
19 to him, this was just them making a blanket statement,
20 that number is too big. Transparency doesn't get to a
21 number that big. And so we don't have to provide it to
22 you.

23 Well, if that is the case, Your Honor, then in a
24 situation like this if we were to say that you can turn
25 around and sue people once they've brought suit against

1 you were unduly burdensome, then it's at that point when
2 you would finally understand if you're the plaintiff, oh
3 gosh, I guess what we should have done is gotten them to
4 come to the table and be more reasonable before offering
5 it. Because instead, they'll just speak through the
6 counterclaim after you've sued them. And only at that
7 point would they give to negotiate a production timeline.

8 My point is this: They had an opportunity if they
9 thought this was actually unduly burdensome to bring this
10 before Your Honor to make a determination regarding that.
11 Because that, like they're pointing out in 30-4-110(a) in
12 that second part where you would receive a request but
13 unable to make a good faith determination would go to
14 exactly what their duties would be in that case. They
15 don't know. They don't think the law would require them
16 to respond because it's unduly burdensome, but they need
17 to get a court to tell them that.

18 Now, they're only doing that because we have sued
19 them for FOIA violations and that would chill the ability
20 for FOIA requesters to get transparency through the
21 courts on violations of FOIA if we allow public bodies to
22 do that.

23 MR. TRAYWICK III: Your Honor ---

24 THE COURT: Briefly.

25 MR. TRAYWICK III: Briefly to address the new

1 matter. We did try to work with him. We never got to a
2 timeline. He was made completely aware of the universe
3 of documents that would have been required to go through.
4 And Your Honor, I don't know how you talk about a
5 timeline when you look at --- at the facts in our
6 counterclaim, which you must accept is true on that
7 motion, that it would take 52,000 hours and cost over 10
8 million dollars to produce this information. On what
9 timeline would you ever get (technical difficulty)?

10 We --- we had a duty to raise this in response to
11 this case as a compulsory counterclaim. And --- and
12 we've have stated facts sufficient to constitute a cause
13 of action and --- and this motion that we're offensively,
14 it was just a counterclaim. We didn't go file a lawsuit
15 against him. He sued us and we're trying to preserve an
16 issue. His arguments are elevating form over substance.
17 This is part and parcel of this litigation.

18 And to end, I just quote the words of
19 (unintelligible) Alexander is whatever doesn't make any
20 difference, doesn't matter. There was no prejudice here,
21 the issues (technical difficulty) the issues being
22 involved in this case, and he we brought it in a way that
23 we thought was most appropriate and (unintelligible).
24 Thank you.

25 THE COURT: All right. I'm going to take this one

1 under advisement as well. Review the complainant's
2 counter claims now that additional statute of 110(a)
3 particularly, I'll have a decision to you on both of
4 these motions. It was the partial motion to dismiss from
5 the defendant and then a motion to dismiss the counter
6 from plaintiff, Mr. Smith.

7 MR. SMITH: That's correct and a strike Your Honor.
8 So to the extent I believe on your plate, Your Honor, is
9 you could dismiss and strike, you could dismiss or
10 strike, you could not dismiss and not strike. I mean,
11 you know, there's a whole bunch of ways you can --- you
12 can do that Your Honor.

13 THE COURT: All right. We're going to do that.
14 I'll take that under advisement. And then I'll give you
15 all --- I'll try to get something to you as quickly as I
16 can. I know we were trying to expedite it. For
17 procedurally, reach out to the chief administrative
18 judge. If y'all agree and y'all want me to something you
19 can always look at my calendar and if I'm able to do it,
20 I will. But if not, y'all just let me. All right?

21 All right. Thank you all for being here today.

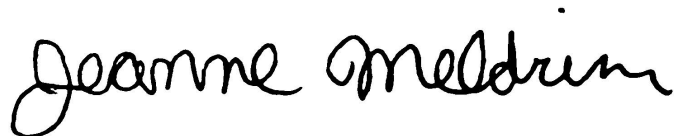
22 (PROCEEDINGS CONCLUDED AT)
23
24
25

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, A COURT-APPROVED TRANSCRIBER, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF CIRCUIT COURT 5 FOR
RICHLAND COUNTY, SOUTH CAROLINA, ON THE 13TH DAY OF
OCTOBER, 2023.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

AUGUST 26, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a large initial 'J' and a period at the end.

JEANNE MELDRIM

TRANSCRIBER

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 COUNTY OF RICHLAND * TRANSCRIPT OF RECORD

-----X
 GEORGE S. GLASSMEYER, *
 Plaintiff, *
 vs. * Case No. 2023-CP-40-04854
 SOUTH CAROLINA LOTTERY *
 COMMISSION, *
 Defendant. *
 -----X

January 5, 2024

B E F O R E:

The Honorable Daniel Coble, Presiding Judge

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

Taylor M. Smith, IV, Esq.
 Attorney for the Plaintiff

Vordman Carlisle Traywick, III, Esq.
 Attorney for the Defendant

Sarah Frierson, Esq.
 Attorney for the Defendant

Recorded by: DCRP/Roderick Fitzgerald

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

I N D E X

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(The following proceedings started at 9:31 a.m.):

THE COURT: Mr. Traywick?

MR. TRAYWICK: Yes.

THE COURT: Who do you represent?

MR. TRAYWICK: The South Carolina Lottery
Commission.

THE COURT: And Mr. Smith?

MR. SMITH: That's correct.

THE COURT: You represent Mr. Glassmeyer?

MR. SMITH: That's correct.

THE COURT: All right. Good morning.

MR. SMITH: Good morning.

MR. TRAYWICK: Good morning.

THE COURT: All right. We have got the case of
Glassmeyer versus South Carolina Lottery Commission. We
have got motion for summary judgment today. Whoever filed
first can go first unless y'all consent to something else.

MR. TRAYWICK: Okay.

THE COURT: Anything before we get started?

MR. TRAYWICK: No, Your Honor. However Your Honor
thinks it best, we filed first, so we're happy to go
first.

MR. SMITH: And, Your Honor, we just want to put
this forth to you. I mean, these are cross-motions for

1 summary judgments, so we're stipulating now there's no
2 issues of material fact. And so this is pretty much your
3 determination as a matter of law regarding all four of
4 these grounds that we're going to be talking about today.

5 And so if you would rather handle it on a per-ground
6 basis to have a talk with us about what the law is or is
7 not, we can do it that way, but if you want him to go
8 through it all and then I just respond, whatever works
9 best for Your Honor.

10 THE COURT: All right. Well, the issue -- and I'm
11 trying to wrap my head around it. Obviously, we have --
12 and let me say what I think the facts are and, that way,
13 if I'm explaining it [indiscernible], y'all can correct
14 me.

15 Is this Mr. Glassmeyer?

16 MR. SMITH: It is, Your Honor.

17 THE COURT: Good to see you.

18 Mr. Glassmeyer filed a FOIA request with the Lottery
19 Commission before. Most recently, there was one -- I
20 believe one in front of Judge Manning, there was a
21 lawsuit. It was dismissed on a 12(b)(6). That went to
22 the Supreme Court. When that came back down, before y'all
23 did anything, y'all came to this agreement back in
24 February of 2022. The agreement pretty much said don't
25 file a FOIA request until May 31st of 2023, and if the

1 General Assembly has not passed a law clarifying this,
2 then you can resume -- and I know there's details about
3 what that means -- then you can start doing FOIA requests
4 again. In the meantime, right after that in June, he sent
5 a FOIA request -- 18 of them, which I believe is with the
6 complaint. One of those included the names of people,
7 which is subject to the issue about Proviso and the law.

8 The rest of them are -- there's issues about did
9 they comply or not comply. Some of them, though, are just
10 saying it's too -- too burdensome. But with all the
11 others, I believe number one was the names of people, so
12 that's one issue. The other one -- I believe they were 5,
13 12, and 18 -- are subject to their counterclaim.

14 The other -- everything else left is kind of a gray
15 area. They say they did comply, they did not comply.

16 Is that generally where we're at?

17 MR. TRAYWICK: And then one other issue of where
18 there is a concession that we did not timely provide
19 certain records, but we're contending it's moot and that
20 attorney's fees aren't appropriate. But other than that,
21 I think the issues, as you have stated, are correct. On
22 one of those where there's a question of whether there was
23 a violation or not, we have submitted a document for in
24 camera review.

25 THE COURT: No. 11?

1 MR. TRAYWICK: That's right, No. 11. So that's in
2 the notebook, a redacted and unredacted version.

3 THE COURT: And the redacted was provided.

4 MR. TRAYWICK: Redacted was provided to
5 Mr. Glassmeyer.

6 THE COURT: Okay. So the issue would be that. And
7 that would be whether it should be unredacted.

8 MR. TRAYWICK: Correct.

9 MR. SMITH: Or perhaps even portions of it, Your
10 Honor.

11 THE COURT: Got it.

12 MR. SMITH: And there's also not one ground that has
13 been addressed either in their motion or our motion, which
14 is left in the complaint. That might have been
15 inadvertent, but it is our intention to try to either, at
16 some point, provide that for in camera review if necessary
17 to Your Honor and brief that at a later time.

18 Your scheduling order provides that this case must
19 be concluded by -- I believe it's March 15th.

20 MR. TRAYWICK: Yeah.

21 MR. SMITH: So we certainly need to have this done
22 basically by then, but that -- if we believe that that
23 still needs to be addressed by Your Honor, because that's
24 something that we have not yet settled, then I think that
25 that would be something that we're going to reach out to

1 Your Honor after this to probably do.

2 Having said that, also, if we prevail on our motion
3 for summary judgment regarding, for instance, these
4 winners' names that are supposed to be provided, because
5 it was a FOIA request, they may intend to specify those
6 exemptions that apply to that information that they were
7 to provide, in which case we would ask Your Honor, if you
8 allow them to use the exemptions, thus have in camera
9 review of that as well.

10 MR. TRAYWICK: And on one that ground, there was
11 sort of one sentence of the complaint, I think -- and I
12 floated this to Mr. Smith -- is basically whether our
13 indication of the law saying that you can't, you know,
14 provide people's signatures, whether that's a proper
15 exemption. I think we can agree to that, frankly, in a
16 paragraph and send you the record and have Your Honor
17 decide that on the briefs.

18 THE COURT: All right. This is what we'll do: Let
19 me hear all from Mr. Traywick, all his motions, and then
20 you rebut, and we have as much time as needed.

21 MR. TRAYWICK: Thank you, Your Honor. And if it
22 pleases the Court, we would like to split the issues and
23 have Ms. Frierson address two of them.

24 THE COURT: Yep.

25 MR. TRAYWICK: Okay. Thank you.

1 As Your Honor indicated, there is some history here,
2 and it's not irrelevant. So the lottery names have been
3 litigated before. Following that litigation, as you
4 noted, there was a settlement agreement. And then,
5 thereafter, there was a lawsuit that the plaintiff filed
6 against our client regarding whether it had a posted fee
7 schedule.

8 So the lottery does not and has never charged fees
9 to retrieve, redact, and provide copies of public records.
10 And so the plaintiff did not prevail in that lawsuit.

11 And, shortly thereafter, it's our contention,
12 [indiscernible] sort of tests that by serving the 18
13 requests here, three of which were, in our view, unduly
14 burdensome, overly broad, and otherwise improper under the
15 law. That's the subject of our counterclaim, and I'll
16 have my co-counsel, Ms. Frierson, address it.

17 And, in addition, he's challenging that one record
18 that was submitted in response to Request No. 11,
19 Ms. Frierson will address that as well.

20 I'm here to talk about the Proviso as it relates to
21 the mediation agreement as well as the law in general
22 under FOIA. And then I'm also here to talk about this
23 sort of manufactured issue of, you know, whether
24 attorney's fees are appropriate on something, when he's
25 already been provided all of the records prior to

1 litigation, not as a result of litigation.

2 So let me start with the crux of this matter. We
3 received the FOIA request on June 21st, 2023. This was
4 not one request for names. This was 18 requests that
5 required our client to go determine the universe of
6 documents, how many emails would be at issue, of every
7 single one of its 125 employees; it required our client to
8 look into the tens of thousands of checks that would be at
9 issue, responsive; and it would require our client to look
10 at the multiple contracts it enters into with vendors and
11 all other sorts of third parties prior to producing that.
12 In addition to many other things, employment records.

13 And so the Lottery Commission had to make a lot of
14 determinations within ten days. But it got ten days --
15 and that's ten business days under FOIA -- to do so.
16 There's no obligation -- there's no duty in the mediation
17 agreement or under FOIA or otherwise that we respond in
18 piecemeal or earlier within the ten days.

19 THE COURT: Let me ask you that. In the summary
20 judgment -- and maybe in the complaint; I don't
21 remember -- they said it was willful. Does that make a
22 difference if you -- let's say it's the first day you got
23 it. You had all the information right there and you knew
24 it all. And, obviously, you had ten days. Does it
25 matter? Is it just an objective or is it subjective to

1 the matter whether -- if they prove that -- because I
2 think that's one of the issues, they're saying they
3 willfully asked -- because that's the big deal if it's ten
4 days if -- if you willfully went past it, does that
5 matter? Maybe it doesn't but --

6 MR. TRAYWICK: So, on this, we didn't go past it --
7 right? -- in the response to the initial determination.

8 THE COURT: You went past the -- when the Proviso
9 was in effect. So what they were saying is that it's --
10 it was a willful -- does that even matter? That's kind of
11 a side issue.

12 MR. TRAYWICK: So what -- number one, it doesn't.
13 Number two, there's no evidence in the record and he's
14 already conceded there's no genuine issue of material
15 fact. Argument of counsel is not evidence. I saw that in
16 his brief too. There's not a shred of evidence that the
17 Lottery willfully did that. All right? They were running
18 around, trying to respond to 18 voluminous requests.

19 Again, if this had just been the one request for the
20 names, maybe you look at that differently. But you have
21 got to look at the context here, and that's the 18
22 requests. This was just but one of them. And there's no
23 obligation under the law to respond to piecemeal or to
24 immediately furnish.

25 Furthermore, willfulness aside, what's wrong with

1 the State agency trying to -- and I'm not conceding this
2 happened, but, in the alternative and just in the
3 abstract, what's wrong with an agency following the
4 General Assembly passing the law? That's their expression
5 of the public policy in seeing is the Governor going to
6 sign this or not. Are we supposed to be giving this
7 information?

8 There's nothing inherently wrong with that, and
9 that's not bad faith. That's good faith. That's trying
10 to comply with the directives of both the General Assembly
11 and the Governor, which, together, represent the people of
12 South Carolina.

13 And so I don't see anything wrong with that. But
14 willfulness is not in the statute, and we can't read it in
15 there. And then, in any event, there aren't any facts in
16 the record to suggest it, and we respectfully reject that.

17 So the response came due July 5th, which, by the
18 way, July 4th. All right? There were a ton of employees
19 not at work in State government and all over the place
20 because a lot of people take off. All right? So there
21 were minimal resources but still worked hard to get all
22 this within ten days. All right?

23 And so once the response came due under the statute,
24 ten business days later on July 5th, the law of the land,
25 as of July 1, was Proviso 3.5, which forbade the Lottery

1 Commission from providing this information.

2 And under Edwards v. State, it's black letter law
3 that executive agencies must follow the law of the General
4 Assembly unless directed otherwise. If you direct
5 otherwise, then, you know, we will comply with Your
6 Honor's ruling. But a contract can't get around that.
7 Okay? And I don't think the contract reads that way
8 anyway.

9 So when you look at that, we couldn't provide any of
10 this stuff as of July 5th when the determination was made.
11 And, also, if you look at the mediation agreement, through
12 May 31 was off the table. And so even if you do look at
13 this in the context of, okay, when could he start making
14 requests, the only conceivable time would be a start date
15 of June 1. And his requests asked through June 15th.

16 So we went back and looked, and they were no
17 million-dollar claimants. So, I mean, this whole issue is
18 moot.

19 So I would note that as well. Primary argument,
20 Proviso forbade us from doing it. Secondary argument,
21 there's nothing to provide within the only window that he
22 would have arguably been entitled to [indiscernible].

23 We, of course, cited the White the case that says,
24 you know, a contract can't be enforced or you get excused
25 from performance under. Whether it be a legal or a

1 violation of public policy, I don't think you have to get
2 too deep into it. The law required us to not provide this
3 information, and we followed the law.

4 Happy to answer any additional questions on the
5 winners' names if you have them, Your Honor.

6 THE COURT: As to the -- and I saw the -- where did
7 the June 1st, 2023, begin date come from? I know that his
8 request goes through June 15th, 2023.

9 MR. TRAYWICK: So that's what we're saying. If you
10 read the mediation agreement, which was attached as an
11 exhibit, it had -- it said that he would not request
12 information through May 31st. And we paid them \$81,000 in
13 attorney's fees to get that. And we paid the mediation
14 expenses.

15 THE COURT: Is their argument that that is the -- he
16 couldn't physically do it until May 31st, but after May
17 31st, he could ask for the redacted information? Is that
18 what their argument would be?

19 MR. TRAYWICK: Maybe. I haven't seen it that way,
20 but that certainly was not the intent of the agreement. I
21 don't think that's -- and we respectfully disagree with
22 that reading of it.

23 THE COURT: All right. So I'm just looking at
24 Item 1. It says, June 30th, 2021, through June 15th,
25 2023.

1 MR. TRAYWICK: Right.

2 THE COURT: But your point would be that the
3 mediation agreement prevents anything going backwards.

4 MR. TRAYWICK: Yes, Your Honor, because it said that
5 the policy would be in full force and effect. And the
6 policy was the whole issue in that litigation.

7 THE COURT: Okay.

8 MR. TRAYWICK: And so it would be in full force and
9 effect until May 31st, 2023, and that he wouldn't request
10 information through that.

11 So it's our position that, you know, we're not the
12 one breaching the agreement. Arguably, he is by bringing
13 this lawsuit and having requested that information. We
14 haven't pled that. We don't need to go there. We're just
15 saying that that information was off the table. And so,
16 really, you're just looking at the June 1 through June
17 15th time frame conceivably of information to which he
18 could have been entitled, though he's not because, once
19 the response came due, the law forbade us from providing
20 the information.

21 THE COURT: Is that Proviso still in effect? I
22 don't have the Proviso.

23 MR. TRAYWICK: It is. It started July 1, so it's in
24 effect this past year.

25 THE COURT: And does it expire?

1 MR. TRAYWICK: June 30th.

2 THE COURT: Of this year?

3 MR. TRAYWICK: Yeah. Sorry. Of 2024, yeah.

4 THE COURT: All right.

5 MR. TRAYWICK: And so the General Assembly at that
6 point has the opportunity to revisit. If they want to
7 extend it, they can. Or if they want to do a permanent
8 law, they can.

9 THE COURT: But as of today, it's in effect.

10 MR. TRAYWICK: It is still in effect.

11 THE COURT: Okay.

12 MR. TRAYWICK: The Lottery cannot provide that
13 information unless otherwise ordered.

14 THE COURT: All right.

15 MR. TRAYWICK: I next want to visit this claim about
16 delayed records. The Lottery fell on its sword. Okay?
17 It miscalculated the deadline. It read that first statute
18 that allowed for business days into the second statute on
19 the production of records for 30 days.

20 THE COURT: Can you explain to me -- because I was
21 confused by that as well. The first -- the way the
22 process works is, when they send a FOIA request, you have
23 ten days to accept -- weekends pretty much --

24 MR. TRAYWICK: Mm-hmm. And holidays.

25 THE COURT: -- to say what we're going to do.

1 MR. TRAYWICK: To make your determination and say,
2 "We have responsive records" or "these exemptions apply."

3 THE COURT: And then, from that day, you have 30
4 days.

5 MR. TRAYWICK: 30 days, that doesn't include the --
6 it's not that business day language.

7 THE COURT: Okay.

8 MR. TRAYWICK: And so it was a simple misreading.
9 It was an honest mistake. There's no deterrent purposes
10 to be served here.

11 I mean, if you look at the correspondence that we
12 have attached to the counterclaim, that even the plaintiff
13 has attached, as a verified complaint that we have
14 attached in our motions for summary judgment, there is not
15 a shred of evidence in this record that indicates bad
16 faith or an intent to not comply with FOIA.

17 She, Ms. Garfield, bent over backwards for several
18 weeks to provide responsive information because the
19 Lottery takes its obligations under FOIA seriously. We're
20 here talking about very discrete issues, and that was just
21 not fair to say that, you know, we should be deterred from
22 doing something.

23 But taking a step back from that, when is a
24 declaratory judgment appropriate? It's only appropriate
25 when there's a justiciable controversy. We are not in

1 disagreement over what the deadline was, and he hasn't
2 shown any harm. Again, Plaintiff has conceded there's no
3 genuine issue of material fact. There's not any evidence
4 in this record of a harm he experienced from getting
5 records six days late. He got the records. And there's
6 no evidence of what damage he would have sustained from
7 it. That was their burden. We filed a properly submitted
8 motion for summary judgment. None of that's in the
9 record. Therefore, the Lottery is entitled to judgment as
10 a matter of law.

11 And I would further note that the statute itself has
12 the word "may," and in the Litchfield case, we cited in
13 our brief, that -- of course, that's discretion of the
14 Court to determine whether attorney's fees are
15 appropriate.

16 In any event, what would one sentence be in the
17 complaint be? I mean, are we talking \$20 here? That's
18 not a determined purpose. That's just mere gotcha. And
19 with all due respect, we just think though the timing was
20 a mistake, we apologized for it. He got the records. The
21 records are in hand. We have complied FOIA.

22 And so, with that, if there are not any additional
23 questions on that, I'd like to turn it over to my
24 co-counsel to address both our counterclaim and then the
25 documents submitted for in camera review.

1 THE COURT: Happy to hear from you.

2 MR. TRAYWICK: Thank you, Your Honor.

3 MS. FRIERSON: Thank you, Your Honor. Again, my
4 name is Sara Frierson, and along with Mr. Traywick, I
5 represent the Lottery.

6 I wanted to touch on one point that our client just
7 told us: There are two pending bills to make that Proviso
8 permanent statutes. We'll see what happens this year in
9 session, but those are pending right now.

10 So moving on to the Request No. 11 document we
11 submitted to you for in camera review, there's a pretty
12 conclusory paragraph, 25 in the complaint, that says that
13 we redacted one whole page of a record under no, quote,
14 lawful claim of authority.

15 Well, first, Mr. Glassmeyer knows what claim of
16 authority we have. In your Tab 20, Ms. Garfield submitted
17 production letters each time she produced documents in
18 response to these requests.

19 For Request No. 11, she cited Section 3420(c), which
20 provides that it is not a public record; security plans
21 and utilized by public body are not public records under
22 FOIA.

23 So we did claim a lawful authority to redact that
24 information, and that information is lawfully redacted.

25 As you will see, which is Tab 24 on the unredacted

1 version, this document relates to the security plan and
2 procedure for reconstruction of damaged tickets. Your
3 Honor can probably imagine what would happen if the public
4 got this information. The amount of fraud that could
5 perpetrate from that is unimaginable. People could submit
6 intentionally false damaged tickets under the guise that
7 they were unintentionally damaged, and they could
8 potentially get reimbursed for those claims. And that
9 would threaten the very integrity of the lottery, the
10 process, the claims, the whole purpose of the Lottery
11 Commission to begin with. That's just not going to
12 further the purpose of FOIA, the purpose of the lottery,
13 or any other public policy.

14 And Mr. Glassmeyer says, "Okay. Well, you shouldn't
15 redact the whole page." Under FOIA, you have to separate
16 an exemption from a non-exemption. So exempt material can
17 be redacted but non-exempt material cannot be redacted.
18 Well, again, this is not an exemption to FOIA. It doesn't
19 fall within the exemption provision. This is a specific
20 exception to the definition of public records. Under
21 3020 -- I mean, 3420(c), it says, "Information relating to
22 security plans, etc., are utilized by a public body must
23 be closed to the public and is not considered to be open
24 to the public."

25 So under that exception to FOIA, we redacted that

1 information. And, okay, what if we did give him the
2 conservation marks or articles or conjunctions that he
3 asked for? It's not going to tell him all the private,
4 closed-off information that he really wants. And we can't
5 do that. We cannot get that information. So, under that
6 section, we properly redacted that document.

7 If you have any questions on that, I'll answer them,
8 but...

9 THE COURT: Nothing that...

10 MS. FRIERSON: And, also, as Mr. Traywick mentioned
11 earlier, there were a lot of communications going back and
12 forth between July 5th, 2023, and August 16th, so the
13 final determination letter and the final production
14 letter. A lot of communications going back and forth
15 between Ms. Garfield and Mr. Glassmeyer. He never once
16 asked what this information was, "Can we get it in a
17 slightly more unredacted format?" He didn't say, "Can you
18 please explain what this document is?" And nor did he
19 really need to because the document has the whole preamble
20 and the title, which is a redacted version, that he could
21 seek. He knew what the document was and what it relates
22 to, and it was lawfully redacted under 3420(c).

23 So moving on to our counterclaim slash -- we also
24 raise it as a defense, depending on how you want to
25 address it. Three of the requests you mentioned

1 earlier -- Request 5, 12, and 18 -- we contend are
2 extremely overbroad and unduly burdensome. So I'm just
3 going to read those requests to you so you understand what
4 they are.

5 Request No. 5 seeks copies of all checks, front and
6 back, and wire transfers issued by the Lottery between
7 June 30th, 2021, and June 15th, 2023.

8 Request 12 seeks copies of all bills, invoices, and
9 statements submitted by any vendor, contractor, supplier,
10 professional, or professional entity and received by the
11 Lottery during that same two-year period.

12 And Request No. 18, which is the whopper, seeks
13 copies of all emails received, sent, and forwarded by any
14 and all Lottery employees for a two-year time period.

15 Now, we're here before you on cross-motions for
16 summary judgment, and we have submitted an unrebutted,
17 uncontested affidavit of expert John Nichols. I'm sure
18 you know who Mr. Nichols is.

19 And his testimony is uncontroverted here. So he
20 says, as it relates to Request No. 12, which is
21 approximately -- sorry; Request No. 5, which is
22 approximately 120,000 checks, wire transfers. It would
23 take around 2,000 hours for somebody to review that --
24 review it, redact it, and produce it, and it would be
25 approximately -- and this is conservative -- 300- to

1 \$400,000 to do that.

2 For Request No. 12, which is about 8,000 documents,
3 he says it would take about 134, 135 hours. This would be
4 20,000 to \$26,000 roughly.

5 And then Request No. 18, if we even needed to get an
6 expert on this, it seeks approximately 3 million emails
7 from the 125 employees, and Mr. Nichols explained that
8 this would take approximately 50,000 hours, 7.5 million to
9 \$10 million to review, redact, and produce these.

10 Now, we don't believe any of these are feasible, but
11 Mr. Glassmeyer says -- his only argument and response is
12 that we didn't ask him to narrow the request. He says the
13 record is silent on that. Your Honor, the record is not
14 silent. It's extremely loud. In two instances, we
15 specifically asked Mr. Glassmeyer to narrow these
16 requests.

17 If you flip to Tab 3 in your binder, this is our --
18 Ms. Garfield's July 5th, 2023, final determination letter.
19 And I'm going to read it for you. I know you can read,
20 but I'm going to read it anyways.

21 She says, "If you are willing to withdraw or revise
22 the objectionable requests, we certainly want to work
23 together to provide responsive information. As drafted,
24 however, several requests would require the Lottery to
25 divert unnecessary and significant agency outside

1 resources to review, redact, and produce documents that
2 are not related to the stated purpose underlying the
3 request."

4 If that's not enough, Ms. Garfield says again in her
5 August 16th final production letter, essentially echoing
6 the same exact thing, asking him to narrow those requests.
7 And that is Tab 13 of your binder.

8 And Mr. Glassmeyer acknowledged that we asked him to
9 narrow these requests because he actually did narrow one
10 of the other requests we identified as overly broad and
11 unduly burdensome. That was Request No. 8. That's not
12 before Your Honor because, when we asked him to revise
13 that one, he did revise. And we provided those documents
14 promptly.

15 So this argument that we didn't ask him to narrow
16 the scope or some sort of limitation on his request is
17 just not correct. And the other strawman argument he
18 makes is that, "Oh, well, we don't charge fees for
19 responding to FOIA requests." True, he knows that. We
20 won summary judgment on that last summer.

21 But now he's kind of flipping and saying, "Oh, it
22 would actually be more transparent for you to charge and
23 give me all these documents than to claim a lawful --
24 invoke the lawful statute, providing an avenue for relief
25 from these overly broad and unduly burdensome requests."

1 That's just disingenuous.

2 And Your Honor doesn't have to make any specific
3 bright-line rule on this. "Overly broad" and "unduly
4 burdensome" are phrases that I'm sure you're extremely
5 familiar with, with Rule 26 summary issues. The General
6 Assembly used these words specifically because they're
7 familiar to everyone. You can easily look at a
8 case-by-case basis and determine whether certain requests
9 are overly broad and unduly burdensome. Here, they are.

10 Request 5, 12, and 18, which seek millions of
11 documents and would require the Lottery to either
12 completely halt operations by using internal sources to
13 review and redact these documents, or spend \$10 million by
14 using outside sources, neither one of those options is
15 reasonable.

16 So we would ask that you agree with us that Request
17 5, 12, and 18 are unduly broad and -- unduly broad and --
18 sorry -- overly broad and unduly burdensome and that we
19 are entitled to relief from those requests. And I'll take
20 any questions you may have.

21 THE COURT: I don't have any at this point.

22 MS. FRIERSON: All right. Thank you.

23 MR. TRAYWICK: Your Honor, that's it from our
24 cross-motions for now.

25 THE COURT: All right. Yes, sir, Mr. Smith?

1 MR. SMITH: Thank you, Your Honor.

2 Your Honor, I intend to probably go through just the
3 exact same order that they did, so those issues that are
4 claimed. But if you have any questions, let me know.

5 THE COURT: I don't right now.

6 MR. SMITH: Thank you.

7 Your Honor, first, I want to begin with the basis of
8 which this is coming out. The thing that I want to make
9 clear as we begin this discussion about what FOIA is
10 intended for and what the legislature has, as codified,
11 which I'm not intending Your Honor to deviate from one way
12 or the other, is simply that this is about learning the
13 activities of public officials at minimum cost or delay,
14 in 30-4-15. That codified purpose, Your Honor, is one of
15 the things that sets this apart. And we know that from
16 our Supreme Court because, when asked to review that, in
17 Quality Towing vs. City of Myrtle Beach in 2001, our
18 Supreme Court said, "Yes, FOIA is remedial in nature and
19 should be liberally construed toward the purpose mandated
20 by the legislature."

21 As they have pointed out, there has been litigation
22 between Mr. Glassmeyer and the Lottery Commission before
23 on FOIA grounds, and Your Honor can read the published
24 opinion that is out there concerning them. And, also, you
25 can see that, before that litigation ended in that

1 settlement agreement, which is now before the Court, in
2 2017, the legislature revised FOIA to do several things
3 which changed.

4 The first thing which changed is the thing which is
5 before Your Honor regarding this newer statutory scheme in
6 30-4-100 -- or, excuse me, 110, which provides that a
7 public body may file a request for a hearing to seek
8 relief from it, unduly burdensome, overly broad, vague,
9 repetitive, or otherwise improper requests.

10 The other thing that they did, Your Honor, was that
11 they changed, in 30-4-30(c), what you can charge fees for.
12 Before, it was not about whether or not you could take
13 time and then charge for fees associated with redaction.
14 The General Assembly in South Carolina said that, before,
15 that was not a proper basis with which to charge.

16 Now, in those same revisions which added this, that
17 you could apply to a circuit court to be relieved as a
18 public body under FOIA, but it also said that you can
19 charge for redactions. But they also put up the ability
20 for us to learn -- and this is what the immediately prior
21 to litigation is about -- what the fee schedules are for
22 each public body.

23 So before you make a request, you can understand
24 them; in that same statutory provision, 30-4-30(c), that
25 they have these fees associated with the request.

1 Now, we know, from summary judgment granted in that
2 case, that because they do not charge fees, there is no
3 fee schedule that has to be posted; therefore, they do not
4 have to post a fee schedule.

5 Consequently and thereafter, what is before you now
6 is the request that Mr. Glassmeyer sent. And so, what
7 we're talking about now is an agreed-upon method for which
8 Mr. Glassmeyer may request information similar to what he
9 had requested way back in 2012 that gave birth to that
10 litigation at that time.

11 So that mediation agreement, Your Honor, which is
12 first, oddly, was this action back on October 2nd but
13 which you can read, provides that, in this litigation
14 where he sought this, they intended to protect these
15 winners' names from a potential invasion of personal
16 privacy. And so they wanted the policy to stay in effect,
17 that it could not be requested.

18 Well, what then happened was they provided, in that
19 mediation agreement, Your Honor -- just making sure I get
20 it right -- that, "As a further condition of settlement,
21 the parties agree that the Lottery Commission's current
22 policy concerning the disclosure of personal information
23 under the unreasonable invasion of privacy exemption to
24 FOIA, 30-4-82, shall remain in full force until May 31st,
25 2023. Importantly, if the General Assembly -- South

1 Carolina General Assembly does not enact legislation
2 addressing this issue by such date, then the South
3 Carolina Lottery Commission will provide the full names,
4 cities, and states of lottery prize claimants in response
5 to FOIA request after that date. Additionally, George S.
6 Glassmeyer agrees not to submit, directly or indirectly,
7 any FOIA requests to the South Carolina Lottery Commission
8 through May 31st, 2023, seeking information regarding
9 claimants and/or prize winners from that date."

10 So, Your Honor, what is before you on this proviso
11 is, is it an enactment of the General Assembly on the date
12 that the governor signs it? And if that is the case, Your
13 Honor, that when this is either signed and/or when this is
14 actually effective as a matter of law, based upon the
15 Governor's signature, Your Honor, when was the duty to
16 comply with this mediation agreement and/or the FOIA
17 request, which, again, the parties agree would be the
18 mechanism with which to ask it.

19 So the dates I have in the motion for summary
20 judgment -- and we believe and stipulate, Your Honor, to
21 that legislative record -- you can go back and look at it
22 for yourself regarding these minutes. So if I have put
23 down anything that's incorrect, I am sorry. That's not my
24 intention.

25 But what is important is that, in this particular

1 case, you have the General Assembly passing the Proviso on
2 June 14th. He submits his FOIA request on June 16th.
3 They receive it by mail on June 21st.

4 The plaintiff then has a duty beginning that day,
5 under the statute, to respond to the FOIA request. They
6 may exercise their use of exemptions, law, that they could
7 use to redact information. In the mediation agreement,
8 though, the parties already contemplated what the rights
9 between the parties would be regarding this and said in
10 the mediation agreement what you would get.

11 Now, this -- the law at the time that duty began,
12 which would not be a violation for ten business days, Your
13 Honor, because that's what the statute provides, then had
14 the law come in effect during the intervening period.
15 They waited until after the law came in effect.

16 And I did not intend to change anything regarding an
17 issue with that. I'm just pointing out that their duty,
18 in my motion for summary judgment, was stated as one which
19 began upon the receipt of the request. They chose to do
20 it later after the law had changed, but the law didn't
21 change as to their duty because their duty began upon the
22 mediation agreement, which is what they contemplated
23 between the parties, of what they would provide, and
24 additionally, what was at law at that time.

25 The General Assembly, in the words of the mediation

1 agreement, had not enacted by the time he either sends or
2 they receive the FOIA request. Consequently, their
3 refusal to turn it over, to cite not law but a Proviso
4 that would entitle them purportedly to not provide it,
5 neither fits what is in -- contemplated between the
6 parties, what Mr. Glassmeyer is supposed to do in that
7 mediation agreement, nor would be a lawful claim of
8 exemption or exclusion under FOIA.

9 Consequently, Your Honor, it is our contention that
10 either, under specific performance for the breach of
11 contract which we have pled from that mediation agreement
12 and not providing the winners' names or as an injunction
13 to providing the winners' names under FOIA, we are
14 entitled to either.

15 I did note, though, in my motion for summary
16 judgment, Your Honor, obviously, we can't have both. So,
17 in the event we prevail on the motion on this point, Your
18 Honor, we would have to elect our remedy regarding which
19 one we would take.

20 The bottom line, though, Your Honor, is that, on
21 this particular issue that they bring up about the Proviso
22 and what they had to compile within those ten days, they
23 also could have reached back to Mr. Glassmeyer and sought
24 some kind of arrangement regarding the extension of that
25 deadline. Not here. That happened on the production

1 deadline, as they point out. That was between the
2 parties. They did not here. Instead, they, I believe --
3 and, again, this is not necessarily germane to this
4 matter -- they wanted to wait until the law had changed to
5 try to say their duty, somehow, would be the duty that
6 establishes at the end of that ten-day period, not at the
7 beginning, which is what the law provides. So I don't
8 want Your Honor to get, like, caught up in that issue.

9 The Edwards case which they cite is also important
10 because it does say that they have to comply with the law
11 of the General Assembly. Well, the law of the General
12 Assembly, at the time they received the request on June
13 21st, was what the law was before the Proviso was effected
14 as a matter of law. Consequently, there was no law which
15 said, in the mediation agreement, that they could use to
16 stop providing winners' names at that time.

17 Finally, the mediation agreement, if Your Honor
18 looks at it, which I read to Your Honor, does say when the
19 request can be made, and to an extent, about what will be
20 provided once the request is made, winners' names. It
21 does not provide the duration of time with which the FOIA
22 request has to concern.

23 Remember, in this mediation agreement, which Your
24 Honor has before you, you can see what the intentions of
25 the parties are. Part of that barter for exchange in that

1 mediation agreement, Your Honor, is the contention that
2 one of the largest agencies in the state of -- or
3 commissions, excuse me -- in the state of South Carolina
4 can go to General Assembly, can get the law changed in
5 their favor, and, thus, they would never have to comply.
6 They had a year to do it. That's under that mediation
7 agreement.

8 Mr. Glassmeyer did his part in waiting until the
9 period where he could not make a FOIA request pass and
10 then made his request. The law didn't change until after.

11 And so, Your Honor, we believe that summary judgment
12 is appropriate regarding either specific performance under
13 the mediation agreement under the breach of contract
14 theory or under FOIA regarding their failure to provide
15 that responsive information within the prescribed period
16 under the act.

17 THE COURT: As to Item No. 1, about me doing
18 anything at this point, can they turn that information
19 over with that Proviso in effect?

20 MR. SMITH: Yes, because their duty was one that was
21 started -- and you look at the law --

22 THE COURT: But, right now, the Proviso says that it
23 can't -- and correct me if I'm wrong -- they can't turn to
24 over the names for million-dollar winners?

25 MR. SMITH: That's correct. What they received --

1 any kind of request for information now, they could not.
2 But this request was not sent now.

3 THE COURT: But just right now, at this point --
4 after July 1st.

5 MR. SMITH: That's the way I read the Proviso.

6 THE COURT: The issue is -- assume you're right,
7 that they breached this contract, that they were -- like
8 you said, once that duty began, after July 1st, I think it
9 gets so confusing because, even if they had breached their
10 duty, what happened July 1st, even though it was a law
11 that came into effect that y'all contemplated, that's not
12 really relevant. It's almost, in my view, analogous to if
13 the Lottery Commission burned down and all of the files
14 were destroyed, you know, they didn't have any computer,
15 and then they said, "Well, it's all gone." Would they
16 still be in breach of contract even though the files are
17 physically gone, it's impossible to complete because
18 they're burned up? After July 1st, it was impossible to
19 complete.

20 MR. SMITH: It -- the -- all right. So
21 impossibility, in fact, burned down? Yes, for sure.
22 Definitely. This is an impossibility by law,
23 hypothetically, is their claim here. And so that is about
24 when would the law have changed to make their performance
25 impossible?

1 Now, here, our contention is that, had they said,
2 Mr. Glassmeyer, all you have got to do is send us, I don't
3 know, a letter. Right? They didn't do that in the
4 mediation agreement. They said, "You have to send us a
5 FOIA request."

6 And the reason that's important is two-fold. The
7 first is that a FOIA request gives them the ability to
8 exercise a certain period of time regarding production of
9 information. Right?

10 The second thing it does is it also triggers the
11 ability for them to have additional agreements regarding
12 production of this. They contemplated that in the
13 mediation agreement. You can read it for yourself. And I
14 believe that that was a part of it. They just assumed
15 that what they would be able to do is get the law changed
16 in time so that, by May 31st, it would at least have some
17 enactment. And that didn't occur.

18 THE COURT: I think I -- and they missed that
19 deadline. It sounds like, if Mr. Glassmeyer filed that on
20 June 1st, then that ten-day -- then they would have been,
21 you know, up the creek because -- but it fell -- because
22 the mediation says it's -- you can do it via FOIA, within
23 that, because you're -- everyone knows the law as they're
24 presumed to; they know that there's certain deadlines.

25 I mean, it's almost like this deadline -- it's

1 almost like when there's 30 seconds left in a football
2 game and you got to take a knee, you have a 40-second
3 clock, you don't have to take it at 29 seconds or 28
4 seconds. You can wait for the clock to expire as the game
5 is over. I mean, if -- I mean, a separate hearing would
6 be if they willfully did it. That might be a separate
7 issue. But if they did it and let's assume it's not.
8 It's just an objective. They had ten days. At the end of
9 the tenth day, they proceeded, and, by then, the house was
10 burned down.

11 I mean, at that point, it sounds like, based on the
12 FOIA request -- I understand if it's a breach of contract
13 it might be. If this is under the contract, then maybe
14 they are allowed.

15 MR. SMITH: I think I understand what Your Honor is
16 saying. We're just pointing that if their impossibility
17 defense regarding the law, you know, having been changed
18 is because Your Honor believes that, at the time that he
19 sends the FOIA request, the law had changed and they could
20 not respond -- right? -- then I think that, yes, that
21 arguably would be a win for them on that issue regarding
22 impossibility. But the duty, under FOIA, begins when you
23 receive a FOIA request, and is it received before the law
24 changes.

25 And so that is our point, is that they could have

1 said, just in the mediation agreement, you know, "Just
2 send us a letter," for instance, and that would be a
3 different ball game. Because then, if they supplied it
4 later, they could say maybe, "Oh, I'm sorry. We had to
5 spend time compiling it." Instead, they had a duty under
6 FOIA to comply with what the law is at that time.

7 And so -- anyway, I don't want to blow it up too
8 much, Your Honor.

9 THE COURT: I see your point. I see your point.

10 MR. SMITH: But, next, Your Honor, I want to get to
11 the late providing of the records. And so that one, which
12 we have, Your Honor, I believe is our fourth -- yeah,
13 fourth ground concerning Request 8, 13, and 14.

14 And so, here, this case, as you're aware, now
15 looking through this, concerns multiple types of FOIA
16 issues and violations, not only opening meetings but all
17 in the records. And so, to elude to Sloan and those cases
18 about whether or not it would even become academic to
19 issue a declaratory judgment in this case, it's simply not
20 analogous to those cases. We're not here on a lawsuit on
21 just those things. We just have the right to assert any
22 violations of FOIA when we're also seeking injunctions and
23 we're seeking specific performance or other remedies from
24 this Court on other FOIA violations with the same party.

25 And so, here, it would not be moot. It would not be

1 moot because the actual injunction, which we are not
2 seeking, would have been impossible for Your Honor to
3 order them to comply with because they already supplied
4 it. The injunction would have been mooted. We're not
5 here on the injunction. We're here on saying that, while
6 Your Honor is considering a potential injunction, to
7 supply responsive information on other claims with the
8 same party concerning the same FOIA request but on
9 different items, it is appropriate for Your Honor to also
10 declare that you violated FOIA.

11 And let me mention that my misstatement about
12 willfulness shouldn't confuse Your Honor. That is not a
13 part of FOIA and what a violation is. It is in FOIA about
14 what is or is not a violation and Your Honor can read it.
15 Those deadlines are there. They can be changed by
16 agreement, but if you do not supply information within it,
17 the request is deemed approved. That is in FOIA.

18 And so we are simply asking for this Court to make a
19 declaration that, when they failed to supply the
20 responsive information within the statutory period to
21 Mr. Glassmeyer, that was a violation of the act.

22 THE COURT: And the remedy would be just to declare
23 that Items 8, 13, and 14 are -- have been turned over? Or
24 what would be -- or just to declare --

25 MR. SMITH: To declare that they violated it by

1 replying with responsive information pursuant to that
2 statute after the statutory period, so the 30 calendar
3 days. Or -- and I'd have to go back and look at the
4 record; Your Honor can look at it for yourself, but there
5 may have been some kind of other arrangement they had, but
6 regardless, it's 30 days, what I recall from right now
7 looking at that.

8 But they didn't do that, and that's what we're
9 seeking a declaration as to a FOIA violation for.

10 No questions about that one, Your Honor, I'll move
11 forward with the next one. So, Your Honor, the next
12 ground concerns that redaction of the entire page. Your
13 Honor, it's my understanding, by talking with them earlier
14 today, that what I believe you have is an unredacted form
15 of what they have in their notebook. I believe it's Tab
16 23. So if you want to turn to that real quick.

17 I indicated in my motion that was not ripe for your
18 consideration just yet, and the reason that I was doing
19 that, Your Honor, is that I have never done an in camera
20 review yet when seeking responsive information under FOIA,
21 but my understanding about what rights would be afforded
22 the requesting party in an in camera review would be some
23 sense of what is underneath the redactions. Now, again,
24 not exactly what's underneath the redactions; that would
25 throw away the point of what Your Honor is trying to

1 review, but a sense of -- for instance, if you're looking
2 at the first page of what they have here, page 1 of 5
3 under what they provided -- you can see that, under B,
4 there is what I assume is a heading about something that
5 is redacted, and then the entirety of C is redacted.
6 Then, if you go to the next few pages, Your Honor, all of
7 it is redacted.

8 Now, if I'm going to make any kind of arguments
9 about what might or might not be information related to a
10 potential security claim, I have got to have just some
11 understanding about is this heading one that has proper
12 nouns in it, for instance, like a particular location? Or
13 does it imply that it's just about a non-proper noun but
14 is a noun, like a building or a -- anything to start
15 talking about this. Because, otherwise, Your Honor, I am
16 not going to be able to say that I believe that, if you
17 look at the section that they have cited, 30-4-20(c) at
18 the end where it read, "Information related to security
19 plans and devices proposed, adopted, installed were
20 utilized, other than amounts suspended for adoption and
21 [indiscernible] installation is required" -- I don't know
22 which part of this it could fit. I can't argue to Your
23 Honor that, "No, Your Honor, that type of information is
24 not what the legislature intended."

25 So, Your Honor, at this point, it is my request that

1 they supply us with some -- something, and Your Honor can
2 structure that however you want; I think you understand
3 what I'm asking for here -- that gives us an idea as to
4 these redactions that are before Your Honor in in camera
5 review, and allow us sufficient time to brief upon the
6 receipt of that -- and maybe if Your Honor wants to
7 receive that too -- so that I can make some argument about
8 whether or not it is appropriate to redact a particular
9 section within this.

10 MR. TRAYWICK: Can I -- all right, Your Honor.
11 First of all, this section says this matter is closed to
12 the public. This isn't even a public record, so we did
13 more than we were even required to under FOIA by giving it
14 and redacting it. We could have just said, "No, we're not
15 giving it to you." So I don't understand what more
16 information he needs to know. The preamble makes it quite
17 clear that it's a security policy and you have it before
18 you. I mean, we don't need proper nouns. We don't need
19 headings. We didn't have to give it at all. But in an
20 effort to be more transparent, we gave it and redacted it.
21 So we did more than what's required under FOIA, and this
22 is just an effort to delay resolution of the issue.

23 MR. SMITH: Your Honor, if I may briefly?

24 THE COURT: Yes, sir.

25 MR. SMITH: Just to get back to the law on that. So

1 if you look at 30-4-(c) [sic] public record, it says it
2 includes all books, papers, maps, photographs, cards,
3 recordings that are owned, used, in possession of, or
4 retained by a public body. This is one of those things.

5 Then, at the very bottom, Your Honor, it reads,
6 "Information relating to security plans and devices
7 proposed, adopted, installed, or utilized."

8 So what is a public body to do? Well, in 30-4-40,
9 you have another statement that, where you have exempt
10 information in B, you have to separate out that exempt or
11 nonexempt information.

12 Now, is this information, which is actually accepted
13 rather than exempt? Perhaps. But if you look to 30-4-40
14 and you see that there's a provision which allows for,
15 under -- there is a provision of FOIA that allows them to
16 exempt information which is allowed to be excluded under
17 other law. And so that provision -- there we go.

18 "Matters specifically exempted from disclosure by statute
19 or law." 30-4-15, the non[indiscernible] exemption
20 records definition appears to exempt information. Had it
21 chosen to exclude the entire record and they were just
22 being very generous -- right? -- with supplying more than
23 they had to, then it would have applied to -- and they
24 chose to waive this top card, well, that's not what
25 they're doing here. They're supplying portions of this as

1 information which, under 30-4-15, they're allowed to
2 exclude from the record. Exclusion or exemption, it
3 doesn't matter. The tool is redaction, and that's what
4 they have before Your Honor.

5 And so, yes, let them claim that it is information
6 under 30-4-15, which is identified, you know, as those
7 things which are information related to that. That's
8 fine. That will be what they use under these redactions
9 to say you can't have it. They're not saying this entire
10 record is not here anymore. That might have been if they
11 put that earlier in the definition, right, of public
12 record. But, no, it specifically says "information
13 relating to."

14 And, Your Honor, I go back -- and we keep talking
15 about these statutory construction issues, that codified
16 purpose of FOIA, which of these constructions were
17 provided helps Mr. Glassmeyer learn the activities of
18 public officials at minimum cost or delay?

19 THE COURT: Okay.

20 MR. SMITH: Your Honor, I'm finally down to the
21 fourth issue, which is the unduly burdensome -- unless you
22 have any other questions about that, Your Honor.

23 THE COURT: No. What I'm going to do with Item
24 No. 11 -- I understand what your arguments are. So what
25 I'm going to do is I'm going to review, obviously, the

1 statute, but review the redacted version that you
2 received, and I'm going to review the unredacted to see --
3 prepare that information to see if you -- if it falls
4 under the statute per se or if it's -- you need more
5 information to further argument about -- to make your
6 argument.

7 MR. SMITH: Correct.

8 THE COURT: But I will have to say you got what you
9 got in this after review, but I'll be able to review that
10 in camera.

11 MR. SMITH: Thank you, Your Honor.

12 And to the extent we have already made any argument
13 on that, I believe that's contained within our motion
14 regarding not every punctuation, article, or whatever
15 would be getting over information related to.

16 MR. TRAYWICK: Can I add one point on that if we're
17 going to put a pin in it?

18 THE COURT: Yep.

19 MR. TRAYWICK: What would punctuation add to a right
20 for the public to know? I mean, we're arguing over
21 nothing here. I'm always mindful of Chief Judge Sanders'
22 admonition of whatever doesn't make any difference,
23 doesn't matter, and I think that would be helpful to guide
24 all of us here. Thank you.

25 MR. SMITH: And it's not uncommon throughout South

1 Carolina history for the government to tell its citizens
2 what does or doesn't matter and what they need to learn
3 about the government. And so this is not inconsistent
4 with the history to hear these arguments, Your Honor.

5 What we have to do, if we're making this statute,
6 which is remedial in nature, is unless it is there being
7 made for receipt for commercial solicitation, which is the
8 only prohibited purpose under the statute, it's irrelevant
9 as to how useful or whatever it is.

10 If it fits in an exemption claim, they can redact
11 it. If it fits an exception claim, like Your Honor is
12 going to review, they can redact it.

13 THE COURT: All right.

14 MR. SMITH: Thank you, Your Honor.

15 So they have a counterclaim and a defense in this
16 action concerning unduly burdensome. So the point that
17 I'm going to be raising here about this one is that,
18 technically, they have summary judgment [indiscernible] in
19 their favor to say you do not have to respond, but we are
20 indicating that that should be denied and that a summary
21 judgment be granted in our favor and they have to supply
22 the response and information, which they're claiming is
23 unduly burdensome.

24 And so, Your Honor, the thing that we are primarily
25 arguing in our motion on this point is that FOIA changed

1 back in '17 to allow them to charge for additional things.
2 They have also had the ability, under 2017's revisions
3 now, to make this argument that they do not have to
4 respond to responsive information because it would be
5 unduly burdensome or overly broad to do so.

6 And what is before Your Honor today, because I
7 haven't heard arguments about this otherwise, is that it's
8 only unduly burdensome from 30-4-110 or overly broad.
9 It's one or the other. It is not vague, repetitive, or
10 otherwise improper. I have not heard argument about what
11 other improper purpose this is made for, but to the extent
12 that Your Honor wants to construe something that they have
13 said is an improper purpose, I'd like to just say that we
14 have addressed what is considered a proper purpose under
15 FOIA, and unless it's for commercial solicitation, there
16 is not an improper purpose.

17 And so what we are going to be arguing about here
18 right now is, is it unduly burdensome or overly broad?
19 Okay. What you have in the affidavit of Mr. Glassmeyer
20 that was filed with our motion for summary judgment
21 yesterday afternoon is his stated purpose. So now Your
22 Honor has in the record what the requestor is stating this
23 for and what he was hoping to get from this being
24 responsive information.

25 And so Your Honor can make a determination based

1 upon that about what would be the thing that could be
2 accomplished in the event Your Honor were to say you have
3 to supply the information. That's important for this
4 reason: If they do not charge for FOIA requests, if
5 Mr. Glassmeyer cannot pay a reasonable deposit -- no more
6 than 25 percent as required under the statute -- for them
7 to then have the duty to start compiling the information,
8 Your Honor, and they get to determine internally whatever
9 the threshold is that would be unduly burdensome or overly
10 broad to make a request, then that means that we would be
11 allowing, on the facts of the case of this -- of what is
12 before Your Honor, an entity like the Lottery Commission
13 or the Lottery Commission in this case to say we can sit
14 back, not charge for FOIA requests, but if we don't like
15 it, we can say it's too big. They cannot pay that deposit
16 to trigger it because there's no deposit to pay because
17 there are no fees. So we don't have to comply with
18 requests we don't like.

19 They should be lauded for not charging for FOIA
20 requests. That makes it more transparent. But when you
21 combine that with this stance in this case -- and we
22 stipulate to this entire record, including John Nichols
23 said about how long this would take, then what it means is
24 that they will not have a duty to respond with responsive
25 information because they will always be able to claim --

1 THE COURT: Could they add in and change the policy,
2 you know, midstream and say, "All right, bad policy. We
3 need a fee schedule because, obviously, there's a problem
4 policy-wise and because we need to have one just because
5 it's getting expensive?"

6 Could they midstream say, "All right. Here's the
7 fee schedule." And we saw the numbers: 25 percent of a
8 million. Could they do that now or is it too late?

9 MR. SMITH: It's too late in this case but they
10 could, at any moment now for any future requests that they
11 receive, do that.

12 THE COURT: And let me ask you this too. I forgot
13 the question I had and you reminded me. When reading
14 Mr. Glassmeyer's affidavit, I finally put together the
15 purpose of FOIA requests. You know, sometimes you get
16 FOIA requests and you don't know what you would search
17 for, why they're doing it, but the reason is for potential
18 embezzlement or skimming off the top or whatever that
19 nature is. Can I take that and use that when I look at
20 what he's searching for? Can I use that as a factor to
21 say, "Yeah, that's reasonable" as opposed to if he said,
22 "I want every email related to if the sky is blue or not"
23 and not in relation to what his true purpose is, I mean,
24 does that -- can I use what his purpose is in my
25 determination?

1 MR. SMITH: I think, Your Honor, in light of what's
2 before you on this record, that might actually be
3 something that could have apply to the determination
4 regarding broadness, because they are saying, right, that
5 it's unduly burdensome or overly broad. And so, if Your
6 Honor were to make a determination that "I find it's not
7 unduly burdensome, you guys can start putting it together,
8 you can access it, whatever, work out a reasonable time to
9 do it," right, but that "I determine, based upon the
10 affidavit that you filed here, for what the purpose is for
11 which you submitted this request, it would be overly
12 broad" to get whatever, you know, Your Honor thinks, that
13 would be appropriate.

14 THE COURT: What I'm seeing here is that one side
15 sees a rabbit and one side sees a duck because, for the
16 purpose of what he wants this information for, to
17 determine if there's embezzlement or skimming off the top
18 or if there's money being displaced, then it makes sense
19 to have all of the checks, all of the wire transactions,
20 all of the emails, all of the other information he
21 requested so it's not overly broad in that sense because
22 that fits his purpose to determine embezzlement or scheme
23 and is not burdensome because that goes to his -- directly
24 to what he is trying to seek.

25 On their end, when it comes to the overly broad and

1 burdensome, I don't think -- they're using money, but I
2 don't think that's in relation to a fee. That's just in
3 relation to how they see it being overly broad and unduly
4 burdensome. So it's not that either side is wrong or
5 right necessarily. It's how do they take this request,
6 which its purpose might be a noble one and legit, but at
7 some point -- because, I mean, could he send a FOIA
8 request to the City of Columbia for every email for
9 everything? I mean, for everything.

10 MR. SMITH: Yeah.

11 THE COURT: Absolutely everything and then it's
12 like, well, how long -- even though it might be a good
13 request and have a legit purpose, how do you -- whose
14 definition -- what are we defining here?

15 MR. SMITH: Your Honor, this is -- as far as I'm
16 concerned, I believe we have done the research. I mean,
17 this will be one of the first times you had -- anyone has
18 had to create a record, you know, concerning what this
19 looks like this a given case.

20 And so what I can report to Your Honor is what isn't
21 available under Title 30, Chapter 4, that they can say,
22 "No, I don't want to supply this information," and the
23 only thing that they have indicated that should allow them
24 to be excused from a particularly onerous request in terms
25 of the amount of time [indiscernible] is to charge for it.

1 And that's what, by the way, in the 2017 revisions
2 as attorney for the press [indiscernible] when I was there
3 on that, that's what they're arguing for. I mean, that
4 was a barter for exchange [indiscernible] on those
5 revisions.

6 So it's true that, if you sent it to the City of
7 Columbia, they would say, "It's going to take" -- same
8 [indiscernible], for instance, right? -- "a million
9 dollars as a deposit for us to start working on this."
10 That's not what's happening here. Instead, what worries
11 Mr. Glassmeyer and myself is that this might be a new
12 trend. This might allow public bodies to not supply
13 information when they feel it's unduly burdensome to do
14 so. And so they're just going to say, "No, we don't
15 charge fees, but look, it's going to take too much time."
16 Well, charge for it. Otherwise, the statute is not
17 complied with.

18 Is he learning about the activities of Lottery
19 Commission at minimum cost or delay by him now having to
20 field a counterclaim and a FOIA suit -- right? -- about
21 this?

22 THE COURT: But doesn't this -- what you're telling
23 this Court to do, whether there's a -- whether you have a
24 fee statute or not, doesn't that just completely neuter
25 the unduly burden -- when would you ever use unduly

1 burdensome or overly broad if you could just say,
2 "Charge"?

3 So, for instance, if I want everything from the
4 federal government and it's a billion dollars, and I say,
5 "All right, I'll get it." I'm Bill Gates and I say, "All
6 right, put it down," and they got to start doing it. You
7 can't say it's overly broad anymore because there's a fee
8 on it.

9 I mean, when does that -- what happens to that
10 definition? What is, then, unduly? Is it when it's
11 untethered from his original purpose? Is that what I'm
12 looking for?

13 MR. SMITH: I think that fits on the overly broad,
14 Your Honor. Again, first impression, Your Honor can make
15 its determination. That fits on the overly broad ruling.
16 You can make a determination in light of what his stated
17 purpose is in his affidavit, but that doesn't --
18 particular parts of production don't fit. That works.

19 But on the unduly burdensome, I think Your Honor's
20 determination is going to have to fall down to what -- we
21 agree, there is some burden in any legal duty. There can
22 be burdensome requests that come out. So overly is the
23 key point here. And overly, to our mind, is not something
24 that can be applied on the stance of this case on these
25 facts because they're choosing -- choosing -- not to ask

1 for fees associated with the request when you combine --

2 THE COURT: So you're saying [indiscernible] only
3 narrow detail, essentially, even though it would be --

4 MR. SMITH: They're large but tailored narrowly to
5 the purpose.

6 THE COURT: To his purpose.

7 MR. SMITH: Right. That's correct, Your Honor.

8 And so, Your Honor, in the event we're wrong, by the
9 way, about can they midstream charge -- and poor
10 Mr. Glassmeyer, now, I submit, hey, deposits of hundreds
11 of thousands of even a million dollars too, Your Honor.
12 If, hypothetically, Your Honor were to order that in this
13 case, I don't know that Mr. Glassmeyer is going to come up
14 with that kind of money -- right? -- to pay that. But the
15 statutory purpose of FOIA would be upheld because he would
16 have the ability, then, to learn the activities of public
17 officials at what Your Honor determined would be the
18 minimum cost. In this case, that deposit of that amount.

19 And so which point here is the one that fulfills
20 that purpose? Well, Mr. Glassmeyer's contention is that,
21 when you don't charge for fees, you can't then sit back
22 and say unduly burdensome when all of the record you have
23 before Your Honor is about time, resources, money that
24 they would have to expend to divert time to fulfill the
25 request.

1 THE COURT: What is the -- I guess, procedurally --
2 the previous case was dismissed under 12(b)(6); right? I
3 mean, it wasn't -- there was an issue about there not
4 being a record.

5 MR. SMITH: Right.

6 THE COURT: Have we built a record for me to make a
7 determination as to unduly burdensome and overly broad?

8 MR. SMITH: I think so.

9 THE COURT: Okay.

10 MR. SMITH: I mean, in --

11 [OVERLAPPING CONVERSATION.]

12 THE COURT: -- there's some testimony based on
13 Mr. Glassmeyer's affidavit and everything?

14 MR. SMITH: I think so. I mean, but, Your Honor, to
15 the extent -- and I think Mr. Traywick would agree with me
16 on this -- you ask us to supply additional things or
17 conduct additional testimony, we can do that. I mean, as
18 long as we fit within the scheduling order and, you know,
19 we're getting including [indiscernible].

20 THE COURT: Yeah, no, I haven't [indiscernible]
21 here. I was just thinking procedurally.

22 MR. SMITH: I think you do have [indiscernible].

23 THE COURT: Anything else as to their -- the
24 counterclaim arguments?

25 MR. SMITH: No. And, obviously, in the affirmative

1 on our charges and the opposite.

2 THE COURT: All right. Thank you.

3 All right. Yes, sir.

4 MR. TRAYWICK: Thank you, Your Honor. I'll start in
5 reverse order where he finished. The statute has to mean
6 something. What he's asking you to do is read out 110 and
7 say they can't do that. Well, that's not what the General
8 Assembly has instructed here. They have allowed for this
9 exception for precisely situations like this, when someone
10 is submitting a FOIA request saying, "Go fish." It's a
11 fishing expedition.

12 By the way, we were never told that purpose, as far
13 as I know. He hasn't pointed to anywhere in the record,
14 until an affidavit filed at 3-something yesterday
15 afternoon, that he was looking for that.

16 Now, if they can point somewhere else in the record,
17 I stand corrected, but that -- that still was never
18 offered. We made two offers saying, "Please narrow your
19 request; this is too much," and we gave the reasons why.
20 And there was never a response to that. Because he didn't
21 want the records. He wanted to come litigate this case.

22 You know, I'm reminded of a principle from Amnesty
23 International v. Clapper, and that's that a party cannot
24 manufacture a harm to go file a lawsuit. That's United
25 States Supreme Court. And, respectfully, that seems to be

1 what's happening here on several of these issues.

2 So Mr. Smith concedes, in (indiscernible), you don't
3 need to look at intent for when the response came due.

4 Also, duty is a question of law for the Court. The
5 law can change. All right? So the duty of the Lottery
6 could have been different at one point and then, when the
7 General Assembly intervenes, it changes the law, before a
8 response comes due, then the law changes. Okay? And so a
9 new duty is imposed to not provide that information.

10 There's no bad faith here. We're following the law.
11 And even to this day, to your point earlier, how could you
12 order it in the face of the Proviso for us to turn over
13 this information? I think that would be in direct
14 contravention of the laws of the General Assembly of South
15 Carolina.

16 We have already -- on the record, we have already
17 given a sense of what it is. It's a security policy. And
18 I just don't understand why he thinks a semicolon is going
19 to help them to determine anything. I mean, not to beat a
20 dead horse but that just is a silly argument. I'm sorry.
21 And then we also did more than what was required under
22 FOIA in providing it.

23 This notion of what's required, again, we are not
24 asking for a Brightline (ph) holding on the unduly
25 burdensome claim. Your Honor is very familiar with

1 discovery practice. We have got un rebutted expert
2 testimony from John Nichols in his affidavit saying the
3 practice which Plaintiff should know -- he's a lawyer
4 too -- is to assert terms. That was never, ever offered.
5 Never. He never even responded to the request to narrow
6 those requests after two letters. Why? Because this
7 lawsuit was going to get filed.

8 And so now we have to defend it and file a
9 counterclaim because, as you have already determined in
10 denying the motion to dismiss, there's got to be a remedy,
11 and the statute is silent as to how you pursue that
12 remedy.

13 Well, to get the relief under 110, you got to have
14 some lawsuit. You don't just -- I don't get to come and
15 just -- now I can say, "Hey, we need a hearing." There's
16 got to be a caption. There's got to be a lawsuit filed.
17 That's how you do it. There was nothing untoward here
18 with the way the Lottery Commission presented this issue
19 before the Court.

20 And I would note that the last letter from
21 Ms. Garfield, who has known Mr. Glassmeyer for 30 years --
22 okay? They were in law school together. This -- her last
23 letter to him was, "Hey, please narrow this." And nothing
24 in response to that. Instead, it was a lawsuit.

25 So I don't know that, at this late hour, they can

1 come and say, "Oh, well, it's just for embezzlement."
2 They have done nothing -- they concede -- by not
3 introducing any facts to the contrary as to how much it
4 would cost and how much it would take -- how much time it
5 would take to conduct all that review and to turn over the
6 records.

7 We cannot force public bodies to undertake that
8 herculean of a task at such great expense -- at the
9 expense of money that should otherwise go to scholarships,
10 to folks trying to pursue their dreams in higher
11 education.

12 So, under these circumstances -- under these unique
13 circumstances, all you have to find is that we met our
14 burden of proof under these unique circumstances that the
15 statutory provision applies.

16 And I implore Mr. Smith to provide a citation for
17 commercial purpose. That's not the sum all -- the end
18 all, be all of when documents can be refused. There's a
19 whole laundry list of exemptions and other reasons as to
20 why you can't produce certain things. Is that one of
21 them? Sure. We stipulate to that. But that's not the
22 only one.

23 Beg the Court's indulgence.

24 Also, I heard Mr. Smith say earlier that a Proviso
25 is not the law. It's black letter law that a Proviso is

1 the law of the land during the year in which it's in
2 effect. And that's State ex rel. McLeod v. Mills, 256
3 S.C. 21. And that's a 1971 decision.

4 So that is the law of the land. We followed it in
5 not providing it.

6 Your Honor, in sum, the Lottery produced scores of
7 documents and took its FOIA obligations very seriously and
8 provided a ton of information to Mr. Glassmeyer. We're
9 here sort of tinkering around the edges on some of the
10 specific requests.

11 But, in our view, the facts are undisputed and
12 they're clear that we're entitled to judgment as a matter
13 of law on each of the claims presented.

14 And, again, he's yet to cite anything in the record
15 or the law that would allow for attorney's fees under the
16 circumstances for the late stuff. We apologize for the
17 error. There's no ripe controversy for a declaratory
18 judgment, as the case we have cited, that they haven't
19 even distinguished. The purpose of a declaratory judgment
20 is not to say you're liable to [indiscernible]. It's to
21 settle uncertainty under -- of the obligations under a
22 statute. We have agreed that was our obligation under the
23 statute. We apologize for the error. He got the records.
24 The cases we cite make clear that the provisions of the
25 records makes it moot, and that there's no determined

1 purpose to be served when they were turned over before
2 litigation. He did not need to file litigation on that
3 point.

4 And so, for those reasons, we don't think attorney's
5 fees are appropriate.

6 Happy to answer any questions the Court may have,
7 but thank you for Your Honor's time and careful attention
8 to this matter.

9 As we indicated earlier, there is one other loose
10 end that Mr. Smith appropriately identified to me this
11 morning. It's whether -- the provision of signatures is
12 required under the law. In not turning that over, we have
13 cited a pretty clear statute. We're happy to submit a
14 brief to your Court -- or to the Court on that. I don't
15 think we need an oral argument. Again, I'll, you know,
16 defer to Mr. Smith. I don't mind spending any time --
17 spending time with Your Honor --

18 THE COURT: [Indiscernible] on this issue?

19 MR. TRAYWICK: So there's a sort of paragraph in the
20 complaint. I think it's No. 24. And Mr. Smith -- or the
21 plaintiff alleged that Defendant did respond to some
22 records pursuant to Item 4; however, failed to provide
23 unredacted information concerning drawers' signatures or
24 winners' names in violation of FOIA. Of course, the names
25 are before you. I guess he's saying we didn't move for

1 summary judgment on the signatures. There's a provision
2 of law that does not -- that prevents the government from
3 providing signatures. That's considered, you know, exempt
4 information. That was cited in not turning it over, so, I
5 mean, I can submit a one-paragraph brief to you on that,
6 or if he's here today to do -- have the citation ready.
7 Or if we can agree by consent to talk about it today. I
8 don't know what would be gained by looking at what it is
9 when there's a statute so clear on point.

10 MR. SMITH: And, Your Honor, on that quick point,
11 given just an opportunity to brief, you know, after we
12 have seen this statement of authority regarding what they
13 did to withhold it, yeah, that's fine. I mean, once we
14 get that point in their briefing on that, we'll reply in
15 briefing, and [indiscernible] for Your Honor.

16 MR. TRAYWICK: So I don't think we necessarily need
17 another hearing on it. I think you can probably decide it
18 on the briefs.

19 MR. SMITH: Whatever Your Honor prefers, yeah.

20 THE COURT: All right. If y'all will brief that.

21 MR. SMITH: And just to be -- for clarity, because
22 you have to remind me -- and Jordan, tell me if I'm wrong
23 here -- the drawers' signatures, those are already
24 identified and redacted, and so we could theoretically put
25 that in front of the Court. Meaning you didn't hold back

1 stuff and not provide it to Mr. Glassmeyer in redacted
2 form; right?

3 MR. TRAYWICK: We need to brief this. I can answer
4 that in a reply.

5 MR. SMITH: We may get in the same in camera review
6 part. You know if -- depending on Your Honor's
7 determination here in a second -- I was going to finish
8 with this, Your Honor -- is what needs to happen next.
9 And so they might claim exemptions on some things that
10 Your Honor has now said they have to provide -- winners'
11 names, for instance. We would probably need to get that
12 in front of Your Honor on the same basis, in camera
13 review, of whether or not exemption claims in those
14 records are appropriate as examined.

15 THE COURT: That's based on Item No. 1?

16 MR. TRAYWICK: Oh, I'm sorry, Your Honor. I just
17 looked and No. 4 is copies of all checks. And so that
18 issue would moot out if you find in our favor on the
19 counterclaim. Or wait. No? I'm sorry, we'll submit
20 something on briefing. I'm sorry, Judge. Can't do this
21 on the fly.

22 MR. SMITH: Depending on Your Honor's order from
23 today's hearing regarding unduly burdensome in particular
24 and those things, there may be additional things which
25 they then, on the substance of what's in those records

1 claim as exemptions, which I think would be appropriate to
2 then put before Your Honor on an in camera review of those
3 items.

4 THE COURT: If I rule -- if I deny their --

5 MR. SMITH: Correct.

6 THE COURT: Yeah, okay.

7 MR. SMITH: In the event -- now, you can also say --
8 which we would ask Your Honor to say -- that they have not
9 been availed -- they have been availed the opportunity to
10 ask for exemptions on those also, which they have not
11 done. They have only relied on unduly burdensome. They
12 could have said unduly burdensome because we have to do
13 these exact exemptions on all these records. They didn't
14 do that.

15 So we don't think that they should have
16 [indiscernible], but if Your Honor disagrees, then we need
17 to have an in camera review as to those things. And we
18 can --

19 THE COURT: Correct. If I say they have got to turn
20 stuff over, then they're going to say, "Well, hold up."
21 Stuff they haven't turned over already, they're going to
22 say, "Well, hold up. Do you want to -- we still
23 disagree."

24 MR. SMITH: That's what I'm assuming will happen,
25 Your Honor. And so we're just going to ask that that be

1 folded into this issue about the drawers' signatures and
2 briefing on that and...

3 THE COURT: The other stuff.

4 MR. SMITH: Okay. Yeah.

5 MR. TRAYWICK: And I'd note the statute we cited in
6 the confidentiality order, which is one more little loose
7 end here, you know, that we -- you don't waive exemptions
8 by not responding in accordance with that section.

9 We did submit that yesterday, I think, Your Honor.
10 I'm losing track of days here. The Lottery inadvertently
11 disclosed one document to Mr. Glassmeyer that did have
12 names on it, and we sought to have that deemed
13 confidential and to replace a document that's on the
14 clerk's docket, and we have submitted a confidentiality
15 order for your signature.

16 THE COURT: Is that in my queue?

17 MR. TRAYWICK: It should be. I believe --

18 THE COURT: And that's what everyone agrees for me
19 to sign? I saw that.

20 MR. TRAYWICK: And that's pending resolution of the
21 issues. Right? That's without prejudice to their
22 argument.

23 THE COURT: So I'll just sign that today.

24 MR. SMITH: And related to it but not that we're
25 asking to put it in because it will already be in front of

1 Your Honor is that the affidavit, Exhibit 5 of
2 Mr. Glassmeyer, that document was actually an attachment
3 to that email. If it makes it in with this batch, then
4 that's fine. I was going to redact the personal
5 identifying information on it anyway and then file it with
6 his affidavit, but since you guys have already moved for
7 the confidentiality order concerning that attachment to
8 the email, I just want to point out for the record today
9 that that's where that actually appears between the
10 parties.

11 THE COURT: Very well. So I'll sign that in my
12 queue, and that will take care of that issue.

13 MR. TRAYWICK: Thank you, Your Honor.

14 THE COURT: As to the Item No. -- or 24 in the
15 complaint, y'all send me a brief on that.

16 As to -- I mean, what this boils down to is he sent
17 18 requests. The ones in dispute are 1, 11, 5, 12, and
18 18?

19 MR. TRAYWICK: Yes, Your Honor.

20 THE COURT: And that's what I need to determine is,
21 for No. 1?

22 MR. TRAYWICK: Proviso.

23 THE COURT: Okay. You have to comply with Proviso
24 on that issue, breach of duty.

25 No. 11, was it properly redacted or not? Or do you

1 need to go back and get more information.

2 5, 12, and 18, was it unduly burdensome and overly
3 broad? If not, then you have to go back and explain if
4 there are exemptions or...

5 But that's what it boils down to; correct?

6 MR. TRAYWICK: Yes.

7 MR. SMITH: And, Your Honor, and so, to be clear,
8 the one that we just mentioned, right, that one also is in
9 there, as is Item 4. Item 4 concerns --

10 MR. TRAYWICK: Supplemental briefing.

11 THE COURT: What y'all supplement.

12 MR. SMITH: That's right.

13 MR. TRAYWICK: That's right.

14 And I would note that we have briefed
15 [indiscernible] otherwise improper, although she may not
16 have said it, we have said it. I mean, that is a
17 catch-all. Right? That can inform your sentence of
18 looking at this in general and just saying this is not a
19 proper request as presented, particularly in light of the
20 argument of trying to use the fact that we don't charge
21 against this. That seems a little...

22 MR. SMITH: And the final point I want to make, just
23 to clarify for the record here, Your Honor, they were
24 aware of Mr. Glassmeyer's purpose when he submitted the
25 request. You can look at the attachment to the complaint.

1 It reads, "I am requesting this information and
2 documentation in part because I am concerned about
3 possible continuing embezzlement of public funds within
4 your agency."

5 It was only in the context, of course, of this
6 litigation where we decided to give Your Honor additional
7 reasons. Again, he was not required to -- nor is anyone
8 who is requesting a FOIA request -- to say what it's for,
9 only that they not make it for that commercial
10 solicitation. I do not have that cite, but I can give to
11 Your Honor if you're concerned about that. It's in the
12 statute, I promise, somewhere. I have looked at it
13 before; I just can't find it right now.

14 THE COURT: I mean, the whole purpose of FOIA, since
15 it came around is -- and it's stated in the first
16 section -- to hold people accountable, to make sure that
17 people know what is happening in the public and private
18 sector.

19 I'm going to take all that into account when making
20 a determination about what to do with this.

21 Anything -- any further summation?

22 MR. SMITH: I'd note that's in the letter but that
23 was never presented in the context of unduly burdensome
24 because no conversation was had about it.

25 THE COURT: All right. Anything further?

1 All right. What I'm going to do is I'm going to,
2 obviously, take this under advisement. I'd like to
3 receive proposed orders as to these. I know y'all are
4 probably busy, so I'll give you 21 days. If you need an
5 extension, that's fine. Just as for the date -- you know,
6 as FOIA, you can see you have a deadline, so 21 days from
7 today. If you need an extension, just email me and I'll
8 give you more time to review this and then make my
9 decision.

10 And then send those supplement -- supplemental
11 briefs. Can you do that within 14 days?

12 MR. SMITH: Yeah.

13 THE COURT: If not -- sooner, too, would be more
14 helpful, but something like that.

15 MR. SMITH: Okay.

16 THE COURT: And then I guess we had a March hearing
17 scheduled, so if we need to have that -- I mean, depending
18 on what happens here.

19 MR. SMITH: Well, and that's a March -- that's the
20 March trial so that's the six-month deadline, the March
21 15th, 14th, whatever. Whatever is in the scheduling
22 order. So we have got to be done by that day.

23 THE COURT: What happened with that?

24 MR. TRAYWICK: So that would be -- I mean, you know,
25 that's a question. We'd both move for cross-motions for

1 summary judgment and contend no new issues of fact. So I
2 think, you know, your legal rulings here would sort of
3 dispose of the case.

4 With that, I mean, I don't know, have Mr. Glassmeyer
5 put up and a witness on our end. I mean, it really is
6 just going to be legal arguments all over again.

7 MR. SMITH: The way I'm viewing it -- and I bet
8 Mr. Traywick agrees -- is that whatever is left -- I think
9 that's the holdover date to what we just need to get
10 disposed of as of then.

11 MR. TRAYWICK: But one point of clarification on
12 this issue of supplemental briefing: Would it be
13 appropriate, Your Honor, for us to also include in a
14 proposed order, a ruling on it?

15 THE COURT: Yes.

16 MR. TRAYWICK: Okay.

17 THE COURT: Yes. [Indiscernible] you can do it less
18 than -- before --

19 MR. SMITH: 14 days on that one. 21 days on this.

20 THE COURT: Correct, yeah.

21 MR. SMITH: Okay.

22 THE COURT: No excepting Sundays or Saturdays.

23 MR. TRAYWICK: We're close attention to deadlines,
24 Your Honor.

25 THE COURT: But, obviously, if anything comes up, in

1 the meantime, I'll give you an extension and I'll give you
2 another hearing or anything. If you need a copy of the
3 transcript, [indiscernible].

4 All right. Anything further?

5 MR. SMITH: No. Just thank you, Your Honor, for
6 jumping into this for us and trying to get under the
7 statute at this time. I appreciate it.

8 THE COURT: I didn't have a choice; right?

9 All right. Thank y'all very much.

10 MR. TRAYWICK: Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 (The above matter concluded at 10:56 a.m.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Glassmeyer v. SC Lottery Commission

3 2023-CP-40-04854

4 DATE OF HEARING: 1-5-2024

5 COURT REPORTER/MONITOR: DCRP/Roderick Fitzgerald

6 *****

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9 recorded proceedings; that said proceedings were
10 transcribed to the best of my ability from the audio
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12 neither counsel for, related to, nor employed by any of
13 the parties to this case, and I have no interest,
14 financial or otherwise, in its outcome.

15
16 17 /s/ Bobbi Fisher_____

18 Bobbi Fisher, RPR and Certified Transcriber

19 Date Submitted: 1/21/24

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) 2023-CP-40-04854
3)
4)
5 George S. Glassmeyer) TRANSCRIPT OF RECORD
6 vs.)
7 South Carolina Lottery) Columbia, South Carolina
8 Commission) March 8, 2024
9 _____ DEFENDANT)

10 B E F O R E:

11 THE HONORABLE DANIEL COBLE.

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

16 TAYLOR M. SMITH, ESQ.
17 Attorney for the Plaintiff

19 SARA FRIERSON, ESQ,
20 VORDMAN C. TRAYWICK, ESQ.
21 Attorneys for the Defendants

25 KESHIA REED
 Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	Notebook of Exhibits		16

1 THE COURT: All right. Good morning. We are on
2 the record with Glassmeyer vs. South Carolina Lottery
3 Education Commission 2023-CP-40-04854. As way of
4 background, this is a FOYA case. I been assign to it as a
5 complex case. We initially had a hearing back in January.
6 We heard arguments from both sides. Afterwards, I
7 received proposed orders for dispositive summary judgment
8 motions from both sides, which I'm in the process of
9 reviewing. Per the FOYA statute, Mr. Glassmeyer is
10 essentially entitled to a hearing. I ruled tentatively on
11 the summary judgment motions earlier this week. I denied
12 them because I want -- if we needed to, I wanted to have
13 this hearing to ensure that if there's anything else that
14 needed to be put on the record, anything that needed to be
15 added to the record, stipulated to or clarified that the
16 hearing was given before I made a ruling on the merits of
17 this case either way. I want to have a full record for
18 either side if this case goes up and that's where we are
19 today.

20 And I've received both proposes orders. And we
21 had a status conference earlier this week where I told the
22 attorneys I'm not looking for anything else. There's not
23 something that I'm missing. It's a lengthy case both
24 procedurally. Legally, it has some novel issues as well
25 as factually reviewing I believe it's about 18 or so

1 requests. The ones that are specific though are still
2 lengthy and fact specific and their each kind of
3 differentiated between their request. There's a lot to go
4 through a lot for it, but as I told the attorneys, I
5 wasn't -- they did a good job of giving everything I
6 needed building a clear record for me kind of clarifying
7 what the issues are. But for today since Mr. Glassmeyer
8 and the Lottery Commission entitled to a hearing, I want
9 to make sure that the attorneys are present. And if
10 there's anything that need to be added to the record,
11 stipulated to or just further arguments to kind of tie
12 everything together, I'll let Mr. Smith address anything
13 with the Court that needs to be addressed.

14 MR. SMITH: Thank you, your Honor. And, your
15 Honor, concerning the procedural stance in this case at
16 this point, we have -- I guess, we'll call it pumpkin day
17 which is next Friday, that six-month period outlined in
18 the statute. Consequently, they are entitled if your
19 Honor were to order that there is not unduly burdensome or
20 overly broad request. And if he is entitled to an
21 injunction perhaps along the lines that we outline in our
22 proposed order on a rolling basis every six months if that
23 will be what the Court consider reasonable, that they then
24 would need an opportunity to present to the Court and we
25 would request an opportunity for an in-camera review and

1 ability to make an argument on any exemption claims. And
2 so I just want to raise that kind of at the beginning your
3 Honor and have any questions about that if they wants to
4 address that about how we might handle that, but either
5 way your Honor, this is not to put pressure on your Honor,
6 but that might be something that we would need to have a
7 decision on pretty quickly such that we could go ahead and
8 start briefing that issue to the extent your Honor feels
9 it has to happen within that six-month period.

10 THE COURT: Of course, and the sixth-month
11 period, I mean, it's -- I think this might be one of the
12 first cases that falls within the sixth-month period. We
13 work with the law as much as we can in that time period
14 and so we'll try to -- we'll address that -- cross that
15 bridge if we need to get to it because we want to make
16 sure -- I mean, you know, when I get these discovery cases
17 where I'm kind of going through stuff and then we have to
18 argue about -- you know, it's one step first. Do you get
19 it then, what do you get. I think the way I would
20 envision that if it came to that would be just working
21 with the parties, having another initial status conference
22 about all the stuff. And then because you kind of outline
23 what it is all the stuff. And then figure out, okay,
24 let's have arguments about this being narrowed down or
25 whatnot. That would be something I have to take up. We

1 won't argue that today, but procedurally if it came to
2 that, we'd have another status conference as quickly as
3 possible to try to get that procedure kind of how we would
4 go. And we would move quick. I mean, that's not
5 something -- my decision would be quickly about what to
6 do. And then we would figure out from arguments from both
7 sides, but we'll have to figure out if we get to that
8 point. And when we do, it'll be addressed in a status
9 conference if necessary.

10 MR. SMITH: Understood, your Honor. And within
11 that vain, we also have Mr. Glassmeyer's status as a
12 prevailing party in this matter. If he were to win on
13 any, I think, the law would say one or more of these
14 causes of action in this case. And so in our proposal we
15 indicated was the prevailing party. However, that is a
16 determination that your Honor's going to be making within
17 your discretion about how that looks for you. Now, the
18 meaning of that though would be that Mr. Glassmeyer would
19 then be entitled under 30-4-100 to seek attorney's fees in
20 addition to the injunctions your Honor's ordering on the
21 per cause of action basis. And so that might be an
22 additional thing, I'm just bringing up. You may also want
23 to address that your Honor.

24 THE COURT: Yeah, that would be something else
25 as well. The attorney fee's in general because I know for

1 that one and then just a general I think it was number 14
2 or whatever it was where there was the time delay, that's
3 where you all were asking attorney fees. So there would
4 be a separate again, but thank you for bringing it to the
5 Court's attention, that would be a separate status
6 conference to figure out about that hearing and how you
7 would brief those arguments that we would handle if needed
8 in the future.

9 MR. SMITH: That's right, your Honor.

10 THE COURT: And I will obviously have
11 jurisdiction of this case 'til the very end and so that
12 won't be an issue.

13 MR. SMITH: Thank you, your Honor. And so
14 getting in the substance a little bit on that your Honor.
15 There is in particular the -- what I'll call the late
16 request. These are the ones that they fail to supply
17 within the 30-day period, that one is dealt with in the
18 proposed order your Honor. And I believe that we are
19 arguing at this point is that that prevailing party status
20 would apply to Mr. Glassmeyer in the event your Honor were
21 to rule that he loses on everything but those. So what
22 I'm pointing out here is this they have indicated that
23 your Honor's declaration as to those being late would be
24 mute. Now, there would be no justiciable controversy
25 practical affect given by an order saying that they are

1 late, that is our fundamental disagreement about that
2 particular part of this proposed order. And so in fact
3 they admitted it is late. Your application then to this
4 matter is an order saying that, declaring that, that is
5 all we're seeking. By it being late, Mr. Glassmeyer's
6 purpose in seeking the information at minimum cost or
7 delay under 30-4-115 was frustrated, so that is why we're
8 seeking that. I want to point out that in this case the
9 injunction regarding those things was muted. We couldn't
10 seek it. They had provided those records. They were
11 merely late. Part of the argument provided by the Lottery
12 Commission to this cases cites back to the two cases that
13 Sloan taught concerning Friends of the Hunley.

14 This first case which establish -- which is not
15 really before this court has already established is it
16 appropriate to give him attorney's fees because he got the
17 documents later, that was the first case. The second case
18 comes back and the Court has to then determine is it
19 appropriate to continue even the appeal at that point or
20 has it been muted because of the providing of documents
21 and the payment of attorney fees. And, of course, there
22 was nothing left to do.

23 This case that you have before you though it
24 concerns not just that issue. It concerns other issues
25 and causes of action that we are dealing with right now

1 before the Court of which this was a part. My point is
2 this, in Sloan two as I'm calling it, the Court
3 misunderstood what was before it which was can we provide
4 records at this point, no. Can we indicate that it was
5 provided later, perhaps. Regardless what is our stances
6 of Court of Appeal reviewing a trial court determination
7 on that basis. And so it's a little bit confusing to
8 read, but in that case, I believe what the Court was
9 trying to say was there's nothing left for us to do other
10 than to ratify what was done at the court below, which is
11 just to indicate, yeah, they violate. It's a weird case.

12 And so I'm bringing this up to say that right
13 now the parties in that settlement agreement -- and this
14 is what gave rise some of the weirdness that your Honor's
15 having to consider in this case, contemplated that the
16 method with which Mr. Glassmeyer would come back to them
17 under that settlement and ask for the records which he
18 initially sued them about sometime ago was submit a FOYA
19 request. And so part of that FOYA request concerns not
20 just what we are saying is always deemed public
21 information under the statute and should be provided to
22 everyone, but also what they fail to provide or provided
23 late in this case. And Mr. Glassmeyer was merely already
24 doing what was contemplated by the Lottery Commission in
25 submitting the FOYA request. Does it concern additional

1 things, it does, but back to the point that I was raising
2 earlier this was already between the parties about how
3 they would receive a request for information. It's all
4 part of that request, and I believe it's appropriate for
5 your Honor not to say at this point that that is mute by
6 just foiling it into the same request for all the other
7 things the parties already agreed to contemplate. What
8 more is Mr. Glassmeyer to do is what I'm trying to point
9 out your Honor, but to insert any other violations that
10 happen to come from the request the parties contemplated
11 he would send about lottery winners' names and other
12 things which indicated or trying to root out potential
13 embezzlement at the Lottery Commission.

14 THE COURT: What remedy would you be seeking as
15 to request number -- this request the one that came late?
16 If we it is -- if we agree based on what they had turned
17 over if that is mute as to the information, you just would
18 like a declaration -- I mean, you can still seek
19 attorney's fees. I mean, I'm not -- what you are seeking
20 for this specific cause of action?

21 MR. SMITH: That a declaration your Honor that
22 the Lottery Commission failed to supply the information in
23 accordance with his requirements in 30-4-30 concerning
24 providing -- producing excuse me -- the information within
25 the specified statutory period. Thirty days was what they

1 had to do from the written determination day. They did
2 not do that as defined. As to the remedy, that's it.
3 It's the declaration.

4 THE COURT: And what is that just -- what is the
5 purpose of this? I'm just curious.

6 MR. SMITH: Right. The purpose of it is to
7 establish as a matter of record that the Lottery
8 Commission had a definite duty at some point and they
9 failed that duty. And the Court is recognizing that.

10 THE COURT: Okay.

11 MR. SMITH: The purposes of the declaration
12 more less is creating a record that the Lottery Commission
13 in a controversy, which obviously includes other things as
14 well, on these failed to exercise a statutory duty
15 appropriately. And so the Court is declaring that they
16 violated FOYA. Now, the affect of that is up to your
17 Honor because there's that discretion given in 30-4-100
18 about that prevailing party status. Your Honor could
19 determine well who cares for instance. I think it's
20 important. And I think it's important because there could
21 have been an agreement about how that period was pushed
22 back. It was actually pushed back as some of these other
23 items. They did not for these. They just submitted them
24 late. And so I think it would be appropriate in this
25 section of your Honor's order to indicate that the

1 declaration is provided. Declaratory judgment is
2 appropriate as to the lateness of the production of these
3 things. However, any claim for injunction is muted
4 because Mr. Glassmeyer has received and there's no
5 practical affect for an injunction to be awarded.

6 THE COURT: And then you're seeking attorney's
7 fees now or that would be in the future hearing based on
8 if I ruled that way?

9 MR. SMITH: If you rule that way, then it's our
10 assertion under the law 30-4-100, that Mr. Glassmeyer be
11 prevailing party if we win on just those issues alone.
12 Now, as to whether or not, we seek attorney's fees, that
13 would be something that we would do quickly, you know,
14 upon a motion I'm thinking procedurally your Honor just
15 know what my thinking is. As soon as we find an order
16 that indicates we're the prevailing party, we can't do
17 that until this court says we are. And so I would make a
18 motion on attorney's fees. And so that is what would
19 entitle us assuming we're the prevailing party. Your
20 declaration though is important for that purpose because
21 if you decide that we don't win on that, which I think is
22 the easiest one for us to prevail on if look at the
23 statute provides, then it comes down to other issues at
24 play. We could lose on those issues your Honor and win on
25 some others and we're still the prevailing party. It's

1 your interpretation of the statute regarding how you
2 bestow that time.

3 THE COURT: Okay. Thank you.

4 MR. TRAYWICK: I appreciate Mr. Smith getting
5 into the merits and I'll address some of that, but I like
6 to sort of get back to the procedural aspects of the case
7 if I might. So the collateral matters that Mr. Smith has
8 referenced, we agree that those are dependent upon the
9 Court's ruling on the issues that been presented in the
10 various cross motions for summary judgment. And, you
11 know, I think both parties have done a good job in this
12 case of working hard to meet the six-month statutory time
13 frame in good faith. And so hopefully there will be a
14 willingness to the extent other matters arise for us to,
15 you know, have some grace for each other and for the Court
16 recognizing your case load to get those done in an
17 expeditious manner, but one that's reasonable, again, if
18 necessary.

19 As for the procedural posture, now that we're in
20 a final hearing, your Honor, we think that -- I know you
21 initially denied the cross motions for summary judgment is
22 mute. I would say now that we're in a final hearing that,
23 you know, and your -- we've submitted yesterday I don't
24 know if you saw in the afternoon a joint stipulation as to
25 the facts in this case. I think this could be treated

1 rather as a trial and that you could issue findings of
2 fact in conclusions of law pursuant to Rule 52 of the
3 South Carolina Rules of Civil Procedure. And we'd be
4 happy to revise our proposed orders to note that.

5 To the point of joint stipulation of facts, your
6 Honor, I've shown this to Mr. Smith tried to save some
7 trees here, so I didn't make copies for everybody. But at
8 the appropriate time would like to submit this notebook of
9 all the exhibits of everything that has been filed to date
10 as court exhibit or trial exhibit for purposes of this
11 final hearing, so that, you know, that that's the record
12 before the Court for purposes of the final hearing.

13 MR. SMITH: And I've consented to both the trial
14 and to that, your Honor.

15 THE COURT: All right. We'll make that -- let's
16 make that a court's exhibit.

17 MR. TRAYWICK: And just for the record, it's 36
18 tabs.

19 THE COURT: Thirty-six tabs we'll make Court
20 Exhibit Number 1. Does that include the stipulation of
21 facts in there?

22 MR. TRAYWICK: It's the caboose.

23 THE COURT: That's everything?

24 MR. TRAYWICK: Yes, your Honor.

25 THE COURT: Okay. So we'll make that Court's

1 Exhibit Number 1. You have an electronic copy?

2 MR. TRAYWICK: So that's what I was going to say
3 your Honor for you ease of reference, we did the upload
4 for you. So as you review the proposed orders, but I will
5 be glad to do an electronic version, of course, circulate
6 to Mr. Smith ahead of time. And then submit that to the
7 Court. We can either e-file it or whatever your Honor.

8 THE COURT: You all can just e-mail it to me.
9 E-mail everything to me. I don't want you all to pay any
10 filing fees not until the end.

11 MR. TRAYWICK: That may need to be linked in
12 because I think it can be a lot. And to that end, we
13 appreciate your Honor's patience as we try to thoroughly
14 litigate these issues for the Court.

15 THE COURT: And I'm work on you alls schedule as
16 quickly as we can for Mr. Glassmeyer, so I know we're all
17 busy so. If you will hand that to the court reporter and
18 she'll make that a court's exhibit.

19 MR. TRAYWICK: May I approach?

20 THE COURT: Yes, you may.

21 (WHEREUPON, Court's Exhibit No. 1 was marked for
22 the record.)

23 THE COURT: And the -- the stipulation of facts
24 is that the same -- have I seen that yet? Is that what's
25 in both of you alls proposed orders or is it different?

1 MR. TRAYWICK: We just filed it yesterday
2 afternoon your Honor.

3 THE COURT: Okay. I'll need to ---

4 MR. TRAYWICK: It's in the very last tab there
5 number 36.

6 THE COURT: Okay.

7 MR. TRAYWICK: Just stipulating everything that
8 we filed constitutes -- we're agreeing that it's
9 admissible, authentic, you know, correct under the rules
10 of evidence and the rules of civil procedure. And then
11 we're asking that your Honor admit that as the record in
12 this case.

13 THE COURT: Okay.

14 MR. TRAYWICK: If there aren't any other
15 questions from the Court on the procedural matters, I
16 would like to sort of touch on the more substitutive issue
17 that he just brought up.

18 THE COURT: Yes.

19 MR. TRAYWICK: With regard to the late request.
20 It's our view, you know, first of all, he's conceded that
21 any request for injunctive relief would be mute. It's our
22 view that a declaratory judgment would also be mute. The
23 purpose of a declaratory judgment, of course, is to settle
24 any uncertainty and insecurity with respect to rights,
25 status and other legal relations, that's direct quote from

1 15-53-130. And there is no uncertainty here. They were
2 late. We've apologized. We've conceded. He's got the
3 correct interpretation of the law. We're sorry for the
4 error. It was an honest mistake.

5 As your Honor indicated in the last hearing, it
6 was a little unclear under the statute about the ten days
7 versus the 30 days. We've read back through it, of
8 course, agree that ten days or ten business days for that
9 initial determination 30 days or 30 calendar days for
10 purposes of providing records. And so we believe that any
11 DJ would be mute. As far as your question, what is the
12 purpose of getting that, I think Mr. Smith illustrated
13 that pretty well. It's to get fees, right.

14 THE COURT: Are there any other purposes in your
15 mind that that -- you would -- are concerned about that
16 you see besides fees if I declare Mr. Glassmeyer the
17 prevailing party based on that one issue. What are the
18 ramifications of that decision by myself?

19 MR. TRAYWICK: Sure. So if you were to make
20 that determination, then, you know, you've got to find, I
21 think, under the case law and the statute that there are
22 deterrent purposes to be served and respectfully there are
23 none here because the Lottery Commission really bent over
24 backwards to respond to 18 or 15 of the 18 voluminous
25 requests and then exercised its rights with respect to the

1 other three. As you can see the collegial correspondence
2 that we've attached and it's now exhibits before your
3 Honor, I think it's A through K in the tabs underneath our
4 counterclaim that's verified, very collegial really work
5 hard to respond in a very timely manner on all these
6 issues. This was an honest mistake. The lottery has not
7 thumbing its nose at him on anything. We're litigating
8 these matters in good faith.

9 Further, you know, there's no prejudice here,
10 right. He received the records and under the Sloan cases,
11 there was no need to litigate this. He also I would note
12 Mr. Smith said there was no reach out to say, hey, can I
13 have a reasonable extension. Of course, that's in the
14 statute, but by the same token he never reached out and
15 say, hey, where are these, why haven't I received these
16 records. You violated the statute. We didn't even know
17 this was an issue until the lawsuit came. And at that
18 point that's when Lottery Commission looked at it and said
19 he's right. Those were six, six and 12 days late
20 respectfully based upon a misreading of the statute that
21 was unintentional. There's no deterrent purpose to be
22 served. It is noted. It will not -- I think everyone
23 over there knows that that is the rule. And I think, you
24 know, there's reason to believe that it will be finally
25 going forward.

1 So for prevailing party if it's a mute issue or
2 even if its, you know, what are we really arguing about
3 here. The purpose of FOYA was served. It was minimal
4 delay. It was some delay, but it was still minimal delay.
5 And he got the information in which he's entitled with
6 respect to those three requests. He hasn't argued to the
7 contrary. Now, if they were late with respect those
8 specific requests, I think, and there were deficiencies in
9 the production, I think we'd be on different footing. But
10 them being late in and of themselves, I think really
11 transforms this into a got you. And so your Honor has
12 wide discretion under Lynch Field Plantation, the
13 Georgetown County Water and Sewer District and under the
14 text of the statute itself. The statute says may. And in
15 that case with the cite of 3-14 SC incite 3-33, the Court
16 emphasize that the use of the word may in the statutes
17 important and found that a special referee did not abuse
18 his discretion in declining to award fees despite finding
19 the FOYA response was untimely.

20 And so with the untimeliness, I do want to sort
21 of focus on something that he's saying. He's saying that
22 it's important because there are these other requests.
23 Well, that's not what 100(b) says for purposes of
24 prevailing party. It says attorney fees and other costs
25 of litigation specific to the request. So you've got to

1 analyze this in terms of what prejudice occurred here,
2 were there any other circumstances that weren't finding of
3 prevailing party status such that the Lottery Commission
4 should award them fees. Respectfully, adding one sentence
5 to the complaint cannot be enough to get us there. And we
6 think, you know, we understand the argument. And, again,
7 apologize for the error, but just don't think that under
8 the unique circumstances present here and award of fees
9 would be appropriate. And we would ask you to exercise
10 your discretion accordingly.

11 THE COURT: Okay.

12 MR. SMITH: Briefly, your Honor.

13 THE COURT: Yes, sir.

14 MR. SMITH: And so we're clear, the deterrent
15 aspect that might be addressed and I am honestly unsure
16 right now about that particular wording appearing in the
17 authority. And so if your Honor would allow an
18 opportunity to brief it if you think that's necessary,
19 I'll be happy to do that on just the narrow issue on a
20 prevailing party. And when this court recognize when
21 that's appropriate, I'll be happy to do that. But let me
22 point this out, our purpose for which we are seeking a
23 declaratory judgment is that the codified purpose of FOYA
24 was frustrating in general and specific as to his
25 understanding of the activities of these public officials,

1 that it did not occur at minimum cost or importantly
2 delay. So that 30-4-15 is what we're saying gives your
3 Honor discretion to indicate that a declaration in this
4 case would allow for there to be that statutory purpose
5 realized in this controversy. Should you liberally
6 construe, well, that's what quality other cases have said.
7 So that's the authority we're relying on it for your Honor
8 to fall inside the declaratory judgment being approved and
9 not muted.

10 As to 30-4-100, the section that allows for that
11 prevailing party statute your Honor, I want to point out
12 the last sentence, which was not said to you in
13 30-4-100(b). It says if a person or entity prevails in
14 part, the Court will make in its discretion award him
15 reasonable attorney fees for the appropriate portion of
16 those attorney's fees. Consequentially, it's not an
17 either or thing. You could indicate for instance if you
18 chose that if this is really only about attorney fees,
19 which we indicate it is not, that the declaration is
20 appropriate. He is the prevailing party as to all the
21 other causes of action, but he only gets his attorney fees
22 as to those causes of action. And you ask me your Honor
23 to try to figure out a way to figure out how much time,
24 you know, I bill on those causes of action, that is
25 something your Honor could order me to do. And I would

1 have to do and so that's the problem.

2 THE COURT: Okay. All right. And as to the --
3 I don't need an electronic copy of this. I'm reviewing
4 this. I have majority of these items. I've reviewed them
5 and I'm able to get them including the redacted and
6 unredacted, in-camera view I have, so I don't need -- and
7 I have this folder I can use.

8 MR. TRAYWICK: Thank you, your Honor. I just
9 want to make sure it was a clean record and if you didn't
10 want all the hole punches in it. This goes up on appeal.

11 THE COURT: Yeah, I just want to make sure you
12 all made sure this is a part of the record everything is.
13 One thing I did want to address I know we briefly talked
14 about it at the last hearing and I find that it is
15 important. I think both parties agree maybe or maybe not
16 the purpose of Mr. Glassmeyer's why he's FOYA as oppose to
17 you can just do it because you want to do it, yes, but I
18 think the reasons given, which I find were instrumental,
19 purposeful and, you know, probably good. Could you just
20 elaborate on -- because I think that does go into kind of
21 analyze this -- analogize this to the discovery process
22 and so won't know why do you need these documents, how
23 does it help his ultimate purpose as oppose to just they
24 have to do it. There's reasons. I know we've talk about
25 fraud, embezzlement. I'm just curious if you can just

1 elaborate.

2 MR. SMITH: Sure, your Honor. And so we're
3 clear I believe the way we landed on this being a matter
4 of first impression, of course, that this should be
5 interpreted as that we got two arguments here from the
6 defendant. One, the unduly burdensome aspect and then the
7 overbroad arguments and aspects, right. They're claiming
8 that both apply to all of it. And so I believe that where
9 we landed -- and tell me your Honor if I'm wrong on this,
10 but I don't want to go down a road that you're not going
11 to recognize, is that it was the overly broad one that was
12 particularly important regarding what the purpose might be
13 for the request. Well, the unduly burdensome goes to a
14 lot of what Mr. Nichols was addressing in his affidavits
15 about the amount of burden placed on a public body to
16 respond. Is that the way you're thinking about it your
17 Honor?

18 THE COURT: You made it eloquent, so, I guess,
19 this may be able to convince me otherwise, but I believe
20 that's, yes, because what I found was in my mind was these
21 documents could just be for curiosity, doesn't mean that
22 FOYA doesn't apply, but I think it changes my analysis
23 when the reason which I think I said was a noble reason if
24 there is fraud waste, duplicativeness whatever it is going
25 on, if that is the reason, that changes the overly broad

1 in a sense of you could be more broad as oppose to if
2 there is clear issues and you want to figure that out as
3 oppose to if you're saying I'm just curious. I think that
4 probably limits you somewhat, so to answer your question,
5 yes.

6 MR. SMITH: And so regarding the overly broad
7 and the purpose stated by Mr. Glassmeyer, I think that if
8 you were thinking about how you would try to conduct an
9 investigation into any public body about how they're using
10 public money and you might be concerned about his state of
11 reason of his affidavit of embezzlement, then it would be
12 appropriate to look at the transactions coming out of the
13 public body to figure out who is authorizing them in
14 particular because checks historically speaking have been
15 one of the chief ways to embezzle funds.

16 And so Mr. Glassmeyer's purpose in seeking all
17 of these checks over that period of time your Honor was to
18 get the full picture of how the public body did transact
19 public money in performance of their statutory duties, the
20 activities of public officials, right. And so he is doing
21 what I believe this court just needs to establish is a not
22 overly broad manner of trying to conduct that
23 investigation. I called it a logical nexus, that there's
24 a logical nexus between the seeking of information
25 contained within the wording of his request, that would

1 indicate if they respond fully, that then that information
2 would be provided and that that logically collides with an
3 investigation into whether or not they're embezzling
4 funds.

5 Going further than that your Honor, I think runs
6 into potential constitutional problems about the courts
7 standing and second guessing private persons ability to
8 conduct investigations, exercise free expression about how
9 they're going to try to figure out is the government lying
10 to them. And I want to warn that in the contest of using
11 that discovery doctrine, I think we misplace the
12 importance of FOYA in its codified purpose if we start
13 going into what is a lot of very important litigation
14 about we practice law about how judicial administration is
15 done regarding discovery practice. Well, that is what we
16 have in the law and I think we can adopt certain things
17 from it as long as we keep the overriding concern that
18 democracy's die in darkness. And that if we are going to
19 give life to FOYA, it has to be to learn the activities of
20 public officials in minimal cost or delay.

21 And I believe that you look at his requests as
22 big as it is and you say, you know, as a jurist as the
23 Court, I'm sitting here and I can't second guess why a
24 citizen does it if though for instance there are things
25 within his request, your Honor, which do not provide that

1 logical nexus that I called it between, yes, you would get
2 the kind of information which might loosen a potential
3 evidence of embezzlement, right. Then I think overly
4 applies. And so I believe that that is the central
5 inquiry that your Honor has here is looking at the wording
6 of the request. And then that would be responding of the
7 similar respond fully, right. Is that something which
8 would merit out embezzlement or whatever purpose it was in
9 the limited affidavit that he provided regarding that.

10 THE COURT: So you're kind of saying FOYA is the
11 do you get it. Discovery is they got it, how you get it?

12 MR. SMITH: More less, your Honor.

13 THE COURT: Okay. Any ---

14 MR. TRAYWICK: Thank you, your Honor. So even
15 if we accept the embezzlement. You know, in our view just
16 an inchoate unparticularized hunch to borrow some phrasing
17 with which I'm confident you're familiar in the Fourth
18 Amendment context should be enough, right. I mean, what
19 is the concern there. Just if any citizen can walk up and
20 just say I'm concerned about embezzlement, shut down your
21 operations, state agency to go respond to millions of
22 documents to field my request, that is the exact purpose
23 for which the general assembly adopted 1-10. And that --
24 we're properly using it here. And so this notion that it
25 will be unconstitutional to second guess, first of all, I

1 didn't hear a citation of any provision of the
2 constitution that would run a fowl of. In fact wouldn't
3 because the general assembly has expressly given this
4 court the authority to make that determination in 1-10(b).

5 And in doing so, the general assembly is
6 presumed to be aware of the common law. And terms ought
7 to be analyzed in accordance with their ordinary and
8 popular meaning. It used words with which this court is
9 intimately familiar and I would venture to say most of
10 your civil docket is clogged with discovery motions. And
11 so you deal with those issues day in and day out. The
12 general assembly is presumed to be aware of that by using
13 terms like overly broad unduly burdensome. Those are
14 terms that you know how to use.

15 Now, in the overall frame work, that needs to be
16 viewed in the shadow of FOYA. And on that point, I
17 believe we agree, but in the purposes of FOYA. But you
18 still have to balance the interests. And in looking at
19 those interests with all due respect, his claim cannot
20 survive the test. So if we look at embezzlement from an
21 overly broad standpoint compared to the text of number
22 five, I think it illustrates it copies of all checks and
23 wire transfers. So where does he think embezzlement is
24 happening, that's just any check or wire transfer to any
25 person everywhere involved with the lottery for a two-year

1 period.

2 Number 12, copies of all bills, invoices and
3 statements submitted by any vendor. I mean, that could be
4 the person who stocks the Coke machine. I mean, how does
5 that lead to concerns about embezzlement. It's not
6 tailored. And so even if you want to adopt his test of
7 logical nexus, I'm not sure where that came from. I think
8 in the discovery context where usually looking at it being
9 relevant to a claim, right. And this fraud notion for
10 relevancy and somehow tailored to it are proportional I
11 think is a word that the federal courts use, those can't
12 survive that test. And last finishing with 18, copies of
13 all e-mails received, sent or forwarded by any and all
14 SCEL employees for two years, that's go fish. I mean, I
15 don't see any reasonable argument to be made that that is
16 tailored to embezzlement. There are terms and connectors
17 which attorneys who deal with discovery disputes all the
18 time are required to have those discussions.

19 The lottery made entries to Mr. Glassmeyer that
20 were either rejected or went unanswered to narrow the
21 request. And if he had concerns about embezzlement, there
22 are terms to which we might could have agreed, but that --
23 the request sitting as it is, the lottery cannot justify
24 to the general assembly or any other oversight body
25 spending that amount of time, that amount of money, that

1 amount of agency, resources both human and capital to
2 defend a claim and respond to it one that is that
3 voluminous. So, yes, there's the overly broad nature of
4 it and I think we just gone through it.

5 And then on the unduly burdensome side, he's
6 conceded that Mr. Nichols, you know, that his affidavit
7 says what it says. He's an expert. He's opine on the
8 issues, but left the ultimate resolution of the issues to
9 you. He's not opining on legal issues. He's just
10 discussing the normal practice for discovery procedures
11 and what type of burden this would have placed upon the
12 lottery.

13 In looking at overly broad and unduly
14 burdensome, I think it's also instructed to look at how
15 much time the Lottery Commission spent responding to the
16 other 15, so that was over a hundred hours. By contrast,
17 the check one, the loan, the request for any checks and
18 wire transfers. Number 12 copies of all bills, invoice
19 and statements would have taken a 134 hours at least alone
20 to go review, redact -- retrieve, review and redact to
21 then produce. Going to number five, that would take 2,000
22 hours to go retrieve, review and redact copies of all
23 checks and all wire transfers to get the account
24 information off. If it went to lottery claimant, to get
25 their name redacted, if there were digital signatures on

1 it to remove that consistent with Title 16 and so that is
2 quite a burden. And then, of course, number 18 three
3 million e-mails. I mean, that's beyond the veil. And so
4 I don't think you're outside your authority at all
5 constitutional, statutory or otherwise to say that that
6 crosses the rubicon.

7 Just a few more points on this, we've got the
8 analysis in our proposed order and we'll, you know, submit
9 that to you in the context of Rule 52. After this, one
10 thing I would also like to note is that after the hearing,
11 we filed another affidavit from Ms. Garfield and that was
12 on the 18th of January. And I would note some important
13 things in there because I think this can also go on the
14 scale in terms of whether the public is able to find out
15 the activities of the lottery. So legislative body of
16 counsel conducts a full audit of the lottery every three
17 years or at the request of five members, that's section
18 59-150-30(b). The lottery is a component of the State of
19 South Carolina undergoes an independent financial audit
20 every year, that's section 11-7-20 subsection A. The
21 inspector general of South Carolina has the power to
22 examine records, reports all that's reviewed papers, books
23 in the like under section 1-6-50(a)(4). SLED has plenty
24 authority to conduct any criminal investigations into any
25 allege financial crimes involving the lottery under

1 section 20-3-15(b).

2 The financial audit reports are publically
3 available, so that might be a good starting point if you
4 think there's embezzlement to identify particular areas
5 with which you have concern. In the past, he's been
6 concerned with lottery claims. He tailored some of his
7 other requests to that and had he done that here, I don't
8 think we be in the posture of 1-10(b), but just these go
9 fish five, 12 and 18 requests are not tailored to the
10 purpose for which he's asserting he needs this
11 information, which hasn't been flushed out.

12 And so under these circumstances FOYA, of
13 course, must be construed liberally, but section 1-10(b)
14 has to mean something. We can't assume that the general
15 assembly intended a futile act and they didn't. If you
16 look at the act enacting that provision, it was to provide
17 rights and remedies. This is a right and remedy we're
18 seeking from the Court for you to say this is too much.
19 It's not a right by rule that we're seeking. It's under
20 the unique circumstances of this case and I think it's
21 eminently reasonable and we'd ask that you enter judgment
22 accordingly.

23 THE COURT: All right. Thank you.

24 MR. SMITH: May I briefly?

25 THE COURT: Yes, sir.

1 MR. SMITH: I like to point on something overly
2 broad. The tailoring they're referring to your Honor is
3 within the scope of what the government has always been
4 required to not do regarding how they instruct citizens to
5 interact with them. Meaning certain reasonable time,
6 place and man restrictions can apply to the government for
7 instance and public meetings or in a forum for instance
8 like this to a certain extent your Honor. But you telling
9 me what I can say in this would be constitutionally
10 suspect.

11 However, as an officer of the Court, reasonable
12 time, place and man restrictions, you see my point your
13 Honor. They're trying to tell you that you have the
14 authority here to take what they are saying a requester
15 must do to change what they are seeking to modify -- to
16 nullify rather what their concerns are about this being
17 brought, about this being unduly burdensome. That is not
18 I believe the role of a court coming from a controversy
19 before the Court about transparency that is required by
20 the state statute.

21 And so the tailoring is what I'm specifically
22 concerned about. It's not necessarily that they are
23 doing. Well, that would be concern is that your Honor
24 would ratify with language in an order legally binding on
25 us, might even be held up by others, right, as persuasive

1 about how you handle these types of request, so that is my
2 concern.

3 As to the illusion about the discovery
4 practices, it occurred to me this when two parties have
5 sued you or multiple parties have sued each other and
6 submit to the jurisdiction of the Court clearly when there
7 are those disputes about how they share information
8 between each other in the discovery process. Sometimes
9 they must come before the Court to get the Court to order
10 a party or parties to actually share information or to
11 actually sit for depositions what have you. There is no
12 other way I think if that system litigation judicial
13 sufficiency could work better, then the way we have it
14 now.

15 You though in this case are not being ask to
16 look at a dispute between two parties who have consented
17 to this jurisdiction with which you need to decide how you
18 share information within this case. This is about the
19 only way that a citizen may ask the government and the
20 government have to respond to information request of it,
21 that's what this case is about a Freedom of Information
22 Act request. And so I believe that improper to go down
23 the road of supplanting all considerations about how
24 discovery practice should work for how this matter first
25 impression in FOYA should work in this context taking some

1 motifs, themes from it appropriate sure, but the reason
2 that we rely on the logical nexus test is the concern
3 about that tailoring that I talked about earlier that that
4 would be like the basic level the Court should go to in
5 determining whether or not a request is overly broad.
6 Because doing more might mean impermissible amount of
7 infringement on activities that people might do in trying
8 to merit, to figure out is the government doing what it
9 says it's going to do.

10 To that point your Honor, I want to bring up how
11 they are alluding to in the record, which we again
12 stipulate to, that there are additional governmental
13 agencies which more or less force them to be accountable
14 to exercise oversight of and I assume be more transparent.
15 All I can say to that your Honor is had there been such
16 confidence by our legislature in the ability of executive
17 agencies to police each other to give the kind of
18 transparency that's necessary for our democracy to
19 survive, they probably would have never enacted FOYA.
20 That FOYA stands as the way as I stated earlier for
21 Mr. Glassmeyer or other citizens to independently do the
22 kind of thing, which they assume. I use that liberally
23 the government is doing of itself. Until FOYA gives you
24 the ability to see what the government is doing, it has to
25 be an assumption. You do not know that.

1 Finally, I have to bring up a point that's
2 mentioned in the motions that I did not address in the
3 proposed order, which is this. There is a doctrine under
4 the first amendment which has traditionally only applied
5 and reported cases to media because they're the ones that
6 litigated. The neutral report is privileged. Such that
7 if you go government meeting or you get a government
8 record and you fairly and accurately summarize from it,
9 you have a qualified privilege against potential harms, I
10 guess, and liability for those harms that might come to
11 third parties. For instance, if there was a defamation in
12 a public record and you printed the entire public record,
13 you would have that qualified privilege against that
14 person suing you because you just got from the government.

15 This is what Mr. Glassmeyer is trying to get
16 here also. It is not just that FOYA's mandate is to learn
17 the activities of public officials. It's that if you
18 learn the activities of public officials, there's an
19 additional thing that you get which is that potential
20 privilege against you going public with that information
21 and people suing you into oblivion. I am not -- I don't
22 think that that particular doctrine in this case is so
23 dispositive of your Honor's inquiry, that's why I did not
24 put it in our proposed order, but I want your Honor just
25 to realize that one of the reasons, which is also in this

1 case like it is in any FOYA case is that a citizen is
2 hoping that even if the government is wrong about what
3 they're saying now that they've provided to you a FOYA
4 request, I can rely on the government. That if another
5 person sues me for that information, I don't now face
6 liability because of that. So I just want to bring that
7 up to your Honor.

8 THE COURT: Thank you.

9 MR. TRAYWICK: If I might briefly, your Honor,
10 just a few things. We're not asking you to change what
11 he's seeking. And if you don't want me to go there in the
12 order, I don't think you need to. You don't have to do
13 that. You and just look at this and say this is beyond
14 the pale because all the statute says is we can apply for
15 relief for overly broad and unduly burdensome. You don't
16 have to say what would be appropriate. You can just say
17 this wasn't under the competing circumstances of this
18 case, so let's remove that as an issue. Second, the
19 parties have consented to the jurisdiction of this court
20 because we got sued, okay, so we are before the Court.
21 And we are disagreeing on the nature of the furnishing of
22 records and so I'm not sure that argument makes the best
23 sense.

24 So although I hear him and I anticipated this
25 coming that you can't just say, oh, well, there's this

1 other government agencies that have this stuff. Sure,
2 that's not dispositive, but it must go on the scale,
3 right. If he's concerned about embezzlement and there
4 other avenues through which he could learn fully about
5 government activity. And there are checks on the
6 government entity that is being requested of something, I
7 think that goes on the scale, right, like are there less
8 intrusive ways to get the information. Well, at least
9 there's a starting point, so that we don't have to go
10 produce three redact and produce three-million e-mails and
11 so that's the only purpose for which we were offering it.

12 On the fair report privilege your Honor, I just
13 reiterate what we said in our response and opposition that
14 was filed on February the 7th got an affidavit from the
15 Court saying that the signatures are what they are. I
16 don't understand how they can't avail themselves of the fair
17 report privilege. And furthermore, I think that argument
18 that he agrees is not dispositive, I don't think it's
19 right. I mean, it's based upon a highly attenuating chain
20 of possibilities of contingent future of events that may
21 not occur as anticipated or indeed may not occur at all.
22 And so I think to ground your decision in this, oh, well,
23 I might want to go report something. I might get sued by
24 the lottery. I think it's just too much that we're
25 getting beyond the realm of facts in the record and

1 entering the realm of speculation.

2 For example, you have to assume that the report
3 on the checks issue, the lottery claimants, the check
4 drawers will be false as represented in the affidavit.
5 Someone it's unclear who might sue him for that and that
6 he'll attempt to avail himself with the fair report
7 privilege. But if he defamed anybody, it would have to be
8 probably one of those two employees or another employee of
9 the lottery perhaps. How are they going to come in this
10 court and say prove falsity when it's their signature.
11 We're saying it's their signature. I don't understand why
12 this is still a point. Particularly, in light of the fact
13 that in paragraph seven of Ms. Garfield's affidavit, she
14 said it's an electronic signature and that's expressly
15 within section 16-13-510(d)(9). As things that someone
16 cannot intentionally divulge. And ironically, that's
17 under the Personal Financial Security Act Article II Title
18 16 and chapter 13, which is entitled forgery, larceny,
19 embezzlement, false pretenses and cheats. So the
20 embezzlement concerns have to run both ways, right. The
21 lottery can't be producing information, interrogation of
22 state law. It's actually a crime to do so, that could
23 facilitate embezzlement either of it or of the person
24 signing the checks.

25 Also, you know, we've briefed this. I don't

1 think we need to go too much into it. I think he wants to
2 propose a test that anyone with a smart phone is a member
3 of the media. I don't think there's any authority for
4 that. You know, a 16-year-old on TikTok is not a member
5 of the media. And so I don't think the smart phone
6 approach works even in this multimedia involving society
7 on -- in which we've got differing definitions or maybe
8 evolving definitions of what constitutes media. I don't
9 think he meets it. In every case applied by the Supreme
10 Court, every case in which the Supreme Court applied the
11 fair report privilege did it to an actual news publisher.

12 And then I've also note that the invocation of
13 this is a little bit at odds with other positions taken in
14 the case. It seems to be at war with each other. In one
15 breath, he says he's not the general public to try to
16 escape application of the Family Privacy and Protection
17 Act, which he doesn't think -- he doesn't seem to think it
18 applies even though it's Title 30, which is about public
19 records, which is the whole thrust of the Freedom of
20 Information Act. And but in the next breath, he wants to
21 invoke a privilege available only to the media to publish
22 the same information of the general public. You can't
23 have it both ways. And so with all due respect, we think
24 the attempt to invoke the fair report privilege in this
25 setting is misplaced and in all events is not dispositive

1 of the issue.

2 THE COURT: All right. Thank you.

3 MR. SMITH: Very briefly, your Honor. The fair
4 report privilege with regards to the spread sheet that Ms.
5 Garfield is one that he can now avail himself of, but
6 understand the limitations. He now can say that from the
7 information supplied to me by I think maybe touches
8 general counsel I'm not sure maybe she's not the director,
9 so let's say the director. The director of the South
10 Carolina Lottery Commission I have that these checks were
11 issued by this person, that is the extent to which the
12 privilege could attach. The actual checks themselves
13 could be assuming the advantages and you can read them.

14 The check said -- has the signature of this and
15 literally you can take a picture of it. And then that
16 would be the check that he could put out to the public,
17 right. By the way, that's the same check that probably
18 has gone through banking institutions and other places, so
19 the privacy here, anyway. It is that that check is what
20 receives the privilege because that's thing that FOYA is
21 trying to say you guaranteed the access to the activities
22 of public officials. They can't spend money except
23 through these instruments. And in those instruments,
24 that's how you figure out was this person authorize to
25 spend the money, that is the purpose for which he's

1 seeking these things, but that's what the privilege would
2 help him also with. The checks themselves are the records
3 which would be a definitive of a statement he can make
4 about who potentially signed a check not an assertions of
5 someone else. We have no reason necessarily to say that
6 Ms. Garfield is wrong about that. It's just that we don't
7 know. We don't know who actually sign the checks. We
8 know her assertions about who had signed checks. And we
9 would be privilege in saying her assertions. We would not
10 contest the checks themselves, which is what this FOYA
11 request is trying to reach.

12 Your Honor, also I just want to point that out
13 the illision to the idea that just because you keep seeing
14 media defendants in these cases concerning a neutral
15 reported privilege, does not mean that there's ever been a
16 positive statement one way or the other of these cases
17 about how it's only the press who enjoyed this right.
18 There have been numerous attempts by media outlets to gain
19 that kind of language in these orders and courts have
20 repeatedly struck them down. So do not confuse the
21 parties to these cases with the substance of the
22 constitutional and legal protections afforded someone
23 under the First Amendment and under this privilege, which
24 is that we have not decided under the free press clause to
25 create a special citizenship for those who are news

1 gatherers to get information. They have to rely on FOYA
2 just like everyone else. This case is a FOYA case. And
3 so your Honor we think it appropriate to make sure that we
4 do not go further than necessary and just recognize what
5 the privilege does or doesn't concern in this case.

6 Finally, all of this -- and I only briefly
7 mention this in the order because Mr. Glassmeyer is so in
8 sense about this in the other litigation. This
9 controversy about supplying all of this information could
10 have been stopped if they had just charge a FOYA request
11 because what could have happened here is that they
12 required a deposit which Mr. Glassmeyer could not have
13 afforded to pay, perhaps this is the cost which exactly as
14 Mr. Nichols says, which we stipulate to here of everything
15 he says. Had they done that your Honor, this would not be
16 a part of the controversy before your Honor. I don't even
17 know if Mr. Glassmeyer would have hired my firm to bring
18 this action considering everything else, you know, was at
19 issue in this case. And so I just want to bring that up
20 that they have the prerogative under the statute which
21 governs this case to do that. They have not here and that
22 is why we're here. They're trying to establish a matter
23 of first impression before your Honor about how big equals
24 unduly burdensome.

25 THE COURT: Okay.

1 MR. TRAYWICK: If I might your Honor sorry for
2 the ping-pong here, but I like to address the new matter
3 there brought in at end. So, of course, section 34-30(b)
4 says that a public body may establish and collect fees as
5 provided for in the section. And it says that a deposit
6 may be required prior to the public by searching for and
7 making copies of records, doesn't say you have to do that.
8 And then you certainly can't read that section or that
9 subsection in conjunction with 110 as it being an either
10 or situation, right. There's no requirement that a public
11 body do it. We as a public body have determined not to
12 charge the public fees. And they concede that's an act of
13 transparency, but in the next breath, they want to say,
14 well, it would have been more transparent for you to
15 charge it and make us pay in which case we wouldn't have
16 gotten the records because it would have been too
17 expensive. What, you can't have it both ways there. I
18 understand the argument. And I understand why he would
19 make it, but in the context of the last case in which he,
20 you know, chided us for not having a fee schedule on the
21 website when we didn't charge fees, which he knew because
22 he had never been charged a fee couple with the argument
23 here of now trying to use that against us. I think we've
24 argued in our order and in briefing that of sort of goes
25 to this improper purpose when you view the requests

1 through that prism, right.

2 Like it seems like because we don't charge fees
3 it's like all right I'll make you pay for that now. You
4 got to get me three million emails and that just -- the
5 fee issue here also is not dispositive. An undue
6 burdensome claims you don't just look at the expense.
7 It's the human capital. It's the draining of agency
8 resources. It's diverting those resources away from the
9 statutorily required mission of the South Carolina
10 Education Lottery. All of that goes on the scale. It's
11 not just the cost. I think you invoked an example in the
12 last hearing of what if Bill Gates just want to fund it.
13 I mean, that still isn't going to alleviate the burden,
14 right. One of these request would take 2,000 hours to
15 comply with, that's an entire time keeper for our firm
16 doing just that for the year. The 50,000 hours we would
17 have to employ how many people just to go through every
18 single e-mail, that can't be what FOYA was intended to
19 provide and it's not.

20 And last on the fair report privilege your
21 Honor, I mean, I don't understand how there's not enough
22 in the record already for him to be able to report that
23 Brian Ford or the other prior CFO sign those checks. I
24 mean, there's been attestation to the Court, under oath
25 and in affidavit and you can so find it. And if it's in

1 your order, then that's fine, but to the extent you want
2 to put the issue to bed altogether and it's our burden of
3 proving the exemption, we can submit those checks to you
4 for in-camera review so you can say that is Brian Ford's
5 signature and then you can find that in the order. So if
6 that would give you more comfort, we're happy to submit
7 that as a late filed exhibit if that would give him more
8 comfort to be able to report on these matters irrespective
9 of whether certain privileges apply.

10 THE COURT: Okay.

11 MR. SMITH: Point on the improper purpose, your
12 Honor and I brought this up and I read it to you, so I'm
13 just circling back around from our initial hearing in
14 January. The only improper purpose mentioned in FOYA is
15 in 30-4-50(b). No information contain in a police
16 incident report during employee salary schedule review in
17 response to request pursuant to this chapter maybe
18 utilized for commercial solicitation. So unless your
19 honor were to find that this was for purposes of
20 commercial solicitation of record before you, it would not
21 be appropriate to second guess the purpose aside from the
22 inquiry we talked about earlier concerning liberally
23 broad.

24 MR. TRAYWICK: May I your honor, there's some
25 important limiting language in 30-4-50(a). It says

1 without limiting the meaning of other sections of this
2 chapter, so it's not so limited to commercial station
3 purposes. Thank you.

4 THE COURT: All right. Anything further, Mr.
5 Smith?

6 MR. SMITH: No, your Honor.

7 THE COURT: Mr. Traywick.

8 MR. TRAYWICK: No, your Honor. Thank you for
9 your time.

10 THE COURT: What I'm going to do is review the
11 file, the arguments I've heard, the proposed orders if you
12 need to -- your proposed orders I believed that covered
13 everything from previous hearing and today procedurally
14 they might need to be updated if you want to send
15 something like that, but substitutively I think they're
16 relatively the same. So if you want to send in a bit of
17 proposed orders, that's perfectly fine. Other than that,
18 I don't think I need anything else before I try to make my
19 decision on this.

20 MR. TRAYWICK: Sure, your Honor.

21 MR. SMITH: Thank you, your Honor.

22 THE COURT: Anything before we adjourn for,
23 Mr. Smith?

24 MR. SMITH: No, your Honor.

25 THE COURT: Anything from defense?

1 MR. TRAYWICK: No, your Honor. We've already
2 revised the proposed order pending what happened today and
3 we'll try to submit that to you by the end of the day just
4 reframes it in terms of trial instead of summary judgment
5 and then adds in those statutory considerations and audit
6 functions.

7 THE COURT: Yeah, you can just ---

8 MR. SMITH: I'm sorry, your Honor.

9 THE COURT: No, go ahead.

10 MR. SMITH: I anticipate basically copying and
11 pasting what he's putting in his and sending right back.

12 THE COURT: Perfect. If you need an extension
13 of time, just reach out via e-mail the law clerk and just
14 send it via e-mail. You don't need to e-file it. All
15 right. Thank you all for being here. Thank you, Mr.
16 Glassmeyer. Be in touch soon.

17 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 49, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Richland County, South Carolina, on the 8th day of March, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 17th day of October 2024.

Keshia Reed

Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF RICHLAND CASE NO.:2023-CP-40-04854

****TRANSCRIPTION OF WEBEX AUDIO/VIDEO****

July 9, 2024

BEFORE: The Honorable Daniel Coble

GEORGE GLASSMEYER,

Plaintiff,

vs.

SOUTH CAROLINA LOTTERY COMMISSION,

Defendant.

APPEARANCES:

Taylor Meriwether Smith, Esq.
Appearing for the Plaintiff.

Sarah C. Frierson, Esq.
Appearing for the Defendant.

Vordman Carlisle Traywick, III, Esq.
Also Present

Recorded by: WebEx Video Courtroom

Transcriber: Natalie Dahl, RPR
SC Official Court Reporter

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EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

P R O C E E D I N G S

THE COURT: Number 2 is Glassmeyer v. South Carolina Lottery Commission, 2023-CP-40-04854. I see Mr. -- there's Mr. Smith. This is the motion to reconsider the granting of summary judgment in this case. I see Mr. Traywick, Ms. Frierson.

Mr. Smith, is your -- and your client is present. I see him here as well.

So I'll hear from you, Mr. Smith.

MR. SMITH: Thank you, Your Honor. Can you hear me okay?

THE COURT: Yes, sir.

MR. SMITH: Thank you. So, Your Honor, as you recall, this was a matter concerning cross motions for summary judgment and, therefore, you were wonderful about not only allowing us time today on this motion to reconsider here, which I know is not something you have to do, so I appreciate the time, Your Honor. But I also appreciate your ability to allow Mr. Traywick and Ms. Frierson and I to brief these issues extensively.

We have an extensive record right now that you can look back on, and this was tied as a matter of law, more or less. So I'll be attacking

1 basically the language in the order to the extent
2 it is necessary for Your Honor for reconsideration
3 of some of the authorities within that.

4 To that extent, I'm just going to go back and
5 do something that I should have done before, which
6 is this: I probably got too Professor-Smith on you
7 throughout that and just arguing within the weeds
8 about all of the statutory interpretation issues in
9 that, and so now I'm just going to try to make it
10 as simple as possible, and I think if Your Honor
11 would look at the proposed orders that we had
12 submitted, you might find that some of the
13 authority that we provided is more consonant with
14 how and which FOIA in particular is to be
15 interpreted as ruled by our supreme court.

16 But on an issue-by-issue basis, there is only
17 four main areas that we're seeking, and that was
18 the four main areas of the order.

19 So let's start with the overly burdensome for
20 a quick second. If you recall, Your Honor, they
21 were defending on the basis that they would have to
22 provide these records because it was unduly
23 burdensome. We had great colloquy between Your
24 Honor, Mr. Traywick, and I at those hearings about
25 what does that statutory language mean.

1 So, to that extent, I just want to remind
2 Your Honor about what it does mean. Well, they, in
3 this case -- and we stipulated to that entire
4 record from Mr. Nickels about the amount of time it
5 would take. And, remember, our entire point
6 throughout this litigation is that even in the
7 event a FOIA request is sent, and they have then to
8 look for records, in their process of doing that,
9 if they make a determination that it is burdensome,
10 that is one thing. Overly burdensome is something
11 that is novel. And so that is something then that
12 we would have to say is it something more than, for
13 instance, breadth. That is where we talked about
14 the intentions of the parties, and I made the point
15 frequently -- and I'll re-raise it here briefly --
16 there is no other purpose with which a FOIA request
17 is considered improper unless you deal with
18 commercial solicitation. That is what using the
19 records are for.

20 So regarding that breadth analysis that
21 appears in the order, I believe it might have been
22 improper to actually indicate that the interest
23 that Mr. Glassmeyer may or may have not had in
24 embezzlement is not an appropriate interest that
25 would have regarding the breadth of the overbroad

1 argument to be applied here. So I'm basically
2 indicating that, in that case, it might be
3 appropriate to look back at that language, Your
4 Honor, and tie it a little bit more closely.

5 If you think we are still wrong and, thus,
6 they prevail, to tie that more closely so that way
7 this doesn't get caught up on appeal to the
8 over-breadth analysis, at least his reasons being
9 put forth were not sufficient for Your Honor,
10 rather than indicating that he did not provide, you
11 know, a lawful basis for asking for the request.
12 Again, commercial solicitation is the only reason
13 you cannot submit a FOIA request.

14 The actual scope, Your Honor, this was
15 continually about the money that would be expended
16 and the effort by the Lottery Commission, assuming
17 they would need to go into and try to find,
18 perhaps, a law firm or staff time to field this
19 request. Remember, they, at any point, can do what
20 they apparently had done publicly at this point
21 now, which is indicating they will have a fee
22 schedule up, and they will charge for fees when
23 they choose to. This is not something that is ever
24 required of a public body, though, even when they
25 have a fee schedule up. They can decide on a per

1 case basis to waive fees, if they choose, for a
2 certain request.

3 In this case, if you recall, Your Honor,
4 which was in your order, there was a previous
5 litigation about a fee schedule. They indicated in
6 that case that they didn't have to post a fee
7 schedule because they didn't charge fees for FOIA
8 requests. Upon receipt of the FOIA in this case,
9 that one was about can you provide me these things,
10 and you don't charge fees. Their response back was
11 not that they are now going to charge fees, because
12 had they done that, reversing what they would have
13 done in the previous case, that would have meant
14 that Mr. Glassmeyer would have been forced to come
15 forward with two-and-a-half million dollars in
16 accordance with what Mr. Nickels said, which we
17 stipulate to in this case, Your Honor, as a
18 reasonable deposit. That didn't happen here.

19 Instead, what they said was it's too big. It
20 would take us too much time. So our argument on
21 unduly burdensome goes back to that basic point,
22 that when a public body makes a determination that
23 they do not charge for FOIA request, charge fees as
24 a way to be more transparent, it doesn't fit with
25 the intentions of FOIA, codified in 30-4-15, to

1 make activities of public officials available to
2 the public at minimum cost or delay, for them to
3 then say it's unduly burdensome because it is big,
4 it would take too much time for us to do that.

5 Now, in that specific narrow factual scenario
6 that you have before you in this case, Your Honor,
7 as I indicated, their public stance now has
8 apparently changed. So this might be a different
9 issue later in the sense of they would tell
10 Mr. Glassmeyer, Hey, that's fine, just give us
11 \$2.5 million as a reasonable deposit, and we'll
12 fulfill that request. He didn't have that option
13 here. That wasn't put forth. That wasn't a way
14 that he could have access to these government
15 records.

16 So we ask for reconsideration of that point
17 on unduly burdensome regarding the time, Your
18 Honor, because in this case, it was not set up like
19 a usual FOIA case would be where they can ask for
20 fees. Or in the event they were telling the public
21 they asked for fees, but waiving it in this context
22 as to certain things, perhaps, neither of those
23 were true. This was just, We don't charge fees for
24 the public. By the way, you submitted a FOIA
25 request, it's so big, so you don't get anything.

1 Your Honor, the second point I want to raise
2 here is about the winners' names. So that one
3 concerned the previous litigation, which Your Honor
4 goes through in the order, about the previous
5 litigation of Mr. Glassmeyer to the Lottery
6 Commission, approximately nine years' worth of
7 litigation that came back down and resulted in a
8 settlement agreement.

9 That settlement agreement provided that after
10 May 31 of the next year, if there has not been a
11 law enacted that would make the production of
12 winners' names of the Lottery Commission
13 confidential, as a matter of state law, then if he
14 were submitting a FOIA request after May 31, that
15 would mean that they then would provide the same
16 winners' names -- I mean not the same winners, but
17 the same type of data of winners' names, but they
18 would litigate it in that case before, which that
19 settlement agreement concerned.

20 As you point out in the order, Your Honor, in
21 that settlement agreement, they actually did
22 provide the winners' names that was subject of that
23 suit at that time. They just said, in the future,
24 if you want to do this, as long as the law doesn't
25 change and you make a request after May 31, we'll

1 give you winners' names. Well, in this case, there
2 is no disputing when they received the FOIA
3 request. There is no disputing when we sent it.
4 It was always after May 31, and it was a FOIA
5 request.

6 So what Your Honor made a determination of in
7 this case is more or less that it was impossible
8 for them to actually perform in this case; that
9 Mr. Glassmeyer may have performed, because he
10 submitted the FOIA request and submitted it after
11 May 31st, but that it was impossible for the
12 Lottery Commission to perform because of the change
13 in law.

14 Well, in this case, he submits the FOIA
15 request, and they receive it on the date provided
16 in the order, which was before, as the order
17 provides, the new law changed. And so Your Honor
18 had to make a determination then: When was the
19 duty to perform owed under our breach of contract
20 theory in this case? Was it owed at the point at
21 which they could wait until the ten days ran on the
22 FOIA request responsiveness -- which Your Honor
23 rules, by the way, in the order -- or was it that
24 it was owed immediately?

25 Regardless, Your Honor, what I'm seeking

1 reconsideration for here on behalf of
2 Mr. Glassmeyer is this: At no point in this order
3 do you mention that the duty to begin might have
4 been a duty that began right after he performed,
5 because he performed, and then performance was owed
6 by the other party. And so if there is a change in
7 law as of the date at which they received the FOIA
8 request, which is how he was supposed to perform,
9 and they don't owe a duty to perform, then when
10 would that duty be owed? It seems to be implied
11 from the order, Your Honor, that the duty was not
12 owed until the end of the FOIA request's ten-day
13 written determination deadline.

14 Well, 30-4-30(c) provides where the
15 determination has to constitute the final opinion
16 of that public body regarding the availability of
17 the requested record. So that means that you are
18 using that time period, those ten business days,
19 roughly, to make a determination about what is
20 responsive to the FOIA request that you have in
21 your possession, custody, or control under the act.

22 Remember, they had already litigated and
23 agreed that they had the information and that it
24 would be provided to him. So there was nothing in
25 this case that meant ten days or six days or seven

1 days or five days was even necessary. It was only
2 that he submitted a FOIA request because that was
3 contemplated in the settlement agreement. That is
4 how he was to perform, and there's been no dispute
5 in this case that that actually was performance by
6 Mr. Glassmeyer or that it occurred after
7 May 31st.

8 So, Your Honor, I think looking back at that
9 statute, particularly 30-4-30 and the language I
10 just mentioned, that would show you that under any
11 interpretation that it fits with, running
12 activities of public officials (inaudible) cost or
13 delay, which is FOIA, or in a traditional breach of
14 contract action about when their performance was
15 due, the impossibility of law could not have
16 applied at that moment, because that occurred when
17 he performed, and he performed on whichever date
18 the date we submitted the FOIA request, the date
19 they received it, whichever one you decide, Your
20 Honor.

21 So, at that point that they have it, their
22 duty to perform is there, and the law had not
23 changed yet; therefore, the impossibility of law
24 could not apply. And so Your Honor's analysis
25 might be inappropriate here, particularly in light

1 of the procedural history you outlined before
2 regarding the settlement agreement, because here it
3 would show that they didn't need time to determine
4 what records were responsive to the request. They
5 had already agreed that these records were things
6 that they would be providing to him if he merely
7 made a FOIA request and it was after May 31st.
8 So we ask Your Honor's reconsideration on that
9 basis as well.

10 Your Honor, finally, we get to the drawers'
11 signatures. Remember, these are the signatures
12 that appear on the checks from the Lottery
13 Commission that are going out. We also have some
14 signatures of endorsements on the back. But, for
15 here, for our purpose in the order, I'm just going
16 to mainly use drawers' signatures so we can talk
17 more about that in depth. That is the same points
18 we raised before; that the Family Privacy
19 Protection Act, which is used as the principal
20 authority with which to take away signatures,
21 because that act contemplates that, that has been,
22 in our view, misapplied in this case. And it is in
23 this way: The Family Privacy Protection Act has
24 been clear about its wording, that it is primarily
25 concerned with the collection, meaning what

1 government records held by a particular government
2 agency -- in this case the Lottery Commission --
3 what do they do when they have those signatures in
4 their files? Well, redaction might be appropriate
5 of those signatures regarding the collection and
6 the management of those files within the
7 government.

8 Now, remember, both of these are in Title 30.
9 So you have Chapter 2, Family Privacy Protection
10 Act; Chapter 4, FOIA. In this case, we've been
11 maintaining all along that in Chapter 4, where the
12 release of records is codified as something that is
13 important and vital to our democracy, then you
14 would need to look to the provisions of 30-4 to
15 whether or not they can withhold it. Well, they
16 might have indicated that they would use an
17 exemption of other law, and in this case, Title 30,
18 Chapter 2. Well, it's about collection, and it is
19 clear in that. It is not about the release of
20 records. The statutory purposes of these
21 particular chapters are not synonymous. They do
22 not cover the same thing. One is about trying to
23 stop embezzlement when you might be able to copy a
24 person's signature and misapply it to another thing
25 within the government, because you saw it with some

1 other government agency perhaps or some other
2 group.

3 The other, Title 4, is about what the public
4 can do to fair out potential embezzlement in the
5 government by investigating governmental activities
6 to make sure that no secret government act occurs.
7 I just want to make that point, Your Honor, for
8 reconsideration, because we believe that if you
9 look closely at 30-2, the Family Privacy Protection
10 Act, which is very briefed in this case, you will
11 be able to see that the purpose for that act is
12 distinctly different, and does not require an
13 entity -- or even provide a basis for an entity --
14 to redact those records.

15 Finally, Your Honor, I just want to make this
16 point, because Mr. Glassmeyer has made it multiple
17 times, and that is that waiver has often occurred
18 in this context where, you know, these signatures
19 that appear on these checks, for instance, that go
20 out from the Lottery Commission have been
21 negotiated, presumably, hundreds of times in a
22 given week. So there are people who have seen
23 these signatures all the time, and they have to be
24 on these documents to be negotiable at an
25 institution.

1 Well, all we're asking for is to see the face
2 of those checks in the same way that any teller
3 would, any other person would, not for the purposes
4 of doing anything that would make it harder for the
5 government to operate, but only for the purposes of
6 saying, Is the government operating, meaning is
7 someone actually -- a government employee -- who is
8 signing these checks, because the investigation
9 would be impossible into that if you can't see the
10 signature on that. And, again, there is nothing
11 improper, aside from commercial solicitation, for
12 anyone submitting a FOIA request. And so, Your
13 Honor, we believe that, and that is a proper
14 purpose for which we did it.

15 There is language, Your Honor, in this order,
16 which I want to bring up, that seems to indicate
17 that there at no point was an argument that was
18 made regarding these drawers' signatures about our
19 purpose to learn about this information. There is
20 thorough briefing on this, and we ask that the
21 order -- even if we're wrong, Your Honor, and you
22 go against us -- to at least be changed to reflect
23 some of those arguments that they were preserved.

24 Finally, Your Honor, I just want to bring up
25 that any point we're talking about all of these

1 issues regarding what is required for the public
2 body to provide in this case, we have to remember
3 that even if we're stuck into a weirdness here
4 regarding him making a FOIA request, because in the
5 settlement agreement between these same parties a
6 year prior, they indicated that that would be the
7 tool used. FOIA is still supposed to be liberally
8 construed towards its codified purpose. I think if
9 you were to do that, Your Honor, you would find
10 that, at least in our proposed order, it is
11 appropriate probably to include more of a balancing
12 in this case about what particular issues then do
13 not fit within the statutory purpose. And I think
14 that, Your Honor, if you were to look at that more
15 closely, your authority here is constrained about
16 what does help us learn the activities of public
17 officials at minimum cost or delay, rather than
18 what is the arguments about what is more convenient
19 for the Lottery Commission to operate as a
20 governmental entity.

21 THE COURT: All right. Thank you, Mr. Smith.
22 Mr. Traywick.

23 MS. FRIERSON: Your Honor, I'll be arguing
24 today.

25 THE COURT: Ms. Frierson.

1 MS. FRIERSON: Thank you. May it please the
2 Court. I'm going to start off with saying that I'm
3 glad Mr. Smith has recognized we have had four
4 hearings before Your Honor on this matter, nearly a
5 dozen briefs, and thorough arguments of counsel.
6 You've considered all of that in your well-reasoned
7 opinion, and he does not raise today any issues
8 that you've overlooked or misunderstood or failed
9 to fully consider, which must be a basis for the
10 motion to reconsider.

11 The issues today are merely rehashing other
12 issues that he's already raised, and that you
13 properly rejected; or, in some instances,
14 potentially raising new instances, which are
15 improper on a motion to reconsider.

16 So I'll go in order in which he went,
17 starting with the request for relief under
18 34-110(a). I'm not sure if he's now raising overly
19 broad as an issue in your order. Seventy-one says
20 he is supposed to state with particularity the
21 grounds in which he seeks his motion, and overly
22 broad was not an issue there. To the extent that
23 is an issue, both parties agreed that Your Honor
24 should consider the interest in seeking the
25 request, i.e., Mr. Glassmeyer's reason, which was

1 potential embezzlement; that Your Honor should
2 consider that in balancing whether a request --
3 request 5-12 or 18 were overly broad in this case.

4 Your Honor considered that, and properly
5 found that they were overly broad in comparison and
6 in balance with Mr. Glassmeyer's request.

7 Moving on to the unduly burdensome. This fee
8 issue, Mr. Glassmeyer is still trying to use it as
9 a sword and a shield against the Lottery. The
10 Lottery did not charge fees at this time, and
11 nothing required it to charge fees at this time.
12 The relief that a public body can seek to charge
13 fees under 34-30 is different from the relief under
14 34-110(a). 34-30 is not tethered to 110(a).
15 110(a) is not tethered to 34-30. Nothing requires
16 a fee to be charged or a fee schedule to be issued
17 before a public body can seek relief from an unduly
18 burdensome request, and that is because, as Your
19 Honor appropriately considered, money is not the
20 only issue here. It is time, effort, human
21 resources, and all of those things were considered
22 before the Lottery sought relief from Your Honor
23 from these three requests.

24 As Mr. Smith acknowledged, he does not
25 dispute the amount of time and effort that it could

1 take for the Lottery to respond to these three
2 requests -- excuse me -- and that would be over
3 52,000 hours. Now, if they were to farm out that
4 huge task, it would be about money. It would cost
5 an absorbent amount of money, upwards of
6 \$10 million. But if the Lottery did it itself and
7 used all of its agency resources and its employees,
8 it would essentially halt the agency's operations,
9 and that certainly cannot be what the general
10 assembly has intended in FOIA. That is why they
11 provided an avenue for relief for an unduly
12 burdensome request in 110(a), and nothing in there
13 required a public agency to charge fees before
14 seeking relief. If the general assembly intended
15 that, they would have said that. They amended FOIA
16 in 2017 to include 110(a), and they could have
17 amended that section to require charging fees
18 before seeking unduly -- relief from an unduly
19 burdensome request. It didn't do that.

20 As Your Honor appropriately considered, you
21 can't rewrite the statute. Mr. Smith can't rewrite
22 the statute. I can't rewrite the statute. The
23 statute says what it says, and nothing tethers it
24 to charging fees under 34-30(a).

25 Mr. Smith, again, talks about improper

1 purpose, and that the only improper purpose is
2 commercial solicitation. I think we've asked him
3 before to provide a citation for that, and I'm
4 unaware of any citation for that. "Improper
5 purpose" can be anything. Regardless, there is
6 several avenues, grounds, which a public body can
7 seek relief -- unduly burdensome, overly broad,
8 improper purpose, and there is several others --
9 and nothing is required -- nothing requires a
10 commercial solicitation to be a portion of that.

11 Now, moving on to the Lottery winners' names.
12 It's a little bit confusing as to what he's trying
13 to argue now. It appears that he's saying his FOIA
14 request should be distanced from the provisions of
15 FOIA because it was provided for in a settlement
16 agreement, but that doesn't make any sense. The
17 settlement agreement states that the Lottery would
18 provide certain information, quote, "in response to
19 FOIA requests." Saying it is in response to FOIA
20 requests specifically incorporates the provisions
21 of FOIA. When a FOIA request is submitted, the
22 provisions of FOIA apply. If the parties wanted
23 this information to be available to Mr. Glassmeyer
24 immediately, as Mr. Smith claims, the parties would
25 have said so. The parties would have said,

1 Mr. Glassmeyer, you can call the lottery up on
2 June 1st and ask for this information, and they
3 must give it to you. That is not what the parties
4 said.

5 The parties contemplated a FOIA request, and
6 that is what happened here. And Your Honor didn't
7 conflate the breach of contract claim from -- the
8 duty under the breach of contract claim from the
9 duty under FOIA. Both the Proviso 3.5 says what
10 the Lottery or any public body must do in response
11 to a FOIA request. The settlement agreement says
12 what the Lottery must do in response to a FOIA
13 request. The duty to provide a final determination
14 did not occur until ten days after the request in
15 response to a FOIA request. After that ten days
16 was up, ten business days, it was July 5th, and
17 Proviso 3.5 was in effect, and the Lottery could
18 not provide this information, could not provide
19 Lottery winners' names and other information in
20 response to Mr. Glassmeyer's FOIA request.

21 I think Mr. Smith acknowledged that there is
22 no dispute that this is a FOIA request. This is
23 not a letter. It is also important to note that
24 Mr. Glassmeyer did not send one FOIA request. He
25 sent 18 FOIA requests within a single FOIA request,

1 and nothing within FOIA or the settlement agreement
2 requires the Lottery to piecemeal final
3 determinations, as Mr. Smith suggests.

4 It is also important to note that Item One in
5 the FOIA request did relate to Lottery winners'
6 names, over \$1 million, but Lottery winners' names
7 were also involved in response to other requests.
8 For instance, one that Your Honor is familiar with,
9 Request Five sought copies of checks. Lottery
10 winners' names was involved in that request. So it
11 makes no sense to require a piecemeal determination
12 of whether Lottery winners' names are subject to
13 disclosure, and nothing within FOIA or the
14 settlement agreement requires that.

15 The settlement agreement -- the duty arose in
16 response to a FOIA request. The Proviso arose in
17 response to a FOIA request. Thus, the Lottery did
18 not have to provide information until it was
19 responding to the FOIA request. At that time,
20 Proviso 3.5 was in effect, and Your Honor
21 appropriately found that the Lottery could not
22 provide this information as a matter of law.

23 Lastly, on the check drawers' signatures, and
24 we've gone over this several times, Your Honor has
25 considered all of these issues. To the extent that

1 -- to the extent that Mr. Glassmeyer thinks that he
2 needs other information, it's unclear why. The
3 Lottery explained in an affidavit that the CFO --
4 the current and former CFO -- signed these
5 respective checks. They said that back in July of
6 2023, and they said that in an affidavit to Your
7 Honor. It's unclear what more would provide full
8 transparency to Mr. Glassmeyer. Your Honor
9 considered that and found that his request is now
10 moot because he has the information, to which he's
11 entitled. That is a separate and distinct ground
12 from your consideration of the Family Privacy
13 Protection Act.

14 The Family Privacy Protection Act is also
15 involved in FOIA because of the exemptions saying
16 that we can exempt information that is prohibited
17 from other statutes. Family Privacy Protection Act
18 prohibits, not just the collection of information,
19 as Mr. Smith claims, it is also intentionally
20 communicating or otherwise making available
21 personal identifying information. That statute
22 then references Title 16, which states that
23 personal identifying information is digital
24 signatures, and personal information under Family
25 Privacy Protection Act is signatures. These

1 signatures fall squarely within the protections in
2 the Family Privacy Protection Act, and the Lottery
3 was entitled to exempt those and redact those from
4 the checks.

5 In any event, that is a separate ground.
6 Your Honor found that he already received the
7 information to which he was entitled. We've
8 affirmed in an affidavit that that is the correct
9 information, and there is nothing untoward about
10 that.

11 For all of these reasons, we do not think
12 that Mr. Smith, Mr. Glassmeyer, has raised any
13 issues that you've misunderstood or failed to fully
14 consider or failed to rule upon, and Your Honor
15 should decline to reconsider your well-reasoned
16 order.

17 THE COURT: All right. Thank you.

18 Any brief response, Mr. Smith?

19 MR. SMITH: Only that, Your Honor, as she
20 mentioned, and as (inaudible) goes, there was
21 significant briefing in this case regarding the
22 law, and for the grounds that I stated today, and
23 the grounds of my motion, I believe you might have
24 overlooked some of the authority that I mentioned.
25 So I would just ask Your Honor to go back and look

1 at that, especially in our proposed order where it
2 is more thoroughly briefed, and even in some of our
3 memorandum, which are numerous.

4 So, thank you, Your Honor, for all of your
5 time.

6 THE COURT: Thank you all. I'm going to go
7 back through all of those. It is a lot to read
8 through, but I'm going to read through it all,
9 review my order I signed in conjunction with
10 everything that you all have sent me, and I'll try
11 to get something. It might take a couple weeks,
12 but I'll try to get an answer in a short time.

13 Thank you all for being here today.

14 (Whereupon, the WebEx recording concluded.)
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CERTIFICATE OF TRANSCRIBER

Case Name: George Glassmeyer v. SC Lottery

Commission

Case No.: 2023-CP-40-04854

Date of Hearing: July 9, 2024

* * * * *

I, Natalie Dahl, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording.**

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

Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina