

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.	)	
	)	
South Carolina Lottery Commission,	)	
	)	
Defendant.	)	
	)	

ORDER**RECEIVED****Aug 06 2024****SC Court of Appeals**

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