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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan,……..…….……..…..……Appellant,

v.

Kershaw County South Carolina,…….…….……..…..…….…..……...Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Christine Jernigan, *Plaintiffs*, v. *Kershaw County South Carolina,* *Defendant*.	NO. 2023-CP-28-_____ **SUMMONS** **Freedom of Information Act** **Public Records Act** **(Non-Jury)**

TO: DEFENDANT KERSHAW COUNTY SOUTH CAROLINA

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 this Complaint on Plaintiff Christine Jernigan ("Mrs. Jernigan"), via undersigned counsel Justin A. Jernigan, at 7148 Stirrup Ct., Weddington, NC 28104, within thirty (30) days from the date of such service, and if you fail to answer the Complaint within this time period, Plaintiff will apply to the Court for judgment by default for the relief requested.

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
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Ph: 864-710-5029

This 24th day of July 24, 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Christine Jernigan, *Plaintiff*, v. *Kershaw County South Carolina*, *Defendant*.	NO. 2023-CP-28-_____ **COMPLAINT** **Freedom of Information Act** **Public Records Act** **(Non-Jury)**

Plaintiff Christine Jernigan ("Mrs. Jernigan" or "Plaintiff"), via undersigned counsel, respectfully submits this Complaint alleging as follows:

PARTIES

1. Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee.

2. Defendant Kershaw County is a political subdivision of the State of South Carolina.

3. Defendant Kershaw County maintains its principal offices at 515 Walnut Street, Camden, South Carolina, 29020.

4. Defendant Kershaw County may be served with process at the above-referenced address via its Chief Administrative Officer, County Administrator Danny Templar, or via a clerk thereof.

5. Defendant Kershaw County, South Carolina, acts by and through its County Council, Chief Administrator, department directors, employees, agents, and attorneys; including its E-911 Communications Director Patricia Crawford and the dispatch operator employees of its E-911 Central Communications Department (collectively, "KCSC").

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JURISDICTION AND VENUE

6. This is an action pursuant to this Court's authority under S.C. Code Ann. §§ 15-3-310, *et seq*., §§ 15-53-10, *et seq*. (the Uniform Declaratory Judgements Act), §§ 30-1-10, *et seq*. (the Public Records Act), and §§ 30-4-10, *et seq*. (the Freedom of Information Act ("FIOA")).

7. This Court has personal jurisdiction over KCSC, and venue is proper pursuant to S.C. Code Ann. §§ 15-7-10, *et seq*., because KCSC generates and maintains communications related public records in Kershaw County and within this Judicial Circuit.

ALLEGATIONS

8. KCSC meets the definition of a public body pursuant to the Public Records Act at S.C. Code Ann. §§ 30-1-10(b) & (d), and FOIA at S.C. Code Ann. § 30-4-20(a).

9. KCSC generates and maintains "public records" as defined by FOIA at S.C. Code Ann. § 30-4-20(a) and pursuant to the Public Records Act at S.C. Code Ann. § 30-1-10(a).

10. Public records, as defined by FOIA and the Public Records Act, include all materials – regardless of physical form or characteristics – that are prepared, owned, used, in the possession of, or retained by a public body, including KCSC.

11. FOIA at S.C. Code §§ 30-4-20(b) & 30(a)(1) provides every "person," including Plaintiff and undersigned counsel, the right to request and inspect, copy, or receive a copy of any public record – regardless of physical form or characteristics – prepared, owned, used, in the possession of, or retained by a public body, including KCSC.

12. KCSC generates and maintains public records pursuant to the Public Records Act and provisions of S.C. Code of Ann. Regs., Chapter 12.

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13. KCSC generates and maintains emergency (E-911), dispatch operator, and other communications records, including audio recordings, pursuant to the Public Records Act and provisions of S.C. Code of Ann. Regs., Chapter 12.

14. KCSC provides communications and dispatch operator services for and/or on behalf of the Kershaw County Sheriff's Department and/or Office (collectively, "KCSO").

15. Upon information and belief, authorizing documents and/or agreements exist by and between KCSC and KCSO with respect to law enforcement communication standards, dispatch operator standards, communication records generation, communication record maintenance, and/or communication records access by and between KCSO and KCSO.

16. Upon information and belief, KCSC is KCSO's partner and/or authorized agent for law enforcement communication related services.

17. Upon information and belief, KCSC generates and maintains law enforcement communication records for and/or on behalf of KCSO pursuant to the Public Records Act and provisions of S.C. Code Ann. Regs., Chapter 12.

18. FOIA imposes "an affirmative duty on the part of public bodies," including KCSC, "to disclose [public] information" and records in response to a person's FOIA requests, including in response to Plaintiff and undersigned counsel's FOIA requests. *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991).

19. The essential purpose of FOIA "is to protect the public," of which Plaintiff and undersigned counsel are members, from "secret government activity" by public bodies, including by KCSC and KCSO. *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843 (1994) (citations omitted).

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20. Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), KCSC is required – within ten business days for public records less than two years old or within twenty business days for public records greater than two years old – to notify Plaintiff in writing regarding KCSC's determination, reasoning, and final opinion regarding the public availability of each public record of Plaintiff's FOIA requests.

21. Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), if KCSC does not provide the required written determination, reasoning, and final opinion as to the public availability of each relevant public record of Plaintiff's FOIA requests, the requests must be considered approved as to all such nonexempt relevant public records or information.

22. Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), all nonexempt public records and information of Plaintiff's FOIA requests must be disclosed – within thirty or thirty-five calendar days as applicable – after KCSC delivers its written determination as to public availability of requested public records to Plaintiff.

23. KCSC may claim exemptions for specific public records of Plaintiff's FOIA requests pursuant to FOIA at S.C. Code Ann. §§ 30-4-40, or pursuant to other state or federal laws.

24. Any exemptions claimed by KCSC in response to Plaintiff's FOIA requests must be narrowly interpreted and applied to specific relevant public records of the requests. *Evening Post Publ'g. Co. v. City of N. Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (citations omitted).

25. KCSC bears the burden of proof with respect to any alleged FOIA exemptions that it claims for specific public records of Plaintiff's FOIA requests.

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26. To claim an exemption for specific public records of Plaintiff's FOIA requests, KCSC "must show the applicability of a specific FOIA exemption to each requested public record." *Pope v. Wilson*, 431 S.E.2d 432, 448, 427 S.C. 377, 388 (Ct. App. 2019) (citations omitted).

27. KCSC cannot lawfully withhold or redact any non-exempt public records or information, including any audio recordings, of Plaintiff's FOIA requests.

28. Electronic mail correspondence from late July 2022 to late August 2022 by, between, and amongst Plaintiff's undersigned counsel, KCSO, KCSC, and both KCSO and KCSC's pre-suit counsel, County Attorney H. Thomas Morgan, Jr., Esq. ("Tommy Morgan" or "Attorney Morgan"), are attached hereto as Exhibit A.

29. On August 11, 2022, undersigned counsel, as a person under FOIA and as an attorney on behalf of Plaintiff Mrs. Jernigan, submitted a written FOIA Request (Ex. B, hereto) to KCSC. Ex. A at 15-17.

30. Specifically, on August 11, 2022, Plaintiff's FOIA Request (Ex. B) was submitted to KCSC's Clerk to Counsel Merri Seigler and also to Assistant County Administrator Lauren Reeder ("Mrs. Reeder"). Ex. A at 15-17.

31. On the afternoon of August 11, 2022, Mrs. Reeder responded by indicating that Attorney Morgan should provide instructions for KCSC to proceed in response to Plaintiff's FOIA Request (Ex. B). Ex. A at 15-16.

32. On August 12, 2022, Attorney Morgan responded by indicating that he would investigate the matter and respond on behalf of KCSC with respect to Plaintiff's FOIA Request (Ex. B). Ex. A at 15.

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33. Prior to submission of Plaintiff's FOIA Request (Ex. B) to KCSC on August 11, 2022, the Request had been submitted to KCSO on July 22, 2022. Ex. A at 32-33.

34. KCSO's Records Department responded on July 25, 2022, by indicating that KCSO could not provide any of the communication or dispatch related records of Plaintiff's FOIA Request (Ex. B), and that these records must instead be obtained from KCSC pursuant to FOIA. Ex. A at 32.

35. KCSO's July 25, 2022, FOIA Response stated, in full, as follows (Ex. A at 32):

> After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

36. Plaintiff's FOIA Request (Ex. B) seeks communication related records, dating from June 2022 to present, that concern: (*i*) Plaintiff, (*ii*) undersigned counsel, (*iii*) Plaintiff Mrs. Jernigan's mother Ann Martin ("Mrs. Martin"), (*iv*) third parties that contacted KCSC and accused Plaintiff and undersigned counsel of improper or unlawful conduct, (*iv*) the KCSC dispatch operators personally involved with the incidents described therein, and (*v*) the KCSO officers personally involved with the incidents described therein.

37. Mrs. Martin chose to travel away from a privately-owned, for-profit assisted living facility located in Kershaw County – known as Pinedale Residential Center ("Pinedale") – with her daughter Plaintiff Mrs. Jernigan on the morning of June 29, 2022. *See* Ex. B at 3.

38. After Mrs. Martin chose to travel away from the privately-owned, for-profit Pinedale facility with her daughter Plaintiff Mrs. Jernigan on the morning of June 29, 2022, KCSO officers pursued and stopped Plaintiff Mrs. Jernigan's vehicle after she and Mrs. Martin had traveled approximately one mile from Pinedale's exit. *See* Ex. B at 3.

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39. Plaintiff's FOIA Request (Ex. B at 4) states that undersigned counsel was available to answer any questions, and would gladly explain, limit, and/or clarify the FOIA Request as may be appropriate.

40. KCSC's pre-suit counsel Attorney Morgan never indicated that Plaintiff's FOIA Request (Ex. B) needed to be further explained, limited, and/or clarified for KCSC to fully satisfy its written determination and disclosure obligations pursuant to FOIA. *See* Ex. A at 2-34.

41. KCSC did not request a hearing before this Court, pursuant to FOIA at S.C. Code Ann. § 30-4-110(a), seeking relief from fully complying with its written determination and disclosure obligations on grounds that Plaintiff's FOIA Request (Ex. B) was allegedly unduly burdensome, overly broad, vague, repetitive, or otherwise improper.

42. KCSC did not request a hearing before this Court, pursuant to FOIA at S.C. Code Ann. § 30-4-110(a), seeking relief from complying with its legally required written determination and disclosure obligations on grounds that KCSC was allegedly unable to make a good faith determination as to whether requested information of Plaintiff's FOIA Request (Ex. B) was exempt from disclosure.

43. KCSC provided its only Response to Plaintiff's FOIA Request (Ex. B) on August 18, 2022. Ex. C, hereto.

44. KCSC's August 18, 2022, FOIA Response states as follows in response to Plaintiff's FOIA Request (Ex. B): "Please find enclosed herewith *all* documents *not subject to exemption* under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq*. as well as a CD containing the audio. If you have any other questions or concerns, do not hesitate to contact me." Ex. C at 2 (emphasis added).

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45. KCSC's August 18, 2022, FOIA Response (Ex. C at 2) did not provide the written determination as to the public availability of each public record of Plaintiff's FOIA Request (Ex. B) as legally required pursuant to S.C. Code Ann. § 30-4-30(c).

46. KCSC's August 18, 2022, FOIA Response (Ex. C at 2) did not attempt to explain how any FOIA exemptions could potentially apply to any specific public records of Plaintiff's FOIA Request (Ex. B). *Cf. Pope*, 431 S.E.2d at 448, 427 S.C. at 388 (citations omitted).

47. It is impossible to determine which, if any, specific public records of Plaintiff's FOIA Request (Ex. B) were withheld as potentially exempt by KCSC based upon the bare assertion that *all* public records and audio recordings *not subject to exemption* were being provided with its August 18, 2022, FOIA Response (Ex. C at 2). *See Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 554-55, 762 S.E.2d 687, 688-89 (2014) (holding that the equivocal and evasive FOIA response provided was "manifestly at odds with the clarity mandated by section 30-4-30(c)").

48. Plaintiff's FOIA Request (Ex. B) must be considered approved as to all nonexempt public records and information pursuant to S.C. Code Ann. § 30-4-30(c) because KCSC's August 18, 2022, FOIA Response (Ex. C at 2) did not provide the legally required written determination as to the public availability of each public record of Plaintiff's FOIA Request (Ex. B).

49. KCSC's August 18, 2022, FOIA Response disclosed one responsive public document, CFS2022-39001, which states that it was printed on August 18, 2022. *See* Ex. C at 4-5.

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50. Upon information and belief, the August 18, 2022, CFS2022-39001 document (Ex. C at 4-5) provided by KCSC is known or referred to as a Call for Services ("CFS") Log and/or a Computer-aided Dispatch ("CAD") Report.

51. KCSC omitted certain fields and/or categories of available public information from the August 18, 2022, CFS2022-39001 document that would have disclosed additional communication related public information that is included within Plaintiff's FOIA Request (Ex. B).

52. KCSC's August 18, 2022, CFS2022-39001 document, for instance, omits all public information concerning the respective KCSC dispatch operators who were personally involved with the relevant communications of the August 18, 2022, CFS2022-39001 document. *Compare* Ex. C at 4-5 *with* Ex. E, hereto.

53. The CD optical disc provided by KCSC with its August 18, 2022, FOIA Response Letter (Ex. C at 3) contains a total of twelve individual audio recording files, and/or portions of phone calls, Audio File Nos. 0 to 11.

54. The first four audio recording files, Audio File Nos. 0 to 3, are redacted and/or incomplete portions of one phone communication by KCSO Officer #15 Courtney Cochran to KCSC dispatch operator Tina Hand beginning at 9:44am on the morning of June 29, 2022, and ending between 9:46am and 9:47am. *See* Ex. C at 5 & Ex. E at 2.

55. The subject matter of the four Audio File Nos. 0 to 3, or phone call portions, concerns undersigned counsel's reporting to KCSO on June 28, 2022, pursuant to the South Carolina Omnibus Adult Protection Act, S.C. Code Ann. §§ 43-35-5, *et seq.*

56. Audio Files Nos. 4 to 11 are redacted and incomplete audio recordings of undersigned counsel's phone communications with several respective KCSC dispatch operators

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and one of the two KCSO officers with whom undersigned communicated, respectively, on the afternoon and evening of June 29, 2022, unsuccessfully attempting to obtain a public record or records documenting the relevant June 29, 2022, police-involved incidents. *See* Exs. C at 4-5 & E.

57. Portions of undersigned counsel's communications with KCSO Officer #32 Dustin Tate on the evening of June 29, 2022, were redacted and/or removed from the August 18, 2022, Audio Files by KCSC. *See* Exs. C & E, hereto.

58. Undersigned counsel's phone communications with KCSO Officer #45 Joseph Branham on June 29, 2022, were omitted from the CD optical disc containing the audio recordings, Audio File Nos. 0 to 11, by KCSC. *See* Exs. C at 4-5 & E, hereto

59. KCSC's August 18, 2022, FOIA Response (Ex. C), obviously, unlawfully withheld all the public records and audio recordings relating to the third-party E-911 call(s) KCSC received on the morning of June 29, 2022, accusing Plaintiff and undersigned counsel of improper or unlawful conduct, and thereby triggering KCSO's subsequent police-actions.

60. Plaintiff's counsel offered to extend the relevant FOIA deadlines of S.C. Code Ann. § 30-4-30(c) for all additional public records of Plaintiff's FOIA Request (Ex. B) if KCSC would simply provide, as soon as possible, the public records and audio recordings relating to the third-party E-911 call(s) KCSC received on the morning of June 29, 2022, accusing Plaintiff and undersigned counsel of improper or unlawful conduct, and triggering KCSO's police-actions. *See* Ex. A at 23-24.

61. KCSC, via Attorney Morgan, rejected Plaintiff's above proposal and stated that "I take no position as to your legal representations or arguments surrounding actions involving Pinedale." Ex. A at 22-23.

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62. To fully resolve the FOIA matters, undersigned counsel then offered to personally inspect and make copies of the public records of Plaintiff's FOIA Request (Ex. B). Ex. A at 21.

63. KCSC never responded to Plaintiff's above follow-up proposal requesting an appointment to personally inspect and make copies of the public records of Plaintiff's FOIA Request (Ex. B).

64. KCSC was not interested in settling the FOIA matters described herein on reasonable terms.

65. Undersigned counsel, individually and as an attorney for Plaintiff, submitted a follow up FOIA Request to KCSC via email on August 24, 2022. Ex. A at 22.

66. Plaintiff's follow up FOIA Request seeks, *inter alia*, a copy of Attorney Morgan's employment agreement with KCSC. Ex. A at 22.

67. Attorney Morgan's employment and representation of KCSC is governed by the South Carolina Rules of Professional Responsibility.

68. On December 2, 2022, KCSO belatedly disclosed the KCSC CFS2022-39009 document (Exhibit D, hereto) to Plaintiff and undersigned counsel, which indicates that it was printed on November 17, 2022.

69. The November 17, 2022, CFS2022-39009 document demonstrates that Pinedale's Administrator Phillip Hudson called KCSC E-911 on the morning of June 29, 2022, and alleged that Plaintiff Mrs. Jernigan and undersigned counsel had committed improper or unlawful acts, and thereby triggering KCSO's subsequent police actions. Ex. D at 1.

70. Mr. Hudson's E-911 call on June 29, 2022, to KCSC totaled approximately one hour, lasting from 10:55am to 11:53am. Ex. D.

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71. KCSC unlawfully withheld the public records and audio recordings of Mr. Hudson's June 29, 2022, E-911 call to KCSC from Plaintiff and undersigned counsel.

72. Upon information and belief, Attorney Morgan provided counsel or assistance to KCSC to obstruct Plaintiff's access to the records of Mr. Hudson's E-911 call to KCSC on the morning of June 29, 2022.

73. On December 2, 2022, KCSO disclosed the KCSC CFS2022-39001 document to Plaintiff and undersigned counsel, attached as Exhibit E hereto, which indicates that it was printed on November 17, 2022.

74. The November 17, 2022, KCSC CFS2022-39001 document disclosed by KCSO on December 2, 2022, includes additional responsive public information to Plaintiff's FOIA Request (Ex. B) that was omitted from the August 18, 2022, CFS2022-39001 document previously provided by KCSC. *Compare* Ex. C at 4-5 *with* Ex. E, hereto.

75. At the hearing before the Honorable Jocelyn C. Newman on December 19, 2022, KCSO's counsel of record David Morrison, Esq. stated with respect to the audio recording of Mr. Hudson's June 29, 2022, E-911 call to KCSC (*see* Ex. D) that Mr. Morrison and his associate were "going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don't know. But we're going to Kershaw County Dispatch to get that." Ex. F at 7:6-10.

76. Over seven months have passed since the December 19, 2022, hearing before Judge Newman and the June 29, 2022, E-911 audio recording has not been disclosed to Plaintiff and undersigned counsel.

77. KCSC's August 18, 2022, FOIA Response (Ex. C) did not disclose any of the public records and audio recordings relating to Mr. Hudson's E-911 allegations as dispatched by

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KCSC operators to KCSO officers for investigation and police-action on the morning of June 29, 2022. *See* Ex. D.

78. Moreover, KCSC's August 18, 2022, FOIA Response (Ex. C) did not disclose any of the audio recordings of the KCSO officer communications before, during, or after the relevant police actions taken on June 29, 2022, for the officers involved. *See* Ex. D.

COUNT I
S.C. Code Ann. §§ 30-4-100(a), (b) & 110(f) (FOIA)

79. Plaintiff incorporates each of the allegations of the foregoing Paragraphs 1 to 79 by reference as if fully set forth herein.

80. KCSC's evasive response and incomplete disclosure of relevant public records of Plaintiff's FOIA Requests (Exs. B & A at 22) do not meet the statutory requirements of FOIA.

81. KCSC's FOIA violations must be considered irreparable injuries for which no adequate remedy at law exists pursuant to S.C. Code Ann. § 30-4-100(a).

82. An actual, present, and justiciable controversy exists concerning Plaintiff's FOIA Requests (Exs. B & A at 22).

83. Plaintiff seeks a declaration from this Court that KCSC has violated the provisions of FIOA pursuant to S.C. Code Ann. § 30-4-100(a).

84. Plaintiff seeks injunctive relief from this Court requiring KCSC to provide unredacted copies of all relevant KCSC public records, including all relevant audio recordings, of Plaintiff's FOIA Requests (Exs. B & A at 22), including:

- Complete, unredacted records and audio recordings of the communications of Pinedale Administrator Phillip Hudson with KCSC and/or KCSO, and all other communication records associated with CFS2022-39009. *See* Ex. D.
- Complete, unredacted records and audio recordings of Audio File Nos. 0 to 11, and all other communication records associated with CFS2022-39001. *See* Exs. C at 3-5 & E.

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- Complete, unredacted records and audio recordings by, between, and amongst KCSO officers personally involved with the relevant incidents on and around June 29, 2022, which include KCSO Officer #45 Joseph Branham; KCSO Officer #42 Grant Arledge; KCSO Officer #15 Courtney Cochran; KCSO Officer Miles Taylor; and KCSO Officer #40 Brian Morris. *See* Exs. C at 3-5, D & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on and around June 29, 2022, including those listed above, and the other KCSO officers personally involved after the relevant incidents occurred, which include KCSO Officer West – who discussed and/or prepared a report on behalf of Pinedale's Administrator Mr. Hudson – and Officer #32 Dustin Tate. *See* Exs. C at 4-5 and E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSO dispatch operators personally with the relevant incidents on and around June 29, 2022, and the KCSO officers personally involved, including those listed above, which include KCSC Dispatch Operators Tracie Friday and Tina Procter. *See* Ex. D.

- Personnel and training information for the KCSC dispatch operators personally involved with the relevant incidents on and around June 29, 2022, including KCSC Dispatch Operators Tracie Friday and Tina Procter. *See* Ex. D.

85. Plaintiff seeks a declaration from this Court that KCSC has arbitrarily and capriciously violated the provisions of FOIA by its refusal and/or delay in disclosing relevant public records of Plaintiff's FOIA Requests pursuant to S.C. Code Ann. § 30-4-110(f).

86. Plaintiff seeks an order from this Court imposing a civil fine of five hundred dollars upon KCSC for each public record that KCSC has arbitrarily and capriciously refused and/or delayed disclosing pursuant to S.C. Code Ann. § 30-4-110(f).

87. Plaintiff seeks an order from this Court scheduling an initial hearing within ten days of the date of service of this Complaint upon KCSC pursuant to S.C. Code Ann. § 30-4-100(a).

88. Plaintiff seeks an order from this Court awarding Plaintiff all costs and expenses incurred in this action including reasonable attorney fees pursuant to S.C. Code Ann. § 30-4-100(b).

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COUNT II
Declaratory Judgment (Public Records Act)

89. Plaintiff incorporates each of the allegations of the foregoing Paragraphs by reference as if fully set forth herein.

90. Pursuant to the Public Records Act and S.C. Code of Ann. Regs. 12-500, "Before disposing of public records under these general schedules, county governments," including KCSC, "should [e]nsure that the records have no further audit, legal, or fiscal value."

91. Upon information and belief, KCSC has unlawfully concealed, destroyed, and/or rendered unavailable public records of Plaintiff's FOIA Request (Ex. B).

92. Upon information and belief, KCSC has violated the Public Records Act and/or provisions of S.C. Code of Ann. Regs., Chapter 12, by concealing, destroying, and/or failing to maintain public records, including audio recordings, of Plaintiff's FOIA Request (Ex. B).

93. An actual, present, and justiciable controversy exists concerning Plaintiff's FOIA Request (Ex. B) and whether KCSC has concealed, destroyed, failed to maintain, and/or otherwise rendered unavailable requested public records in violation of the legal requirements of FOIA, the Public Records Act, and/or provisions of S.C. Code of Ann. Regs., Chapter 12.

94. Plaintiff seeks a declaration from this Court that KCSC has violated the legal requirements of FOIA, the Public Records Act, and/or provisions of S.C. Code of Ann. Regs., Chapter 12, with respect to public records, including audio recordings, of Plaintiff's FOIA Request (Ex. B) that KCSC has concealed, destroyed, failed to maintain, and/or otherwise rendered unavailable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

A. Schedule an initial hearing within ten days of the date of service of this Complaint pursuant to FOIA at S.C. Code Ann. § 30-4-100(a);

B. Declare that KCSC's response, written determination, incomplete disclosures, and redacted disclosures of public records in response to Plaintiff's FOIA Requests violate FIOA;

C. Declare that any exemptions claimed by KCSC are invalid and/or in violation of FOIA;

D. Declare that KCSC has violated the Public Records Act and/or provisions of S.C. Code of Ann. Regs., Chapter 12, with respect to public records of Plaintiff's FOIA Requests it has rendered has concealed, destroyed, failed to maintain, and/or otherwise rendered unavailable;

E. Issue an order restraining and enjoining KCSC from continuing to violate FOIA with respect to matters described herein;

F. Issue an order restraining and enjoining KCSC from continuing to violate the Public Records Act and/or provisions of S.C. Code of Ann. Regs., Chapter 12, with respect to matters described herein;

G. Issue an order requiring that KCSC immediately disclose all of the relevant public records requested by Plaintiff;

H. Issue an order awarding Plaintiff all costs and expenses incurred in this action including reasonable attorney fees; and

I. Grant such other or further relief to which Plaintiff may be entitled as a matter of law or equity, and/or which the Court may deem just and proper under the circumstances.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

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Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 24th day of July 2023

ATTORNEY FOR PLAINTIFF CHRISTINE. JERNIGAN

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EXHIBIT A

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ELECTRONICALLY FILED - 2023 Jul 24 12:33 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Justin Jernigan

From: Justin Jernigan
Sent: Tuesday, August 9, 2022 11:25 PM
To: Tommy Morgan
Cc: Shelley Dabney
Subject: RE: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Tommy, did not hear from you last Friday, but do want to get the records, etc. We can discuss is helpful, but otherwise let me know when I can expect a complete response.

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Tuesday, August 2, 2022 6:11 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Well, there is lower humidity but it's still in the mid-90s so not much different. We did go to Pike's Peak yesterday where there was snow and 42 degrees. That was nice.

From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Tuesday, August 2, 2022 3:33 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Tommy, could do 4pm on Friday, but also ok with pushing until next week. Just let me know by sometime Friday either way.

Hope you and your wife have a great trip. Even though no snow this time of year I'm sure the lower humidity is nice.

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Tuesday, August 2, 2022 2:54 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Justin,

I'm currently in Denver with wife for her national legislative conference. When I get back into the office Friday I'm right and proper slammed. However, I ***should*** be able to squeeze you in say 4:00?

Thanks,
TM

From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Monday, August 1, 2022 5:13 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Tommy,

I propose Friday at 2pm to discuss this week. Other or later dates/times can work as well depending on your schedule.

Tried to make my FOIA request (attached) as specific as possible, and glad to clarify/limit as may be appropriate. I did not see a way to submit the KCSO FOIA Form via online/website submission, just fyi, as noted in your below email. Maybe it is the KC FOIA submissions that you are indicating should be submitted online via KC's website but that you are making exception under circumstances? If so, many thanks.

Understand there is FOIA exemption for body cam video, but respectfully request preservation.

Also, you are 100% correct that I am primarily concerned with what has/is happening regarding my grandmother (e.g., issues you note fall outside of FOIA). Rather than attempt to address that by submitting a complaint to KCSO directly I would respectfully request that you consider these issues (as well as the closely related subject matter of the FOIA request), confer with your client, and let me know if there are potential solutions.

I don't really want to complain right now either. I would simply request some kind of clarification that KCSO will not take such actions again if my aunt Sharon or Pinedale calls KCSO again asking for assistance in preventing me or my family from traveling with my grandmother (Ann) away from Pinedale. Also, please consider as well that it is unlawful for a person (i.e. Sharon/Pinedale) to knowingly make a false complaint to a law enforcement officer concerning the alleged commission of a crime by another. SC Code 16-17-725.

Thanks,

Justin

From: Justin Jernigan
Sent: Thursday, July 28, 2022 1:08 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy, very much appreciate your prompt response and the helpful information you included. After I've had a chance to consider I will reach back out to you via email later this week or early next week with some proposed dates/times to discuss.

Hope all is well with you also!

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Thursday, July 28, 2022 12:56 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

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Justin,

Hope all is well. Go Class of '06!

As for FOIA and requesting certain documents, here's the lay of the land:

- KCSO: investigative file, incident reports, dash cam video (not body cam as that's exempt per § 23-1-240(G)(1)), personnel records, training records, etc.
- KC: E-911 comms (CAD reports), detention center records (KC operates the jail, not KCSO), etc.

Helpful links and documents:

- KC FOIA Form – email County FOIA Coordinator Lauren Reeder lauren.reeder@kershaw.sc.gov
- KCSO FOIA Form – you would normally would submit online to KCSO but given this situation I'll handle accordingly. I'll have to speak with them to determine what records are available that apply to this situation.
- KCSO Complaint Form – that should be sent directly to Sheriff Lee Boan lee.boan@kershaw.sc.gov and his Chief Deputy Rock Coleman tyrrell.coleman@kershaw.sc.gov.

I understand based on my reading of your correspondence that you have concerns/questions/issues as to the incident involving your grandmother and possible mistreatment at her residential care facility and how events were handled by KCSO. FOIA is not the best way to ask the questions you have so I would prepare a complaint form and submit to KCSO so it can be addressed by Command Staff. I can assure you Sheriff Boan and Chief Coleman are very responsive to these types of inquiries and will likely contact you soon.

After you review this email and feel we need to discuss, let's set up a time to call next week.

Thanks,
Tommy

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Smith Robinson Holler DuBose and Morgan, LLC
www.SmithRobinsonLaw.com

H. Thomas Morgan, Jr.
Assistant Kershaw County Attorney

E: tommy@smithrobinsonlaw.com
P: 803.432.1992
F: 803.432.0784

Camden Office
935 Broad Street
Camden, SC 29020

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From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Thursday, July 28, 2022 12:44 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

Quick follow-up when you have a chance. Alisha (KCSO's FOIA Officer) indicated in her below email of Monday, July 25, 2022, that I would need to contact "central dispatch" with respect to all call related public records she identified. Alisha's email of July 25th also, however, suggests that she accessed, used, etc., KCSO's records with respect

to her conclusion that the incidents were "civil matters," and that I was informed of such during my phone call with Corporal Taylor (2nd Shift) on evening of June 29, 2022.

I certainly do not mind contacting/requesting call records from central dispatch in view of Alisha's email but was also, as noted, confused by Alisha's ambiguous response. In any case, I request your permission, and will otherwise refrain, from contacting any Kershaw County employees without your express approval in view of the below email from Alisha this morning, and my follow up email, noting that I should/will contact you directly going forward regarding these matters.

Also, small/cool world, I looked up your firm bio and discovered that we both graduated USC Law class of 2006. I have been a patent attorney living/practicing in South Charlotte area since we graduated in 2006, other than from '06-'08 when I was law clerk at federal court in Augusta. Still, I believe that I remember you from law school classes we attended together.

So, obviously, criminal and SC FOIA matters are well outside my area of practice, and I certainly never expected or wanted to become personally involved with either this summer. My family and I support and respect law enforcement employees. I am teaching my kids (daughter 9 and son 14) to respect/value law enforcement. It is an often difficult, yet critically important, public service.

Would respectfully submit that my mother, grandmother, and I have, nevertheless, been treated like "scumbag troublemakers" by KCSO at all points prior to this email to you. I do not fully understand why, but know for sure that it was through no fault of our own. I would appreciate discussing this matter with you at your earliest convenience.

Best Regards,

Justin

From: Justin Jernigan
Sent: Wednesday, July 27, 2022 11:02 AM
To: Alisha Joe <alisha.joe@kershaw.sc.gov>; kcso@kershaw.sc.gov
Cc: Tommy <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Thanks Alisha. Will drop you/KCSO from all further correspondence and will confer with counsel directly.

Tommy/Shelley, will await your response or phone call after you have had a chance to review/consider.

Justin

Justin A. Jernigan
Additon, Pendleton & Witherspoon, P.A.
Patent Attorneys
P.O. Box 567
Monroe, NC 28111
T: (704) 945-6734
F: (704) 945-6735
jjernigan@apwlaw.us

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From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Wednesday, July 27, 2022 10:58 AM
To: Justin Jernigan <jjernigan@apwlaw.us>; kcso@kershaw.sc.gov
Cc: Tommy <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Fwd: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Mr. Jernigan,

I've added the County Attorney on to this email thread. From this point forward, please refer to him for anything further so that we can assure all of your needs are met.
Thank you, and have a great day.

---------- Forwarded message ---------
From: **Justin Jernigan** <jjernigan@apwlaw.us>
Date: Wed, Jul 27, 2022 at 12:20 AM
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
To: Alisha Joe <alisha.joe@kershaw.sc.gov>
Cc: KCSO@kershaw.sc.gov <KCSO@kershaw.sc.gov>

Thanks for your response Alisha.

I respectfully submit some questions and concerns with respect your response. First, should I consider your below email to be KCSO's full, final, and complete response to my 7.22.22 FOIA request?

The response from KCSO seems to only discuss one of the incidents set forth in my FOIA; e.g., KCSO's pursuit, stop, detention, forcing my mom to take and leave my grandmother at Pinedale against both of their expressed wishes, etc., on June 29, 2022. You note that, based on your review of the records, I was, at around 6:30pm-7:00pm on June 29th, "informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident." Is KCSO's position that this was always merely a civil issue or was that not decided until later in the afternoon/evening after these incidents had already occurred? Also, please note that the SC FOIA at Section 30-4-40 discusses certain matter that *may* be exempt from disclosure, but I do not see any "civil matter" exception, so please point to the legal basis in support of this position. The SC General Assembly states that the provisions of the SC FOIA "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." Section 30-4-40.

My 7.22.22 FOIA request encompasses public records not discussed or addressed in KCSO's below response. The additional requested records include, but are not limited to, public records concerning my reporting of criminal exploitation of a vulnerable adult (my grandmother) to KCSO on June 28-29, 2022? Does KCSO view this to also be merely a civil matter such that KCSO "do[es] not have any records regarding this incident" as well? Please clarify.

Moreover, what about the records requested in my 7.22.22 relating to the officers/employee's involved, relevant training/certifications in the noted areas, etc.? Surely KCSO maintains records relating to its officers/employees right?

Lastly, please note that the SC FOIA at Section 30-4-20 defines "public record" as including "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body." Does KCSO not have access to, possess, use, etc. any such public records concerning my 7.22.22 FOIA? Your below email indicates that "[a]ccording to the records…you were informed…you were dealing with [] a civil issue" on evening of June 29th by Corporal Taylor (2nd Shift). If you reviewed records indicating this information I would respectfully request that those be provided in electronic format, or first made available for inspection and potential copying depending on volume.

Thanks, and please give me a call to discuss if it could be helpful (cell phone number is 864-710-5029). All rights, remedies, etc. are respectfully reserved.

Best Regards,

Justin Jernigan

From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Monday, July 25, 2022 2:34 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: KCSO@kershaw.sc.gov
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Good Afternoon,

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

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On Fri, Jul 22, 2022 at 5:47 PM Justin Jernigan <jjernigan@apwlaw.us> wrote:

> Dear FOIA Officer,
>
> Please consider my attached request and contact me at your earliest convenience after you have had a chance to review/consider. My cell phone number is 864-710-5029.
>
> Best regards, and hope you have (or had) a great weekend,
>
> Justin
>
> *Justin A. Jernigan*
>
> Additon, Pendleton & Witherspoon, P.A.
>
> Patent Attorneys
>
> P.O. Box 567
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> Monroe, NC 28111
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>
> jjernigan@apwlaw.us
>
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--

Alisha R. Joe

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Sex Offender Registrar

Agency TAC

Records Department

Assistant VA

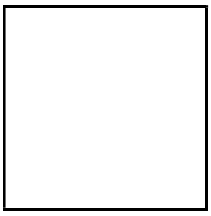
Kershaw County Sheriff's Office

821 Ridgeway Road (PO Box 70)

Lugoff, SC 29078

Phone: (803) 425-1512

Fax: (803) 425-6021



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Alisha R. Joe
Sex Offender Registrar
Agency TAC
Records Department
Kershaw County Sheriff's Office
821 Ridgeway Rd. (PO Box 70)
Lugoff, SC 29078
P: (803) 425-1512 ext. 1104
F: (803) 425-6021

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Justin Jernigan

From: Tommy Morgan < tommy@smithrobinsonlaw.com>
Sent: Tuesday, August 9, 2022 11:25 PM
To: Justin Jernigan
Subject: Automatic reply: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

I am out of the office with limited ability to check my emails until my return on Friday, August 12th. As such, please contact my paralegal, Sherry Roth, at Sherry.Roth@smithrobinsonlaw.com and she will assist you in my absence.

Thanks,
Tommy

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Justin Jernigan

From: Justin Jernigan
Sent: Thursday, August 11, 2022 11:56 AM
To: merri.seigler@kershaw.sc.gov
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
Attachments: Kershaw Sheriff's Office FOIA, 7.22.22, Jernigan.pdf

Hi Merri,

I submitted the attached FIOA request to KCSO on 7/22/22 and received the below email response from Alisha indicating to contact you regarding certain County public records. Can you please provide me with copies of the County call related public records falling within my FOIA Request? Would prefer electronic copies sent via email if possible.

FYI, after Alisha's below email on 7/25/22, KCSO placed me in contact with the County Attorney Tommy. We had a call scheduled to discuss last Friday at 4pm (8/5/22), but I believe Tommy had been traveling and I did not hear from him then. I followed up earlier this week and Tommy is out this week also. Just wanted to keep the ball rolling in the meantime. If I can be of assistance on this please give me a call (cell 864-710-5029).

Thanks

Justin

From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Monday, July 25, 2022 2:34 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: KCSO@kershaw.sc.gov
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Good Afternoon,

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

On Fri, Jul 22, 2022 at 5:47 PM Justin Jernigan <jjernigan@apwlaw.us> wrote:

> Dear FOIA Officer,
>
> Please consider my attached request and contact me at your earliest convenience after you have had a chance to review/consider. My cell phone number is 864-710-5029.

Best regards, and hope you have (or had) a great weekend,

Justin

Justin A. Jernigan

Additon, Pendleton & Witherspoon, P.A.

Patent Attorneys

P.O. Box 567

Monroe, NC 28111

T: (704) 945-6734

F: (704) 945-6735

jjernigan@apwlaw.us

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Alisha R. Joe
Sex Offender Registrar
Agency TAC
Records Department
Assistant VA
Kershaw County Sheriff's Office
821 Ridgeway Road (PO Box 70)
Lugoff, SC 29078
Phone: (803) 425-1512
Fax: (803) 425-6021



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Justin Jernigan

From: Justin Jernigan
Sent: Friday, August 12, 2022 10:50 AM
To: Tommy Morgan
Cc: Shelley Dabney; Lauren Reeder
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

No worries. Like I said, just trying to keep the ball rolling given that you have been busy, and I was a little unclear if I needed to make a FOI request to County also given that I sent prior to KCSO, who then said to request from County….

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Friday, August 12, 2022 8:18 AM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>; Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I am back in the office and am trying to play catch up. 2 weeks and 2 trips (Denver and Boston) and it's real easy to fall behind.

Let me look into the status of the records themselves. I know you wanted to chat about your concerns. I will do my best to give you a call today but my calendar is pretty tight. Next week it opens back up, however.

I appreciate your understanding.

Thanks,
Tommy

SMITH ROBINSON
Forward thinking. Results driven.
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www.SmithRobinsonLaw.com

H. Thomas Morgan, Jr.
Assistant Kershaw County Attorney

E: tommy@smithrobinsonlaw.com
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Camden Office
935 Broad Street
Camden, SC 29020

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From: Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Sent: Thursday, August 11, 2022 1:30 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Fwd: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Please let me know how you'd like to proceed.

LAUREN

---------- Forwarded message ---------
From: **Justin Jernigan** <jjernigan@apwlaw.us>
Date: Thu, Aug 11, 2022 at 12:24 PM
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
To: merri.seigler@kershaw.sc.gov <merri.seigler@kershaw.sc.gov>, lauren.reeder@kershaw.sc.gov <lauren.reeder@kershaw.sc.gov>

Lauren,

I'm copying you in on my below email also as your name is listed "for questions" regarding County FOI.

Thanks,

From: Justin Jernigan
Sent: Thursday, August 11, 2022 11:56 AM
To: merri.seigler@kershaw.sc.gov
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Hi Merri,

I submitted the attached FIOA request to KCSO on 7/22/22 and received the below email response from Alisha indicating to contact you regarding certain County public records. Can you please provide me with copies of the County call related public records falling within my FOIA Request? Would prefer electronic copies sent via email if possible.

FYI, after Alisha's below email on 7/25/22, KCSO placed me in contact with the County Attorney Tommy. We had a call scheduled to discuss last Friday at 4pm (8/5/22), but I believe Tommy had been traveling and I did not hear from him then. I followed up earlier this week and Tommy is out this week also. Just wanted to keep the ball rolling in the meantime. If I can be of assistance on this please give me a call (cell 864-710-5029).

Thanks

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Justin

From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Monday, July 25, 2022 2:34 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: KCSO@kershaw.sc.gov
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Good Afternoon,

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

On Fri, Jul 22, 2022 at 5:47 PM Justin Jernigan <jjernigan@apwlaw.us> wrote:

> Dear FOIA Officer,
>
> Please consider my attached request and contact me at your earliest convenience after you have had a chance to review/consider. My cell phone number is 864-710-5029.
>
> Best regards, and hope you have (or had) a great weekend,
>
> Justin

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Justin A. Jernigan

Additon, Pendleton & Witherspoon, P.A.

Patent Attorneys

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jjernigan@apwlaw.us

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--

Alisha R. Joe

Sex Offender Registrar

Agency TAC

Records Department

Assistant VA

Kershaw County Sheriff's Office

821 Ridgeway Road (PO Box 70)

Lugoff, SC 29078

Phone: (803) 425-1512

Fax: (803) 425-6021



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--

Lauren Branham Reeder
PUBLIC INFORMATION & MARKETING OFFICER
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515 Walnut Street | Camden, South Carolina 29020
803.425.5320 | Phone
803.729.9663 | Cell



Check out Kershaw County's vision: http://www.visionkershaw2030.org/

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Justin Jernigan

From: Justin Jernigan
Sent: Wednesday, August 24, 2022 11:55 AM
To: Tommy Morgan
Cc: Shelley Dabney
Subject: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan
Attachments: Kershaw Sheriff's Office FOIA, 7.22.22, Jernigan.pdf; FOI Resolution 2017.pdf

Tommy,

I appreciate your honesty. You have not reviewed the 8.18.22 production which was sent with your cover letter, told me to contact you regarding questions with respect to the production, etc. Since you did not listen to the 8.18.22 production or otherwise look into the matter, we are in agreement that you are not really in a position to make comments on my allegations that portions have been dubbed, clipped out, etc. You also admitted during our phone call that you have never even actually read my 7.22.22 FIOA request. That fact is also apparent from reading your below email of August 23, 2022, at 9:00:16 pm. I've attached my 7.22.22 FOIA request, yet again, for you to review, and I'm including C&P's of two paragraphs in my request below.

> I would also respectfully request all public records concerning Department actions involving my mother (Christine Pratt Jernigan, 302 Pine Cliff Dr., Seneca SC 29672), and grandmother (Ann Berry Martin) on June 29, 2022, or otherwise relating to myself. These records also include, but are not limited to, records relating to my aunt/uncle, Sharon/Jim Wright of Camden, and the Pinedale facility, that are relevant to this matter.

...

> I also respectfully request records concerning the names, ranks, dates of service, and/or related public information concerning all Department employees having any personal involvement regarding the above-described incidents that occurred in or around late June 2022 to present. Included in this request are training classes taken by these individuals, required, or respective certifications concerning constitutional rights of private citizens in connection with stops, detentions, arrests, use of police powers, etc. (e.g., regarding probable cause, reasonable suspicion, or indications of unlawful conduct required before taking such steps). I would also respectfully request similar training or certification information for all such individuals with respect to investigating abuse of the elderly or otherwise disabled/vulnerable adults.

Also attached hereto is your client KC's FOIA Resolution No. 124.2017, with a relevant portion C&P'd below.

> (B) The County shall provide non-exempt requested within thirty (3) calendar days of the initial response and determination/notification for those records less than two (2) years old and within thirty-five (35) calendar days if the records are greater than two (2) years old.

I made what I thought was a very reasonable proposal/offer via email yesterday because you said something about having a busy upcoming schedule. Even so, you flatly rejected my proposal without even reading my 7.22.22 FOIA request! For clarity, my rejected proposal/offer is withdrawn. I would alternatively propose scheduling time on Friday 8/25/22, Saturday 8/26/22 and/or Sunday 8/27/22 for me to review all the requested records personally and obtain my own copies of the requested records. Let me know by the end of the day today.

NEW FOIA REQUEST: To KC and all of its related or subagencies including KCSO; REQUESTOR: Justin Jernigan (contact info. same as attached cover page from 7.22.22 FOIA requests)

All public records, including but not limited to, contracts or other documents concerning, explaining, etc. the relationship between KC and KC County Attorney Tommy Morgan. For example, job descriptions and responsibilities with respect to assigned FOIA requests and for contested/adversarial legal matters Attorney Morgan becomes aware of involving third-parties against KC, third-party attorneys, etc. This request includes any public records or documentation concerning whether the relationship between KC and Attorney Morgan is governed by the S.C. Rules of Prof. Resp. or if the relationship is more limited in any respect. Including, but not limited to, whether Mr. Morgan can ignore disputed legal issues and request that third-party attorneys contact his client directly regarding disputed legal matters.

All public records concerning training, certifications, etc., with respect to the employees, contractors, or contract employees, etc., involved in the incidents in or around late June 2022 (see attached 7.22.22 FIOA request), or becoming involved in any way thereafter, that relate to KCSO/law enforcement's authority to take police action in civil matters, in matters involving power of attorney (POA) documents, and/or to give legal opinions on civil matters or anything concerning POA documents. This request also includes any applicable training, certifications, etc., with respect to the before mentioned individuals and the Resident's Bill of Rights (SC Code §§ 44-81-20, et seq.), the Protection of Persons Under Disability (SC Code §§ 62-5-101, et seq.), related regulations, and related Federal statutes/regulations.

Best regards,

Justin Jernigan
justin.a.jernigan@gmail.com
864-710-5029

From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Wednesday, August 24, 2022 9:18 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: Re: Proposal RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy, please read my original 7.22.22 request and get back to me. You response below is not understood. I'm not requesting anything "new"!!! You had 10 biz days for a final response. The only response was from Aliesha on 7.25.22. 30 days to produce the non-exempt records. See also KC Resolution 124.2017 as far as time periods.

I assume you are taking no position because you do not disagree.

Get Outlook for iOS

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Tuesday, August 23, 2022 9:00:16 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: RE: Proposal RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I refer you to S.C. Code Ann. § 30-4-30 as to time deadlines for response to requests. I also direct your attention to S.C. Code Ann. § 30-4-100 regarding injunctive relief as to FOIA requests.

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I have previously referred your E-911 requests to the Director. I note I had previously provided you with her direct address. Regardless, I'll forward you new request regarding Sharon and/or Jim Wright and have them provide any records should they be available.

I'll reiterate that I have zero control over the production of the audio recordings themselves. In other words, I have zero idea whether they were redacted although I have never known of such taking place in the past. So any "lags" in the recording as you describe might be due to technical difficulties with the cellular transmissions.

I take no position as to your legal representations or arguments surrounding actions involving Pinedale. As I have stated on numerous occasions, FOIA is not a vehicle to discuss or debate allegations or accusations or the validity of actions/inactions.

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From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Tuesday, August 23, 2022 11:37 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Proposal RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

Thanks for spending some of your valuable time discussing this matter with me via phone yesterday.

As we discussed, we (me and your client KC/KCSO) presently have a disagreement regarding the response and records provided to my 7.22.22 FOIA request (as well as other disputes). My understanding of FOIA is that the recipient has 10 days to give a complete/final response and 30 days to produce the requested/responsive records. If the requester files a court action after this time period expires, and the recipient subsequently turns over additional responsive records, the requester is entitled to recover attorneys' fees/costs. *Burton v. YCSO*, 594 S.E.2d 888, 358 S.C. 339 (2004).

Proposal: Please provide all the audio/phone-calls, call logs, etc. relating to the noted incident that involve or otherwise concern my aunt Sharon Wright, her husband Jim Wright, and/or Pinedale (anyone associated with Pinedale, including Phillip Hudson, administrator) as soon as possible. If you can, please send the files to me via email or you can transfer to my cloud drive (I will provide a link). I do not expect any redactions, but if the records are redacted, audio chopped out, etc. (like with the disc sent on August 18, 2022), please provide the exemption(s) claimed under FOIA matched up to any portion(s) redacted (e.g., if audio records, please note the time periods that have been omitted and the claimed exemptions).

I do not want to file a lawsuit over FOIA issues as long as you will provide the above asap, and thereafter agree to keep me in the loop regarding the other records requested in my attached 7.22.22 FIOA request (e.g., give me an expected date of receipt, if more time may be needed on any records let me know in advance, etc.). Please respond and let me know if this is acceptable.

Other Matters Discussed:

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My understanding is that you represent KC/KCSO. For example, your client sent both of us the below email on July 25, 2022 (emphasis added):

> Mr. Jernigan,
>
> I've added the County Attorney on to this email thread. *From this point forward, please refer to him for anything further so that we can assure all of your needs are met*.
> Thank you, and have a great day.

My assumption was that you were the person I should contact "for anything further so that we can assure all of your needs are met." If this is incorrect please let me know. You also noted in your Letter to me dated August 18, 2022, that if I had any questions regarding the FOIA response/production that I should contact you.

We also (potentially) disagree regarding whether your client had any legal justification for taking any action at all based simply on a lay person's legal opinion with respect to "rights" that were allegedly taken away from my Ann under a POA. Your client had no authority or jurisdiction to pursue, stop, detain, etc. my mother Chris and my grandmother Ann without any reasonable suspicion, probable cause, etc., regarding criminal activity. Your client is, of course, not certified to make legal determinations or take any action with respect to civil matters.

The General Assembly recognized that residents residing in facilities (e.g., my grandmother Ann) retain their individual rights and personal freedoms as fully as other citizens, that it is necessary to preserve the dignity and personal integrity of residents, and that each resident's need for self-determination must be safeguarded against encroachments. SC Code § 44-81-20. At the time Ann was admitted to Pinedale in late May 2022, my aunt Sharon should have been given oral and written explanations by Pinedale regarding Ann's rights and signed a written acknowledgement that these rights were explained to her by Pinedale. S.C. Code § 44-81-40(A). Written notices relating to certain of the residents' rights are required to be posted in conspicuous locations in and around Pinedale. *Id.* The written notice provided on DHEC's website explains, for instance, that a resident may voluntarily choose to relocate from a facility (e.g., Pinedale) at any time. See https://scdhec.gov/sites/default/files/docs/Health/docs/Residents%20Bill%20of%20Rights.pdf (14 lines or so up from the last line). Pinedale is, of course, not an institution, prison, etc. that can force its resident to remain against their reasonable, rational, and expressed wishes (e.g., exploitation of a vulnerable adult).

Only a court, following legal proceedings that are conducted consistent with Ann's due process rights, can decide that certain rights and freedoms be taken away. S.C. Code § 62-5-101(9) (vested instead to "a person appointed by the court as guardian"). Ann retains, for example, the following rights and personal freedoms: the right to reside in a place of her choosing, the right to travel, the right to visit family away from Pinedale, and the right to make decisions regarding her medical care and treatment. S.C. Code § 62-5-304A.

If you disagree or have any questions please let me know.

Thanks,

Justin
864-710-5029 (cell)
justin.a.jernigan@gmail.com

From: Justin Jernigan
Sent: Monday, August 22, 2022 8:25 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>

Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Hi Tommy,

Hope you had a good weekend. This is the last week before school starts back for the kids up here, so I'm a little bit bummed out about getting back in the drop-off lines, which is where I will be this time next week.

I am writing to ask if you intend to respond to any or my allegations regarding your client and/or anything else? If so, please let me know when I can expect to receive a response, including with respect to the additional allegations below.

I believe that you should respond because, in my view, you are assisting in a continuing coverup of the underlying facts. I assume that you are the one that listened to and prepared the woefully incomplete disc/response to my 7.22.22 FOIA request because your client (Alisha/KCSO) told me to deal with you directly on these matters on July 25th (see email chain below).

I've attached hereto the text summary of the complete 11 audio files I received. These are surely not the only audio/video and/or other records that exist and fall within the scope of my request. For instance, why were no audio/video files included showing who called KCSO and falsely reported criminal activity against my mother and/or myself? Where are the audio files concerning KCSO sending three county owned vehicles and KCSO officers to pursue my mother/grandmother and stop, detain, falsely imprison, kidnap, etc., on June 29th? Where are dashcam video/audio and the video/audio of my discussions at the KCSO with officers on June 29th? These records surely exist, but if they somehow do not for reasons I am currently unaware of, please explain. As present, I consider KCSO's "responses" to my 7.22.22 FIOA as additional evidence of bad faith and willfulness.

For example, based on what I received in response to my 7.22.22 FOIA request, it seems that you must have delegated the task back to KCSO/KC because I would not expect this kind of response from an attorney knowledgeable in FOIA. The only records I received concern conversations between myself and your client; i.e., nothing I didn't already know. It is still unclear from the records provided "why" KCSO decided it was appropriate to stop, detain, falsely imprison, kidnap, etc., my mother and grandmother on June 29th. Does KCSO still believe my mother and grandmother are not citizens that possess the same rights and freedoms as you and I do? If my mother picks up my grandmother tomorrow is KCSO planning to take similar action if the perpetrator makes a similar request? The person/entity who called KCSO concerning non-criminal actions of myself and my mother is not named in any KCSO's public records? The only person/entity identified in the records as calling KCSO regarding this matter is myself.

You/KCSO have even redacted portions of the 11 audio files/conversations you provided concerning myself. I was, of course, personally involved in most of these conversations but KCSO even redacted portions of my conversations with KCSO from the audio files! For example, why would KCSO redact portions of my conversation with Corporal Tate on the evening of June 29th (I previously thought the dispatcher operator called him Corporal "Taylor" as noted in my 7.22.22 FOIA). At one point during our conversation Corporal Tate said that by requesting a report I was basically asking KCSO to create evidence against their own interests!?! I explained in response that I just wanted what happened to be documented and that maybe I'm somehow the one at fault. That, of course, is not an accusation of impropriety against KCSO which is what Officer Tate accused me of personally at that time and also in the call notes provided with respect to the call (not attached hereto). Corporal Tate told me that since I was accusing KCSO of acting outside its jurisdiction then I needed to contact the Attorney General's office. Tate then hung up on me.

FYI, I did subsequently contact the Attorney General's office as instructed by Corporal Tate. I received a very nice response explaining that the Attorney General's office does not handle such matters, so KCSO again gave me bad information on June 29th resulting in further time wasted.

I spoke to the receptionist, dispatch, and Deputy Branham at around 2:30pm on June 29th before leaving Lugoff. I also left another message with Captain Boykin (I think). All, or at least the receptionist and Branham, indicated that a report

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would be prepared by the end of first shift. That was the information I was given by KCSO so, naturally, when I called back that evening as instructed, I expected that someone would send me a copy of the report. It seems like KCSO was intending to prepare the previously mentioned "report" until the end of the shift when KCSO realized there was no "criminal code" that they could write on the report, hence, KCSO then decided it was a "civil matter." In other words, a matter that KCSO had no jurisdiction to be involved in at all. Not only that, because it was a "civil matter" KCSO decided there were no public record that needed to be produced in response to my 7.22.22 FOIA.

This is unprofessional behavior. Professionals, unfortunately, make mistakes sometimes. When they inevitably do, the only reasonable/rational response is to stand up and own up to it. Trying to cover it up just makes it worse. It is very dangerous for law enforcement to act outside their jurisdiction, as I'm sure you know, because citizens have the right to defend themselves, someone could get seriously hurt, etc.

As always, if you disagree, please fully explain and provide justifications in writing.

Thanks,

Justin

From: Justin Jernigan
Sent: Thursday, August 18, 2022 1:57 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

I do not understand your below email. You represent KCSO right? I have submitted complaints to you right? Therefore, I have already submitted my complaints to your client KCSO.

Are you saying that you have chosen to ignore everything that does not concern, specifically, FOIA? You are withholding all other information from your client and ignoring it? You are also telling an attorney to contact your client directly? I'm fine with you forwarding these emails to KCSO and dealing with them directly if those are your instructions. Send me the emails of who I should forward to unless you are willing to forward and make the introductions.

I also do not appreciate your non-response on behalf of your client to the serious (e.g., felony) issues I have raised below. Since you represent KCSO, respectfully, your response is also on their behalf and is noted. If you disagree with that please let me know.

Also, please read the case of BURTON v. YORK COUNTY SHERIFF'S DEPT, 594 S.E.2d 888, 358 S.C. 339 (2004). In that case Burton requested public records under FOIA including: "Employment Records. Burton asked to review the employment information for the named deputy sheriffs, including dates of employment, title, rank, pay-rate schedule, copies of disciplinary letters, records of suspension and all other information as provided by law." This information should have been disclosed and the YCSO was liable for costs and attorney's fees. Id. I have made similar requests for information concerning the officers/employees involved in my 7.22.22 FOIA request. You have also identified other officer's (Deputies Tate and Arledge) with are included in my request, plus the other employees personally involved (dispatch operators, etc).

I do not consider any of these matters to be closed, and you should not either. Like I have been requesting, you can always call me to discuss (864-710-5029). Your unilateral decision to "close these matters" is not accepted.

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Justin

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From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Thursday, August 18, 2022 12:32 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I picked up the audio files from E-911 and that disc will be going out in the mail today (possibly tomorrow).

I believe there's dash cam – not 100% certain – based on my discussions of the incident with Deputies Tate and Arledge. They were going to pull those and as soon as I receive the video I'll mail to you. As previously mentioned, no body cam footage will be provided pursuant to S.C. Code Ann. § 23-1-340(G)(1).

As previously noted, there is no incident report from KCSO.

Finally, per your continued allegations below, should you believe a crime was committed, please contact law enforcement. I have already provided you contact info for any complaints that need to be directed to KCSO.

FOIA is not intended to discuss allegations and refutations of claims – rather, it is to provide access to public documents or meetings. *See generally* S.C. Code Ann. § 30-4-15. Accordingly, KCSO considers this request as completed and is closing the matter. Please let me know if you do not receive the disc videos within the next week or so and we'll re-transmit.

Tommy

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Assistant Kershaw County Attorney

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Camden Office
935 Broad Street
Camden, SC 29020

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From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Wednesday, August 17, 2022 3:02 PM

ELECTRONICALLY FILED - 2023 Jul 24 12:33 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Hi Tommy,

Checking back in again on the FOIA request and other related issues. Give me a call if I can be of assistance in moving this along. I am also writing to follow up and further explain my request for an explanation from you regarding why KCSO did not commit kidnapping, conspiracy, etc. that should be reported to SLED/FBI? I am not a criminal attorney, have never been a prosecutor, and have never worked in law enforcement. These offenses are, however, defined in Title 16, Chapter 3, Article 9 quoted below (emphasis added):

ARTICLE 9
Kidnapping

SECTION 16-3-910. Kidnapping.

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person *by any means whatsoever* *without authority of law*, except when a minor is seized or taken by his parent, is *guilty of a felony* and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.

HISTORY: 1962 Code Section 16-91; 1952 Code Section 16-91; 1942 Code Section 1122; 1937 (40) 137; 1966 (54) 2151; 1974 (58) 2361; 1976 Act No. 684; 1991 Act No. 117, Section 1.

SECTION 16-3-920. Conspiracy to kidnap.

If two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of Section 16-3-910 and any of such persons *do any overt act towards carrying out such* *unlawful* *agreement, confederation, or conspiracy, each such person shall be guilty of a felony* and, upon conviction, shall be punished in like manner as provided for the violation of Section 16-3-910.

HISTORY: 1962 Code Section 16-92; 1952 Code Section 16-92; 1942 Code Section 1122; 1937 (40) 137; 1991 Act No. 117, Section 1.

You, of course, are the only one presently who has access to the records, officers/employees involved, etc. In any case, based on my personal knowledge, the additional evidence will confirm seizure, detention, carrying away by *unlawful* force, etc., of another person (e.g., my grandmother Ann) by KCSO and my aunt Sharon. Sharon is an ordinary citizen who is not an attorney, prosecutor, member of law enforcement, etc. Still, it seems that Sharon must have called 911 and somehow defrauded KCSO into believing that a 2013 POA gives her/KCSO the right to confine Ann against her expressed wishes using the force of law (i.e., three KCSO vehicles were sent to pursue, stop, detain, seize, etc. my mother Chris and my grandmother Ann).

Sharon's unlawful assertions of such "authority" under the 2013 POA were first directed at us in late June 2022 (i.e., myself, my mother Chris, and my father Dan). Sharon, and my uncle Jim Wright, informed us that they never actually enrolled Ann for a "one month trial period" at Pinedale as they previously claimed was the case (e.g., fraud, willful misrepresentations, etc.). My parents had planned to pick Ann up at the end of the fictional one-month trial period on June 30, 2022. I spoke to the facility administrator Phillip Hudson on June 28, 2022, who indicated that Ann was free to voluntarily leave with her daughter Chris, same as with all the other residents that were free to leave voluntarily. I explained this to Deputy Branham on the morning of June 29, 2022, when I also reported my additional knowledge regarding exploitation of a vulnerable adult (Ann) by my aunt/uncle. Sharon certainly

knew/knows Ann was free to voluntarily leave Pinedale when she contacted KCSO because it was required by law to have been explained to her, orally and in writing, prior to Ann's enrollment at Pinedale. S.C. Code §§ 44-81-20, et seq.; see also https://scdhec.gov/sites/default/files/docs/Health/docs/Residents%20Bill%20of%20Rights.pdf (14 lines or so up from the last line).

Sharon/Jim revealed to us in late June 2022 that their true plan was to unlawfully force Ann to remain at Pinedale 100% of the time (e.g., Ann was on Pinedale's waiting list for a year or so, as records will confirm, and they apparently enrolled Ann quickly to not lose their "spot"). Sharon/Jim's alleged justification for their unlawful detention of Ann was the purported authority granted under the 2013 POA. The 2013 POA was unknown to us until late June 2022. The 2013 POA was prepared by my aunt/uncle's personal friend/attorney in December 2013 (see, e.g., KC ROD online records). December 2013 was after Ann was "gracefully forced" to retire in November because her Alzheimer's/dementia had progressed to a point that she could no longer perform required job-related tasks she previously performed without issue. Ann's co-workers, according to Sharon/Jim, reached out to them because they were "covering" for Ann.

It was unlawful for KSCO to agree that Ann does not possess the same rights and freedoms as other citizens. S.C. Code § 44-81-20. Ann's rights are even more worthy of KCSO's protection because Ann is a vulnerable adult who is unable to protect herself. Id.

KCSO's subsequent actions, however, were possibly worse. My mother and grandmother were clearly the only victims. Yet, officer Taylor (e.g., believed to be the ranking officer at the KCSO during the unlawful detention) refused my repeated, and very reasonable, requests that my mother and grandmother be released unless charged with a crime. It seems that your client would have recordings of these discussions. During these discussions officer Taylor engaged in unauthorized practice of law by providing an incorrect legal opinion that the 2013 POA "overruled" Ann's earlier, validity-executed and acknowledged, 2006 POA appointing Chris as co-agent with authority to act independently. No one, to date, has even asserted that the 2006 POA has been revoked and it was certainly prepared when Ann was of sound mind, made the appointment herself, etc.

Sadly, there has been a continued lack of accountability by KCSO regarding any "mistakes" on their part. Even worse still, KCSO's purportedly "complete" response to my FOIA request on 7/25/22 was another effort to cover up a matter of public importance.

It is unclear why. This was obviously not our fault. My mother and grandmother are the victims. KCSO appears unconcerned by the unlawful actions by its officers/employees, much less those of the third-party bad actors.

It you disagree with the above, please explain the reasons, fully support with contrary evidence, details, etc.

Best Regards,

Justin

Justin A. Jernigan
Additon, Pendleton & Witherspoon, P.A.
Patent Attorneys
P.O. Box 567
Monroe, NC 28111
T: (704) 945-6734
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jjernigan@apwlaw.us

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From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Saturday, August 13, 2022 2:08 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

As you know, I do have a bunch of "worries" the least of which is that my FOIA request has not been handled reasonably or in a timely manner, all rights reserved.

Particularly, with respect to dispatch records and other public records identifying the employees involved.

Can you please explain how KCSO has not engaged in kidnapping and a criminal conspiracy to do same?

The "complete" response from KCSO on 7.25.22 about there being no public records because this is a "civil matter" was, viewed objectively, in bad faith. If you disagree, please explain.

The full details regarding this matter should be reported to SLED and to the FBI/DOJ for investigation. If you disagree, please explain.

Would respectfully request the public records I requested as soon as possible. This is also a matter of substantial public importance so I would also submit that a waiver of fees would be warranted.

Please give this matter your prompt attention now that your schedule has opened following your planned travels, etc,

Thanks, and hope you had a good weekend back in SC!

Justin

Get Outlook for iOS

From: Justin Jernigan
Sent: Friday, August 12, 2022 10:50:20 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

No worries. Like I said, just trying to keep the ball rolling given that you have been busy, and I was a little unclear if I needed to make a FOI request to County also given that I sent prior to KCSO, who then said to request from County….

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Friday, August 12, 2022 8:18 AM

To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>; Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I am back in the office and am trying to play catch up. 2 weeks and 2 trips (Denver and Boston) and it's real easy to fall behind.

Let me look into the status of the records themselves. I know you wanted to chat about your concerns. I will do my best to give you a call today but my calendar is pretty tight. Next week it opens back up, however.

I appreciate your understanding.

Thanks,
Tommy

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www.SmithRobinsonLaw.com

H. Thomas Morgan, Jr.
Assistant Kershaw County Attorney

E: tommy@smithrobinsonlaw.com
P: 803.432.1992
F: 803.432.0784

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From: Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Sent: Thursday, August 11, 2022 1:30 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Fwd: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Please let me know how you'd like to proceed.

LAUREN

---------- Forwarded message ---------
From: **Justin Jernigan** <jjernigan@apwlaw.us>
Date: Thu, Aug 11, 2022 at 12:24 PM
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
To: merri.seigler@kershaw.sc.gov <merri.seigler@kershaw.sc.gov>, lauren.reeder@kershaw.sc.gov <lauren.reeder@kershaw.sc.gov>

Lauren,

I'm copying you in on my below email also as your name is listed "for questions" regarding County FOI.

Thanks,

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From: Justin Jernigan
Sent: Thursday, August 11, 2022 11:56 AM
To: merri.seigler@kershaw.sc.gov
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Hi Merri,

I submitted the attached FIOA request to KCSO on 7/22/22 and received the below email response from Alisha indicating to contact you regarding certain County public records. Can you please provide me with copies of the County call related public records falling within my FOIA Request? Would prefer electronic copies sent via email if possible.

FYI, after Alisha's below email on 7/25/22, KCSO placed me in contact with the County Attorney Tommy. We had a call scheduled to discuss last Friday at 4pm (8/5/22), but I believe Tommy had been traveling and I did not hear from him then. I followed up earlier this week and Tommy is out this week also. Just wanted to keep the ball rolling in the meantime. If I can be of assistance on this please give me a call (cell 864-710-5029).

Thanks

Justin

From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Monday, July 25, 2022 2:34 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: KCSO@kershaw.sc.gov
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Good Afternoon,

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

On Fri, Jul 22, 2022 at 5:47 PM Justin Jernigan <jjernigan@apwlaw.us> wrote:

> Dear FOIA Officer,
>
> Please consider my attached request and contact me at your earliest convenience after you have had a chance to review/consider. My cell phone number is 864-710-5029.
>
> Best regards, and hope you have (or had) a great weekend,
>
> Justin
>
> *Justin A. Jernigan*
> Additon, Pendleton & Witherspoon, P.A.

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Patent Attorneys
P.O. Box 567
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T: (704) 945-6734
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jjernigan@apwlaw.us
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--

Alisha R. Joe
Sex Offender Registrar
Agency TAC
Records Department
Assistant VA
Kershaw County Sheriff's Office
821 Ridgeway Road (PO Box 70)
Lugoff, SC 29078
Phone: (803) 425-1512
Fax: (803) 425-6021

Check out Kershaw County's vision: http://www.visionkershaw2030.org/

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--

Lauren Branham Reeder
PUBLIC INFORMATION & MARKETING OFFICER
Kershaw County Government, SC
515 Walnut Street | Camden, South Carolina 29020

803.425.5320 | Phone
803.729.9663 | Cell

Check out Kershaw County's vision: http://www.visionkershaw2030.org/

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EXHIBIT B

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KERSHAW COUNTY SHERIFF'S OFFICE

SHERIFF LEE BOAN

Freedom of Information Act Request Form

Requestor: Justin Jernigan Phone: 864-710-5029

Address: 7148 Stirrup Ct. Weddington NC 28104

Email: justin.a.jernigan@gmail.com

Pursuant to S.C. Code Section §30-3-40, the South Carolina Freedom of Information Act (SC FOIA) I am requesting copies of the following public records:
(Note: Data recorded by a body-worn camera is not a public record subject to disclosure under the Freedom of Information Act. S.C. Code Ann. §23-1-240(G) (1).)

Records Sought: (Please be as SPECIFIC as possible-include any names, addresses, dates of births, case numbers if known, specific dates and/or date range, type of report, etc.)

Case/Report #: Unknown

Please see attached.

Pursuant to SC Code Section 30-2-50, obtaining or using public records under the Freedom Information Act for the commercial solicitation of any person in this State is prohibited by law and subject to criminal penalty. No person or private entity shall obtain or distribute personal information obtained from a public record for commercial solicitation.

Fee Schedule:	Return Request in Person, Via U.S. Mail or by Email to:
$15.00 per hour for search, retrieval and redaction	Kershaw County Sheriff's Office
$5.00 for each incident report	ATTN: FOIA Officer
$10.00 per CD/DVD	821 Ridgeway Road/ PO Box 70 Lugoff, SC 29078
$5.00 per statement	Email: KCSO@kershaw.sc.gov
Method of Payment: Cashier's Check or Cash	

Signature 7/22/22 Date

821 Ridgeway Road / P.O. Box 70, Lugoff, SC 29078
(803) 425-1512 Phone / (803) 425-6021 Fax / KCSO@kershaw.sc.gov Email

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KERSHAW COUNTY SHERIFF'S OFFICE
SHERIFF LEE BOAN

Freedom of Information Act Request Form

Requestor: Justin Jernigan

Date: 7/22/22

Records Sought Information (continued from Department's Form):

The dates for the incidents requested are generally from June 1, 2022, to present. Certain portions of this request, however, are outside this date scope concerning the relevant training or certifications of the Department employees personally involved.

The only reference information I received from the Department (Dispatch Operator) was CAD Number 2022-39001 with respect to my phone calls to and messages left with the Department on June 28, 2022, and the return phone call I received from Deputy Branham on June 29, 2022, who accepted my reporting of suspected exploitation of a vulnerable adult, my grandmother, at around 10:30am via phone.

I would respectfully request all public records relating to my reporting of suspected exploitation of a vulnerable adult, my grandmother, Ann Berry Martin, 86 years old, who is presently located in Kershaw County at the Pinedale Residential Care Facility (Rm 104). The requested records include, but are not limited to, call logs, notes, investigation file reference number(s) assigned, information concerning officers assigned to investigation(s), etc.

I would also respectfully request all public records concerning Department actions involving my mother (Christine Pratt Jernigan, 302 Pine Cliff Dr., Seneca SC 29672), and grandmother (Ann Berry Martin) on June 29, 2022, or otherwise relating to myself. These records also include, but are not limited to, records relating to my aunt/uncle, Sharon/Jim Wright of Camden, and the Pinedale facility, that are relevant to this matter.

More specifically, on June 29, 2022, at approximately 11:30 am, my 86-year-old-grandmother, Ann Berry Martin, was traveling with her daughter, Christine Pratt Jernigan, along Hermitage Pond Rd toward Bishopville Hwy in Camden, Kershaw County. As my Mom/Grandmother were nearing this intersection, oncoming Kershaw County Sherriff's Department vehicles drove past, quickly changed directions, and directly pursued with flashing blue lights and sirens. My mother and grandmother were detained and questioned for one hour or so. I drove to the Sheriff's Department in Lugoff and arrived approximately 20mins into the stop/detention. I requested officers I spoke with at the Office to release my mother and grandmother unless

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charged with a crime. Neither Deputy Branham (who was on the scene and whom I spoke with via phone) nor the other officers at the Kershaw County Sherriff's Office – which included at least Officer Taylor (1st shift, whom I believe to have been the ranking officer in charge at that time) and a younger female officer - ever mentioned any suspected or potential criminal charges.

I would respectfully request all public records concerning my interactions with the Department during the relevant time of June 1, 2022, to present. More specifically, on the evening of June 29, 2022, I also contacted the Department dispatch line. I requested to speak with an officer regarding an incident report with respect to the actions taken with respect to my mother and grandmother and involving myself also. I was on hold for approximately 30 minutes before hanging up and calling dispatch again. I was eventually connected by dispatch to Corporal Taylor (2nd Shift). Corporal Taylor (2nd Shift) stated that no incident report could or would be generated because no criminal conduct or potential criminal conduct was ever at issue. According to Officer Taylor (2nd Shift), this was a "civil matter," and the Department does not prepare any reports in situations that never involved the possibility of criminal charges. Officer Taylor (2nd Shift), however, also declined to specify if the Department would take the same conduct if a similar situation arose.

I also respectfully request records concerning the names, ranks, dates of service, and/or related public information concerning all Department employees having any personal involvement regarding the above-described incidents that occurred in or around late June 2022 to present. Included in this request are training classes taken by these individuals, required, or respective certifications concerning constitutional rights of private citizens in connection with stops, detentions, arrests, use of police powers, etc. (e.g., regarding probable cause, reasonable suspicion, or indications of unlawful conduct required before taking such steps). I would also respectfully request similar training or certification information for all such individuals with respect to investigating abuse of the elderly or otherwise disabled/vulnerable adults.

In conclusion, I respectfully note that the essential purpose of the FOIA is to protect the public from secret government activity. *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163 (Ct.App.2003); *see also Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001) ("FOIA was enacted to prevent the government from acting in secret."); Wiedemann v. Town of Hilton Head Island, 330 S.C. 532, 535 n. 4, 500 S.E.2d 783, 785 n. 4 (1998) (noting that "[t]he purpose of the FOIA is to protect the public from secret government activity").

Please contact me regarding any questions or concerns regarding this FOIA request. I will gladly explain, limit, and/or clarify the above request as may be appropriate. The purpose of this request is simply to obtain sufficient records to protect the public, including my family, from secret government activity because I was informed that no Department report would otherwise be prepared or provided.

Lastly, the Department Form (attached hereto) indicates that body-worn cameras are not public records under SC Code Ann. 23-1-240(G)(1). I would respectfully request that body-worn camera records, if any, be preserved pending resolution of this FOIA request. I would also

respectfully note that any non-body-worn camera recordings, audio recordings of any type, dashboard cameras, etc., relevant to the above request, and falling within the definition of public records under FOIA, are within the scope of this request.

Sincerely,

Justin A. Jernigan



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EXHIBIT C

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SUMTER 126 N. Main Street, Sumter, SC 29151 P: 803.778.2471 F: 803.778.1643
CAMDEN 935 Broad Street, Camden, SC 29020 P: 803.432.1992 F: 803.432.0784

Reply To: Camden

August 18, 2022

Mr. Justin Jernigan
7148 Stirrup Court
Weddington, NC 28104

RE: Freedom of Information Act Request

Dear Mr. Jernigan:

I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith all documents not subject to exemption under the South Carolina Freedom of Information Act, S.C. Code Ann. Section 30-4-10, *et seq.* as well as a CD containing the audio.

If you have any other questions or concerns, do not hesitate to contact me.

Very truly yours,

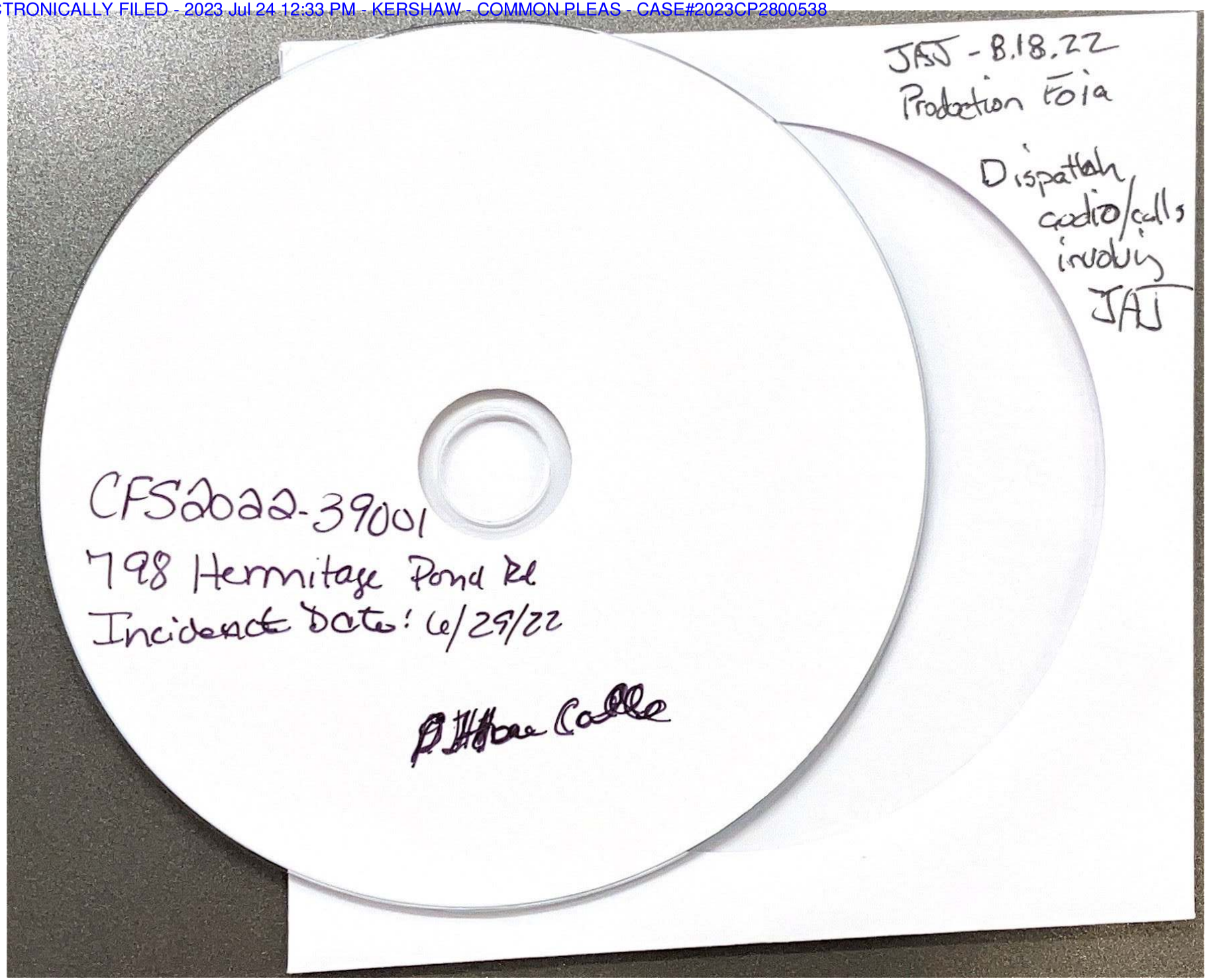
SMITH ROBINSON HOLLER
DuBOSE AND MORGAN, LLC

H. Thomas Morgan, Jr.
Asst. Kershaw County Attorney

HTM, Jr.:srd

Enclosure

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E-911 Communications
515 Walnut Street
Camden, S.C. 29020
803-424-4001

CFS - Unit Response Times — Printed on August 18, 2022

CFS #	CFS2022-39001
Call Taker	Tina Hand
Location	798 HERMITAGE POND RD, CAMDEN, SC 29020 (PINEDALE RESIDENTAL CENTER)
Location Details	
Primary Incident Code	1021 : CALL BY PHONE
Additional Incident Code(s)	1038 : SPECIAL HOUSE CHECK
Mod	
Priority	3
Use Caution	No
Primary Disposition	NO ACTION
Beat	
Zone	
Call Time	06/29/22 09:44:44
Completed Time	06/29/22 10:38:35

Reporters

JUSTIN JERNIGAN (Initial Reporter)

Sex	
DOB	
Address	
Report Time	06/29/22 09:44:44
How Reported	Admin Line
From Phone	(864) 710-5029
Contact Phone	
Comments	

Other Names

Vehicles

Responders

32	Tate, Dustin	KCSO (Primary)
45 (Primary)	Branham, Joseph	KCSO (Primary)
SO		KCSO (Primary)

Response Times

Assigned	06/29/22 09:46:52
Enroute	06/29/22 10:38:35 *
Arrived	06/29/22 10:38:35 *
Leaving	
Arrived At	
Completed	06/29/22 10:38:35

IR / External Agency Numbers

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Unit Response Times

Non Unit Specific Times

06/29/22 09:44:44 | New CFS
06/29/22 09:46:27 | MAKE CONTACT WITH HIM REF TO ADULT THAT IS NOT BEING TAKEN CARE OF HE IS THE GRANDSON THEY REC THE CALL FROM THE SLED HOTLINE AT THE OFFICE
06/29/22 09:46:39 | GIVE HIM A CALL
06/29/22 09:47:37 | VULNERABLE ADULT
06/29/22 14:36:45 | COMPL CALLED BACK AND WANTS #45 TO CALL HIM BACK
06/29/22 18:26:48 | CALLED BACK AND WANTED TO SPEAK TO SOMEONE HE WANTS A REPORT DONE
06/29/22 18:32:10 | HE JUST WANTS SOME CLARIFICATION AS TO WHAT IS GOING ON
06/29/22 18:55:19 | COMP WAS STILL ON HOLD I ADV HIM CPL WOULD CALL HIM TO GIVE HIM FURTHER 1014 ON WHAT CAN BE DONE
06/29/22 19:37:26 | COMP CALLED BACK AGAIN REF TO WAITING FOR CALL
06/29/22 20:08:55 | CALLER CALLED BACK AND IS TRYING TO EXPLAINING HIMSELF AND HE WANTS TO TALK TO CAPT BOYKIN AND WILL CALL BACK IN THE MORNING TO SPEAK WITH HIM
06/29/22 20:18:44 | 32 - COMPL BEGAN TO IMPLY THAT KCSO WAS ABUSING THEIR AUTHORITY AND THAT WE DIDN'T HAVE ANY AUTHORITY TO CONDUCT A TRAFFIC STOP ON HIS MOTHER EARLIER AND RETURN THE GRANDMOTHER WITH DEMENTIA BACK TO THE FACILITY. I INFORMED HIM SEVERAL TIMES THAT THE ISSUE WAS CIVIL IN NATURE, AND THAT IN ORDER FOR A REPORT TO BE GENERATED, I NEEDED A CRIMINAL OFFENSE TO BEGIN ONE. HE PROVIDED NO CRIMINAL INFORMATION AND CONTINUED TO IMPLY THAT WE HAD TO PROVIDE HIM INFORMATION ABOUT THE STOP, THE VIDEO FOOTAGE AND A REPORT FOR THIS INCIDENT. I SPOKE WITH LT WEST AND THE OWNER OF THE FACILITY WISHES FOR JUSTIN TO NOT RETURN TO THE FACILITY. JUSTIN KEPT REFERRING TO CAPT BOYKIN AND I ADVISED HIM THAT HE WOULD HAVE TO CALL DURING BUSINESS HOURS. HE ADVISED THAT HE WOULD CALL BACK IN AN HOUR, TO WHICH I INFORMED HIM I AM THE HE WOULD SPEAK TO UNTIL 0600 TOMORROW MORNING. C12. CIVIL ISSUE.
06/29/22 20:25:23 | Complete

32

06/29/22 18:31:33 | Dispatch
06/29/22 19:38:21 | Phone Transfer - TXD TO COMP
06/29/22 20:05:32 | Available

45

06/29/22 09:46:52 | Dispatch
06/29/22 09:52:00 | Waiting
06/29/22 10:14:00 | Dispatch
06/29/22 10:38:35 | Available
06/29/22 14:38:22 | Dispatch
06/29/22 17:17:32 | Complete

SO

06/29/22 14:36:54 | Dispatch
06/29/22 14:37:38 | Available

EXHIBIT D

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ELECTRONICALLY FILED - 2023 Jul 24 12:33 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

E-911 Communications
515 Walnut Street
Camden, S.C. 29020
803-424-4001

CFS #	CFS2022-39009
Call Taker	Tracie Friday
Location	798 HERMITAGE POND RD, CAMDEN, SC 29020 (PINEDALE RESIDENTAL CENTER)
Location Details	
Primary Incident Code	1049 : CIVIL DISTURBANCE
Mod	
Priority	2
Use Caution	No
Primary Disposition	NO ACTION
Beat	
Zone	
Call Time	06/29/22 10:55:18
Completed Time	06/29/22 11:53:34

Reporters

PHILLIP HUDSON (Initial Reporter)

Sex	
DOB	
Address	
Report Time	06/29/22 10:55:18
How Reported	911
From Phone	(803) 427-3971
Contact Phone	
Comments	

Other Names

Vehicles

Responders

15	Cochran, Courtney	KCSO (Primary)
40	Morris, Brian	KCSO (Primary)
42	Arledge, Grant	KCSO (Primary)
45 (Primary)	Branham, Joseph	KCSO (Primary)

Response Times

Assigned	06/29/22 10:56:47
Enroute	06/29/22 10:57:19
Arrived	06/29/22 11:07:10
Leaving	
Arrived At	
Completed	06/29/22 11:53:34

IR / External Agency Numbers

ELECTRONICALLY FILED - 2023 Jul 24 12:33 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Command Log Filter: All Commands | Details: Hidden | Units: All Units | Revised Entries: Shown

06/29/22 10:55:18 | Friday, Tracie | New CFS
06/29/22 10:56:13 | Friday, Tracie | FAMILY IS SHOWING OUT ... JUSTIN JERNIGAN ... THEY ARE TRYING TO REMOVE A RESIDENT FROM THERE WITHOUT THE POA .. THE POA HAS TOLD THEM NOT TO TAKE HER AND THEY ARE TAKING HER ANYWAY
06/29/22 10:56:17 | Friday, Tracie | THEY ARE LEAVING OUT THE DOOR NOW ...
06/29/22 10:56:47 | Hand, Tina | 45 | Dispatch
06/29/22 10:57:13 | Friday, Tracie | IT IS VERY VERBAL AT THIS TIME ... THE POA WANTS HER TO STAY THERE AND THE OTHER FAMILY MEMBER DOESN'T SO THEY ARE TAKING HER ...
06/29/22 10:57:19 | Hand, Tina | 42, 45 | Enroute
06/29/22 10:58:23 | Friday, Tracie | THEY ARE GETTING VERBAL WITH THE EMPLOYEES AS WELL ... SAYS THAT HE UPSET THE OTHER RESIDENCES AS WELL ...
06/29/22 11:00:01 | Friday, Tracie | ON LINE WITH THE ADMINISTRATOR ... THEY ARE LOADING HER INTO A VEHICLE .. IN A SILVER IN COLOR ... -- NISSAN IXD788
06/29/22 11:00:54 | Friday, Tracie | **CORRECTION IXV788 ****
06/29/22 11:02:34 | Friday, Tracie | HE IS WANTING TO MAKE A REPORT ABOUT JUSTIN JERNIGAN GOING OFF ON HIM AND THE OTHER STAFF AND YELLING AT THE RESIDENCE...
06/29/22 11:04:18 | Friday, Tracie | THE CURRENT POWER OF ATTORNEY HAS A DOCUMENT FROM 2016 - SHARRON WRIGHT --- MEDICAL AND FINANCIAL
06/29/22 11:05:09 | Friday, Tracie | THEY ARE STILL ARGUING WITH THE ADMIN - NOW ABOUT HER MEDICATION --
06/29/22 11:05:42 | Friday, Tracie | THEY ARE GETTING INTO THE VEHICLE ... GOING TO THE RIGHT ...
06/29/22 11:07:06 | Hand, Tina | 42 | Message - BEHIND THE VEH AT 34/HERMITAGE POND
06/29/22 11:07:10 | Hand, Tina | 42 | On Scene
06/29/22 11:07:53 | Hand, Tina | 45 | On Scene - OUT WITH 42
06/29/22 11:08:26 | Friday, Tracie | PHILLIP ADVISED THAT THE POA WAS NOT THERE AT THIS TIME THEY HAD HER ON THE PHONE -- I ADVISED THEM TO CALL THE POA AND SEE IF SHE CAN COME TO THE FACILITY ...
06/29/22 11:09:52 | Hand, Tina | 40 | On Scene - OUT WITH 42
06/29/22 11:22:06 | Proctor, Tina | 15 | On Scene - JUSTIN IS AT THE SHERIFF DEPT AND WANTS TO LET 42 40 KNOW
06/29/22 11:31:55 | Proctor, Tina | 15 NEEDS EITHER 40 OR 42 TO CALL HER TO TELL HER WHAT IS GOING OJN
06/29/22 11:31:56 | Proctor, Tina | ON
06/29/22 11:32:09 | Friday, Tracie | 42 | Clear Alarms
06/29/22 11:32:14 | Friday, Tracie | 40 | Clear Alarms
06/29/22 11:32:17 | Friday, Tracie | 45 | Clear Alarms
06/29/22 11:32:20 | Friday, Tracie | 15 | Clear Alarms
06/29/22 11:53:34 | Hand, Tina | 15, 40, 42, 45 | Complete - THE ELDERLY FEMALE IS WITH THE POA GOING BACK TO PINEDALE THE OTHERS HAVE BEEN TOLD TO CONTACT THE COURT

CLQ

Requested At
Sent To
Status
Received At
Location ,
Accuracy

EXHIBIT E

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E-911 Communications
515 Walnut Street
Camden, S.C. 29020
803-424-4001

CFS - Command Log — Printed on November 17, 2022

CFS #	CFS2022-39001
Call Taker	Tina Hand
Location	798 HERMITAGE POND RD, CAMDEN, SC 29020 (PINEDALE RESIDENTAL CENTER)
Location Details	
Primary Incident Code	1021 : CALL BY PHONE
Additional Incident Code(s)	1038 : SPECIAL HOUSE CHECK
Mod	
Priority	3
Use Caution	No
Primary Disposition	NO ACTION
Beat	
Zone	
Call Time	06/29/22 09:44:44
Completed Time	06/29/22 10:38:35

Reporters

JUSTIN JERNIGAN (Initial Reporter)

Sex	
DOB	
Address	
Report Time	06/29/22 09:44:44
How Reported	Admin Line
From Phone	(864) 710-5029
Contact Phone	
Comments	

Other Names

Vehicles

Responders

32	Tate, Dustin	KCSO (Primary)
45 (Primary)	Branham, Joseph	KCSO (Primary)
SO		KCSO (Primary)

Response Times

Assigned	06/29/22 09:46:52
Enroute	06/29/22 10:38:35 *
Arrived	06/29/22 10:38:35 *
Leaving	
Arrived At	
Completed	06/29/22 10:38:35

IR / External Agency Numbers

ELECTRONICALLY FILED - 2023 Jul 24 12:33 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Command Log Filter: All Commands | Details: Hidden | Units: All Units | Revised Entries: Shown

06/29/22 09:44:44 | Hand, Tina | New CFS
06/29/22 09:46:27 | Hand, Tina | MAKE CONTACT WITH HIM REF TO ADULT THAT IS NOT BEING TAKEN CARE OF HE IS THE GRANDSON THEY REC THE CALL FROM THE SLED HOTLINE AT THE OFFICE
06/29/22 09:46:39 | Hand, Tina | GIVE HIM A CALL
06/29/22 09:46:52 | Hand, Tina | 45 | Dispatch
06/29/22 09:47:37 | Hand, Tina | VULNERABLE ADULT
06/29/22 09:52:00 | Hand, Tina | 45 | Waiting
06/29/22 10:14:00 | Hand, Tina | 45 | Dispatch
06/29/22 10:38:35 | Hand, Tina | 45 | Available
06/29/22 14:36:45 | Campbell, Barry | COMPL CALLED BACK AND WANTS #45 TO CALL HIM BACK
06/29/22 14:36:54 | Campbell, Barry | SO | Dispatch
06/29/22 14:37:38 | Campbell, Barry | SO | Available
06/29/22 14:38:22 | Hand, Tina | 45 | Dispatch
06/29/22 17:17:32 | Hand, Tina | 45 | Complete
06/29/22 18:26:48 | Hand, Tina | CALLED BACK AND WANTED TO SPEAK TO SOMEONE HE WANTS A REPORT DONE
06/29/22 18:31:33 | Hand, Tina | 32 | Dispatch
06/29/22 18:32:10 | Hand, Tina | HE JUST WANTS SOME CLARIFICATION AS TO WHAT IS GOING ON
06/29/22 18:55:19 | Navarro, Vanessa | COMP WAS STILL ON HOLD I ADV HIM CPL WOULD CALL HIM TO GIVE HIM FURTHER 1014 ON WHAT CAN BE DONE
06/29/22 19:37:26 | Navarro, Vanessa | COMP CALLED BACK AGAIN REF TO WAITING FOR CALL
06/29/22 19:38:21 | Navarro, Vanessa | 32 | Phone Transfer - TXD TO COMP
06/29/22 20:05:32 | Navarro, Vanessa | 32 | Available
06/29/22 20:08:55 | Combies, Kimberly | CALLER CALLED BACK AND IS TRYING TO EXPLAINING HIMSELF AND HE WANTS TO TALK TO CAPT BOYKIN AND WILL CALL BACK IN THE MORNING TO SPEAK WITH HIM
06/29/22 20:18:44 | Tate, Dustin | 32 - COMPL BEGAN TO IMPLY THAT KCSO WAS ABUSING THEIR AUTHORITY AND THAT WE DIDN'T HAVE ANY AUTHORITY TO CONDUCT A TRAFFIC STOP ON HIS MOTHER EARLIER AND RETURN THE GRANDMOTHER WITH DEMENTIA BACK TO THE FACILITY. I INFORMED HIM SEVERAL TIMES THAT THE ISSUE WAS CIVIL IN NATURE, AND THAT IN ORDER FOR A REPORT TO BE GENERATED, I NEEDED A CRIMINAL OFFENSE TO BEGIN ONE. HE PROVIDED NO CRIMINAL INFORMATION AND CONTINUED TO IMPLY THAT WE HAD TO PROVIDE HIM INFORMATION ABOUT THE STOP, THE VIDEO FOOTAGE AND A REPORT FOR THIS INCIDENT. I SPOKE WITH LT WEST AND THE OWNER OF THE FACILITY WISHES FOR JUSTIN TO NOT RETURN TO THE FACILITY. JUSTIN KEPT REFERRING TO CAPT BOYKIN AND I ADVISED HIM THAT HE WOULD HAVE TO CALL DURING BUSINESS HOURS. HE ADVISED THAT HE WOULD CALL BACK IN AN HOUR, TO WHICH I INFORMED HIM I AM THE HE WOULD SPEAK TO UNTIL 0600 TOMORROW MORNING. C12. CIVIL ISSUE.
06/29/22 20:25:23 | Navarro, Vanessa | Complete
08/18/22 12:05:25 | Crawford, Patricia | Waiting
08/18/22 12:05:35 | Crawford, Patricia | Complete

CLQ

Requested At
Sent To
Status
Received At
Location ,
Accuracy

EXHIBIT F

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State of South Carolina	)	
	)	Court of Common Pleas
County of Kershaw	)	2022-CP-28-00782
Christine Jernigan, et al.	)	
	)	
vs.	)	Transcript of Record
	)	
Kershaw County Sheriff's Office	)	
	)	

December 19, 2022
Kershaw County, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge.

A P P E A R A N C E S (All present by video or telephone):

Justin A. Jernigan, Pro se
Attorney for the Plaintiffs

David L. Morrison, Esquire
Attorney for the Defendant

A L S O P R E S E N T:

Cameron W. DeBoy, Esquire

Dana Knight
Transcriber

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THE COURT: All right. Good morning, folks.

Bailey, you can go ahead and make both Mr. Morrison, Mr. Jernigan, panelists. I think those are the only two, maybe, we'll have this morning.

This is a Term of the Common Pleas, nonjury, for Kershaw County. The only matter on the roster is 2022-CP-28-00782, Christine Jernigan v. the Kershaw County Sheriff's Office. And I don't know exactly what the matter is, because there -- I know it's contained within the complaint, but no separate motion was filed.

Mr. Jernigan, are you there?

MR. JERNIGAN: I am, Your Honor. Can you hear me? Hi, I'm here. Can you guys hear me?

THE COURT: I can hear you. Can't see you, though. If you would turn on -- there we go. Hi. All righty. Tell me why we're here, Mr. Jernigan.

MR. JERNIGAN: Okay. Yes, Your Honor, thanks for scheduling this hearing. I submitted a pretrial brief last week about this matter. This is a Freedom of Information Act case. And there's a provision in the statute that requires a hearing to be set within ten days, an initial hearing, and that is in 30-4-100, Subsection (A). And this is a case where a Freedom of Information Act request was submitted on July 22nd. The required statutory provisions were not followed for the response, and the documents requested were not produced,

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so the plaintiffs are asking for an order from the Court requiring Kershaw County Sheriff's Office to provide all the documents requested. No exemptions were ever claimed.

So the case is simple, on the Freedom of Information Act request. If there was a motion required to be filed, my apologies. I was not sure, and tried to get instructions about how to get this hearing scheduled. And there wasn't solid instructions or an understanding about what should be done on that. So that's kind of why we're here today.

THE COURT: Okay. Thank you, sir.

Mr. Morrison, talk to me.

MR. MORRISON: Judge, first a couple of housekeeping matters. This matter was brought by Christine Jernigan and Justin Jernigan. Justin is a North Carolina lawyer, lives in Charlotte, graduated from USC, went to school here.

As a noncitizen, I find -- and Justin and I have discussed this, I told him get the Court on the same page with us. As a noncitizen, he doesn't have any rights to enforce FOIA, FOIA's only enforceable by citizens. His mother does have a right to enforce FOIA, and he is acting as her lawyer in this case. However, the Freedom of Information Act was submitted -- the Freedom of Information Act request was submitted by Just-igan -- by Justin Jernigan, not by Christine Jernigan. So as a little housekeeping matter, I don't think Justin's a proper party. And I don't think Christine Jernigan

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has submitted a FOIA request at all. Despite that, we have responded. We've been trying to work this out with Justin, to accommodate him.

I'm not sure why he says the timeframes were not met. The Freedom of Information request, if my memory is correct, was served July -- let me take a look, I have it here in my notes -- was on July 22nd, and the response from the Kershaw County Sheriff's Department was three days later, July 25th. Their response was --

This all surrounds an incident where Justin and his mother went to a nursing home to get his grandmother. His mother's sister, Justin's aunt, holds a power of attorney over his grandmother's care and treatment, and she didn't want his grandmother to leave the nursing home, and refused to allow her to leave the nursing home. The nursing home called the police. The police considered this to be a civil matter, that it was between the parties to resolve in court, in probate court or wherever, but it was a civil matter. There was no incident report prepared.

By the time the police got there, Justin and his mother had left the nursing home with his grandmother. They were subjected to a traffic stop to work it all out. They got the powers of attorney on scene, where the police could review them. They talked with the aunt, Justin's aunt and his mother's sister, about that. They talked -- at some point, I

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believe, they talked to the nursing home person that may have been the initial call. I don't know if they talked to them again after that or not. But in any event, they determined it was a civil matter and let everybody go on their way. Grandmother went back to the nursing home through the aunt, I believe.

The initial response to Justin was that this was a civil matter; there was no incident report prepared. Justin had requested four or five categories of documents. And the respondent said this was a civil matter, there had been no incident report prepared. Less than 30 days after that, they responded through Tommy Morgan with a response -- I think Justin and Tommy had had some phone conversations about what Justin was seeking in the meantime. And they responded, through Tommy Morgan, with a response to the request. So I'm not sure, when Justin says the sheriff's department didn't respond timely, I'm not sure what he intends by that, because there are responses.

Now, he may contest the adequacy of the responses, but there were responses. And if you contest the adequacy of the responses, we've had further conversations with him since the lawsuit was filed, where we have provided him additional information.

One of the issues here is regarding the audio recordings. And Justin has asked us for an additional audio recording, and

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we are in the process of checking on that. Cameron DeBoy, who you can see seated in my background, another lawyer in my office, was checking on that. He had COVID in his house; he was out sick last week. He tells me he tested negative, but I'm convinced he was out with COVID. He probably had it in his house for about two or three days before he got sick. And I know when I had it, I didn't test positive until day two or three of having it. But in any event, Cameron's back today.

We owe Justin discovery responses that we were working on. We had anticipated having them to him last week, they were due Friday before last. On that Friday, we asked him if we could have a couple of additional days. Cameron was working on that and then Cameron ended up being out most of last week.

I think you were here Monday and maybe part of the --

MR. DEBOY: Part of Tuesday, yeah.

MR. MORRISON: And then was out the rest of the week after that. Today's his first day back. I'm staying far away from him because I'm going to visit my elderly parents over Christmas and I don't want to expose them.

But in any event, we can wrap that discovery up and get it to him in a couple of days. Some of the things he requested are audio recordings that are kept by central dispatch, by Kershaw County. That is not part of the Kershaw County Sheriff's Department. Justin was told that at the

outset and was told he could go to central dispatch to get those recordings.

Tommy Morgan then went above and beyond and went to central dispatch to get them for him, and got them -- even though it's not the Kershaw County Sheriff's Department's responsibility to get them for him. Justin has asked us for an additional one and we are doing the same thing and going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don't know. But we're going to Kershaw County Dispatch to get that.

Again, we thought we would have that last week, but Cameron was out with the sickness last week. We could probably get that done in a matter of days. I'm presuming -- this is -- since this is the week before Christmas, I presume we can get that done in a matter of a few days. I'm hoping to be out of here Wednesday afternoon, because I'm going to visit my elderly parents over Christmas.

In any event, we had a hearing two weeks ago to date, that was -- that was misconstrued by all of us. When I got the notice, it looked like a trial to me. I called Justin, I said I don't think this is ready for trial. He agreed. He thought this was the ten-day hearing, but it wasn't in front the administrative judge. And I'm not sure if the statute requires it to be or if the statute just requires the administrative judge to set a hearing before any judge. But

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it wasn't -- so we had this hearing two weeks ago. I thought we were finished with it. At that point, we were going to go through some discovery and come up for a trial in three months. Because we're about three months out from a trial date, I think, on this case.

And then Justin requested another hearing. I didn't realize until I talked to him on Thursday that he had requested this hearing. So I'm here to do whatever the Court wants to do. I think we've had this hearing. I think we've -- I don't think we have any real disputes in this case other than spins on the facts --

Can you still hear me? My camera's frozen on my end.

THE COURT: Yeah, I can hear you though.

MR. MORRISON: Okay. So I don't think we have any real disputes other than spins on the facts.

But we did respond within three days. I think the initial response was due within ten days. They responded within three days to tell him this was a civil matter; they didn't have any incident report on this. And then Tommy responded, in less than 30 days after that, by providing records. We have provided additional records since then. I've had five or six phone conversations with Justin that have lasted over an hour.

A lot of this is personal to Justin, and our conversations get fairly animated. And I understand that,

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this is his grandmother. And his mother and grandmother we're talking about, so I get that. So I understand that, I sympathize with him, it's a bad situation where his mother and aunt are fighting over who has the ability to control. There are dueling powers of attorney, but I believe only one of them is actually recorded. And they're -- and the second power of attorney that is recorded, that's in favor of his aunt, is after the initial power of attorney that I don't believe is recorded.

But we're not here to resolve that dispute, I just give that as background information on why Justin and I get so animated on the phone sometimes. And he gets animated and -- he's accused me of kidnapping his grandmother and I told him back off, you can't do that. We get along very well. So we've had, like I say, we had several hour-long phone conversations, and if Justin didn't get unanimated about as quickly as he gets animated, we probably wouldn't have had those conversations for that long, so I'm -- I recognize that it's emotional for him, he's got a personal interest in it.

But I think we have responded. I think there is one personnel file that may have been initially omitted, and we've got that to send him. We've got that with the training records of the officer involved. I think the initial response was telling him that this was a civil matter and there was no incident report. The sheriff's department didn't prepare

anything for this. Assuming that, if there was anything prepared, he would want anything.

One other issue we do have, and I don't think it's a proper issue for this proceeding, but it's an issue we have. And that is that he initially recognized that his initial FOIA request, that body cam is protected by FOIA, and body cams were not -- recognized that the sheriff's department would take the position, body cams are not producible. And that is the position they take. They take the position that the statute says that a person that is the subject of a body cam, which would be in this part -- in part, Christine. Justin was not at the scene where this all took place. That that person can request the body cam, if there is a civil proceeding, a criminal proceeding, or a court order. Here there was no civil proceeding, no criminal proceeding, no -- and no court order.

I have told Justin, in this proceeding, that the body cams no longer exist. There was no incident report for them to be tied to, there was nothing flagged to them to save them. I recognize that Justin put in his FOIA request, he asked that they be preserved. And all I can tell him is that they were not. They were not destroyed, as Justin would put it, but they were written over, as a -- as a matter of business practice. And when they were written over, they no longer exist.

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And that's -- if he wants to sue the sheriff's department for some other proceeding and ask for an instruction in that proceeding, he may be entitled to it. But I don't think it's something for us to go into detail in in this proceeding, because our job in this proceeding is to produce documents. I can tell him that those documents were not properly producible at the time he made the request, and that since then they no longer exist.

So that's where we are. I've got discovery responses that I had told Justin I would try to get to him before this hearing, then Cameron was out and I didn't -- Cameron was working on it and didn't end up getting to them. Cameron's back today so we can get back to work on that, and we're very close to be being finished. We got to go get -- Justin wants them verified, so we have to go get someone to verify them from the sheriff's department. That's kind of where we are. I'm not sure what else we should be doing here today.

THE COURT: Mr. Jernigan, tell me -- I mean, respond, of course, to what Mr. Morrison said, but tell me what relief you're requesting today?

MR. JERNIGAN: I'm requesting an order requiring the sheriff's department to disclose all records of the request that was submitted on 7/22.

THE COURT: Okay. And are these -- I guess we probably need to be more specific as to what you have and what you

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don't have. Because I understand they've already produced some items.

MR. JERNIGAN: Yes. It would be all the records in the request that are submitted, that's attached to the complaint. There should be radio -- and that's also the subject of my discovery. There's a certain amount of records that are required to be kept by the Records Act, which precedes the Freedom of Information Act. That's the subject of my discovery. I want to get the complaint cards, the audio for the 911 callers that reported this. I was also on body camera, myself, because I was at the sheriff's department asking them to release my mother and my grandmother. Because I think during Mr. Morrison's discussion, he never mentioned any criminal charges that were filed.

So that's my main problem, is that the police did take action. They pulled over my mother and my grandmother; three cars were there. There's dash camera video where the audio has been removed. There should be three dash camera -- there really just needs to be an order entered requiring the sheriff's office to disclose all the records that were requested, because until that happens, they will not disclose those records. It's been several months and they've disclosed minimal information.

THE COURT: Right. And I guess I'm sort of trying to get a little bit ahead of that, because I can issue the order. I

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mean, the statute requires them to disclose the thing, you know, whatever they have. I can issue an order requiring them to disclose what they have. But then will -- there will be a next step, I assume, where you contend that they have not produced everything, and they'll say yes we have. And I feel like we're at that stage now, and so that's why I'm trying to parse out what you believe is still outstanding and separate that from what has already been produced to you, so that I can be more specific, as -- and let's take, for example, the body-worn camera footage. The court doesn't do futile things; right? So I'm not going to order them to produce what they say does not exist.

So I sort of want to get more specific so that I know what the court is ordering them to produce. And if that means we have to go through your request, sort of item by item, then so be it. Maybe you don't know the full scope of what you're asking for, I don't know. But let's get a little bit more specific, if you can, Mr. Jernigan.

MR. JERNIGAN: Yes, and the requirements of FOIA are that I do not know what is in their record system. It's not really the public's job to know what records the sheriff's department holds, but I requested all audio recordings, all video recordings, all call logs, all radio logs between the people involved, the 911 calls, the complete audio.

All of the calls -- I was actually the initial

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complainant in this case, because this is actually exploitation of a vulnerable adult, which is a felony. You know, the police, law enforcement has no power to get involved in a civil matter, so they should not have pulled over my mother and my grandmother. There's records of all of this, there's a -- these are required to be kept, as the Court probably knows, you know, it's very important that law enforcement keep accurate records on their activities; they're public officials. These are public events where somebody called 911 on me and my mother, and my grandmother, and the police took action.

They've provided me -- before I filed suit, the only call, and the only records of calls that were provided were my own. And those were redacted. So I think the Court should issue an order requiring them to disclose all the records requested, and then there will be some contempt power if they do not, because the requirements of the law are not going to be followed by the Kershaw County Sheriff's Office until such time.

THE COURT: All right. Mr. Morrison, can we -- I'm not, of course, seeing a discovery request, but now that this is in litigation, I would propose that we attack it this way. And that is that, within ten days, you get to Mr. Jernigan, any outstanding records that should have been disclosed pursuant to his FOIA request. And at the same time, I want you to get

him discovery responses. And with that, I think that the -- whatever documents are produced, in response to a request for production, should be Bates labeled. That's just for convenience. But also, maybe we can go through --

And I'll ask you to do this, Mr. Morrison. If you will go through the FOIA request and really -- I feel like the department needs to give -- or the sheriff's office, needs to give, sort of, a written response that can refer to Bates labeled documents. And/or give an explanation in writing as to whether these -- you know, if they're not produced, any objection, any statutory objection, or explanation that they -- it doesn't exist anymore, like the body-worn camera footage, or whatever.

And that may be exactly what is asked for in interrogatories and requests for production, I don't know because I've not seen those things. But to the extent that that's not the way it's requested or what's requested, I think that the sheriff's office should do a written response, almost like you're responding to interrogatories or requests for production, as to each item set forth in the FOIA request. Does that make sense and -- or am I duplicating work for you, or -- talk to me about that.

MR. MORRISON: Judge, I -- let's talk about that for just a minute. Frankly, that's kind of a redo. We have produced documents. Some of them, they were produced before I was

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involved, through Tommy Morgan who's the Kershaw County attorney. He had produced the majority of this stuff before we were involved.

We have found a couple of more things, in talking with Justin, that Justin thought should be out there. When we have searched it at the sheriff's department, we don't have an incident report to go search by, so we have to go search for individual things. And there's no -- nothing that tells us what individual things are there, because Justin has made very broad requests. He's asked for requests involving any public records involving him or any public records involving his mother. So we've produced what we believe is -- exists and is available.

I've had several conversations with Justin where I've said, what else do you think is there? And, for example, we redacted information in the personnel files. And he tells us -- I've asked -- he tells me that's not proper, and I says, tell me what was improper. This was done by Tommy Morgan, before I was involved, so tell me what's improper. And he says, well, that's not my burden. Well, I don't know how to respond to that.

But I have trouble responding in this matter because communication is lacking at some points, because I don't know how to respond to it. We think we have produced everything. I have one more personnel file to get to him. And I have

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the -- I have told him that we will go back to central dispatch. Which is not our responsibility, that's a separate entity, that's not Kershaw County Sheriff's Department.

But I've told him, and I will; I will go back to central dispatch and see if there was -- if there is an audio recording for when the director of the nursing home called the police while they were there to pick up grandma and he was telling him they can't take her, and they were telling them they were. And he was telling him he has power of attorney, they say you don't have power of attorney, you can't -- the power of attorney says no, she can't leave. And they were telling him they were taking her anyway, and they did. And I've told him I would check to see if there was audio of that recording, and I will.

Other than that, I think we have produced everything. And if we go back and -- and pursuant to some order, say we've produced everything he has requested, we can go through the same exercise we've already gone through, but we'll be at the same place we are. We have produced everything that we think is there. Justin has asked in discovery about why some other things aren't there. And I'm happy to answer those. We are working on that, we'll have that done, completed very shortly. So I think --

THE COURT: Okay. So --

MR. MORRISON: I think that will take care of that

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process. I think that discovery will likely take care of that process, because otherwise I will simply be redoing what we've already done, I believe. It has not been --

THE COURT: What --

MR. MORRISON: -- Bates numbered in the past.

THE COURT: Right, and so -- frankly, I just think that Bates numbering is just a good practice. I wish everyone did it. I don't mean to create some burden on you or your firm, but I just think that it just needs to be done. I've even suggested it in criminal cases. I actually think it's more important in criminal cases, so that people know what's been produced and what hasn't. Because the stakes are higher, someone's liberty is at stake. Anyway, I digress.

I was just trying to think of a way to make it simple for the court. Because, as you said, and as I suggested earlier, we'll probably be back here again, because Mr. Jernigan's going to say, well, I don't have this and I don't have that. And all I know that he has identified with specificity is what's in the FOIA request. And I know that there's sentences that say things like, "included, but not limited to," but at least there's a list of things that he believes should probably be there. And I guess the same with the request for production, to the extent that there are any, I just -- I want the -- to make it easy for the next judge, whether that's me or someone else, to be able to identify what's missing, if

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anything, and why? And I'm just trying to think of the best way to do that.

MR. JERNIGAN: May I speak to that, for a second?

THE COURT: Yes, sir. Yes, sir.

MR. JERNIGAN: Yes, Your Honor, Judge Newman. I believe in the Freedom of Information Act Statute, if you look at 30-4-30, and it's Subsection (C), which discusses the written determination that's supposed to be provided. And I cited some case law in the brief -- pretrial brief I submitted.

What you described should have been provided by Kershaw County Sheriff's Office. They should have gone through the request, within ten business days, and explained what was available, what was not available, what they were claiming was exempt, and the date that they would produce it. Or the date that they would not produce it. That should have been done within ten business days. They produced what they wanted to produce, and they redacted things, out of my own phone calls with them, that they wanted to redact.

So I am in this position because I have never been told what they have and what they don't have. So I am trying to take discovery to figure out what the department of records and archives requires that the sheriff's office and the 911 center keeps. Because I've submitted requests to both places. They produce things from both places, so if I need them in the complaint and add the 911 center, I will.

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But yeah, this is supposed to be an easy process that has not been made easy by the sheriff's department. By not following what the law requires and what the law says. And if they destroyed the body camera, I would ask for the Court to, in its order, say that there was a request made for it, it was not preserved, and then we can deal with that down the road, I suppose.

THE COURT: Mr. Morrison?

MR. MORRISON: Judge, that's the first I've heard that he has sent a FOIA request to the -- to central dispatch. If he sent a FOIA request to central dispatch, I'm repeating the work by going to central dispatch myself to try to get him the same things that he should be getting from them. Did I misunderstand --

MR. JERNIGAN: (Indiscernible) --

MR. MORRISON: -- that, Justin?

MR. JERNIGAN: It's in the -- I emailed central dispatch the same request as I emailed Kershaw County, when I was told, well, there's records at central dispatch that apparently the sheriff's office cannot access, which seems ridiculous. But this is the runaround that I've been getting. And I'm happy to resolve it, but I would just like an order for them to produce everything and then see what they produce. Because until there's an order entered, we're just going to run around in circles, and it's, like, I'm kind of tired of doing that

after this many months.

THE COURT: Mr. Morrison?

MR. MORRISON: I'm not sure that that answered my question, but I will go back to central dispatch again myself and -- to see if that audio recording exists.

MR. JERNIGAN: I want all the audio recordings and all the communication on the radios that were going on during the police stop. I want -- the dash camera has audio on the exterior of the car and the interior of the car. These are records that Kershaw County has that they have not produced. They don't want to produce it because they made a mistake.

Everybody makes mistakes, but it doesn't mean the incident did not happen, and it doesn't mean they don't have records.

MR. MORRISON: Judge, again, we keep going back to arguments over what we have. I have -- the dash cam was produced by Tommy Morgan. It does have audio on it. It's not the audio he wishes, it has interior car --

MR. JERNIGAN: They took --

MR. MORRISON: -- audio --

MR. JERNIGAN: -- all the audio off it.

MR. MORRISON: There is --

THE COURT: Go ahead, Mr. Morrison.

MR. MORRISON: There is audio from the interior of the car, there is no audio from the exterior, and that has been

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produced. So --

MR. JERNIGAN: (Inaudible response.)

THE COURT: Go ahead, Mr. Morrison.

MR. MORRISON: My understanding, from talking with people at the sheriff's department, from talking with Tommy Morgan, from central dispatch, is -- other than this one audio recording of the initial caller from central dispatch that may exist, my understanding is everything has been produced. We have produced everything that does exist. Justin keeps saying there has to be more, but until we get into a place like this, where he mentions something like that -- and he's mentioned the dash cam, exterior recording, before. But he doesn't tell us -- when he says there's more, he doesn't tell us what more there is.

And I don't have an efficient way, with there being no file, no incident report, to go back and search for that. But he keeps saying there should be something more, and I say, well, this is -- we've been told this is everything. And he won't tell us what. He tells us we shouldn't have redacted. I've asked him, well, what shouldn't have been redacted? He said, well, that's not my burden.

He just wants an order, without talking with us about what it is. Like I said, we've had lengthy phone calls, but they've mostly been -- we have very productive phone calls, in large part, but at points they become Justin ranting and

raving for a while -- and I understand that, and I'm not criticizing for that, because I probably would be too if I were in his situation. It's a sad situation; the underlying situation here is a sad situation between his mother and his aunt.

But he's asking for an order, ordering us to tell us -- we've produced him everything, who we've told him that a dozen times already, and then saying he wants to beat us over the head with the order later, without telling us what it is he thinks we haven't produced. And I don't have an efficient way of getting that, unless he tells us what it is he thinks we haven't produced. And I guess I could send him discovery and ask him that, but I thought we could do that through phone calls.

THE COURT: And that's sort of why I suggested treating the FOIA request like a request for production, with written responses, Bates labels, so that -- because at some point, whether it's today or in a month, someone's going to have to parse out whether there has been compliance. If I issue an order today, the order will be quite generic, that simply requires Kershaw County Sheriff's Office to comply with the provisions of FOIA.

And I guess maybe that's what needs to happen and there will be a subsequent determination as to whether that's happened. I think the Bates labeling and the written

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responses would probably get -- I guess, I don't know, that would -- that would be for the next step. It would be the work that you will probably need to do when that next step comes, but I'm not going to require that it be done now, I just thought it would be simpler that way.

But I'm happy to issue a really, sort of, generic order that requires the Kershaw County Sheriff's Office to respond, in full, to Mr. Jernigan's FOIA request dated July 22nd, 2022. That response must be delivered within ten days or -- yeah, he doesn't have to receive it in ten days but it needs to be sent to him within ten days. And then, I guess the next step will be the next step, to determine whether there has been full compliance.

I guess that's where the conversations come in and, you know, you maybe heard something additional today, Mr. Morrison, that maybe needs to be produced, maybe not. I guess I'm not going to get into the particulars of it. Yeah, that is what it is, and another judge on another day can determine whether a document's missing, whether an audio recording that should have been produced has not been produced, whether it exists or doesn't exist. I don't know. I guess I won't get into the specifics of it, that will be another hearing for another day.

Mr. Jernigan?

MR. JERNIGAN: Yes, and I would ask that if the sheriff's

department wants to make any deletions to the audio files or take anything out, they need to justify the exemptions based on the Freedom of Information Act. To tell me that I need to tell them why they're deleting things and I disagree with it is an unreasonable burden. It's simple to ask them, and it's required by FOIA, if you're going to make any redactions, explain why you're redacting it and why you're justified in redacting it, otherwise I have no idea.

And there had been redactions made to my own phone calls, between Kershaw County and the central dispatch, and they've never been explained. The only explanation is they don't want them to be in the record, they don't like the fact that these calls were recorded, and they don't want to give them to me. So I believe this order, with the proviso that they -- you know, if they're going to redact any of the -- you know, if they're going to take out the audio from the dash camera, they need to justify why, because there's nothing in FOIA saying that's exempt. And I think that this will help move things along.

And also the requirement that they provide the discovery responses that were due -- I guess, two Fridays ago -- within ten days as well.

THE COURT: I'm happy to include the discovery responses.

Mr. Morrison?

MR. MORRISON: Judge, first, let me address the one thing

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he just said, I'm trying to remember what it was. The redactions of audio recordings that he's claiming. I don't have any reason to believe they're redacted; I can't swear to it one way or another. Tommy Morgan received recordings from central dispatch and forwarded them along as received. I don't believe central dispatch would have had any reason to redact. I know the sheriff's department didn't redact, because they were received from -- by Tommy Morgan from central dispatch, from Kershaw County. And they were sent on as they were. So as far as redactions, I'm not aware of any, have no reason to believe they were done. If they were done, it would have been by central dispatch, and I don't know why they would have had any reason to do that.

As far as -- the only question I have is the ten days. We've got Christmas and New Year's coming up. I was planning on taking off Wednesday through Friday of this week, because my elderly parents live in North Carolina and I'm going to see them. I would like to get a little bit more time, because that doesn't leave many working days between Christmas and New Year's and me being off a little bit.

THE COURT: Mr. Jernigan, what say you?

MR. JERNIGAN: My position is that this should have just been done a long time ago. Mr. Morrison is correct, we've had a lot of conversations, where I've explained in detail my interactions that should be documented, based on the Records

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Act. I believed, in good faith, that they were searching for these records, but they haven't provided me -- they provided me one CAD report, a report of one phone call, two Fridays ago, with no audio attached to it, that was the 911 call I had asked for months ago.

So I'm fine with the extension to that -- you know, a reasonable extension, but I'm also -- and I do have one housekeeping matter to mention. And Mr. Morrison mentioned, there is a -- there is another civil case before the court, it involves my mother and my grandmother against my aunt. And the last three digits on that one are 967. It's Christine Jernigan, Ann Martin v. Sharon Wright.

And there was a motion for a preliminary injunction filed earlier this month, and I just wanted to note that that has been filed. I'm not the representative attorney on that. But I know -- if that can be scheduled at a surrounding circuit or court, given that there's no more term -- civil term for this month in Kershaw County.

THE COURT: Yeah, there's no more court at all, circuit court, for the remainder of 2023, including today. I just heard that there was an issue with this case and the clerk's office contacted me. In fact, I was out with COVID at the time they contacted me and I just told you -- told them fine, I'll have Webex today, just for this matter. So nothing is going to be scheduled before January 3rd, I believe --

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MR. JERNIGAN: Okay.

THE COURT: -- is the next court term. But I mean --

MR. JERNIGAN: Would --

THE COURT: -- I don't even know that Kershaw has court then.

MR. JERNIGAN: Yes, and so would that -- the procedure for getting a hearing scheduled -- so the motion has been filed. Should we follow up with the -- I'm not sure if you're the chief judge next month; it sounds like you're rotating off.

THE COURT: Rotating off. So Judge Benjamin will be chief administrative judge, starting in January. And it looks like -- I mean, she may do a special term of court for purposes of hearing that, but it looks like civil court is not scheduled in Kershaw until the week of January 30th.

MR. JERNIGAN: Okay.

THE COURT: That's the next available term of court, and that looks like a jury term.

MR. JERNIGAN: Okay.

THE COURT: That doesn't mean that motions may not be scheduled, there may not be any jury trials ready. So it could possibly be heard the week of January 30th --

MR. JERNIGAN: Okay.

THE COURT: -- but that's the next term of court there.

MR. JERNIGAN: Okay. Thank you, Judge Newman. And --

THE COURT: You're welcome.

MR. JERNIGAN: -- would a 20 day -- or 20 days is fine, give Mr. Morrison for the holidays.

THE COURT: Okay. Let's do 20 --

MR. MORRISON: Thank you, Justin --

THE COURT: -- days, then.

MR. MORRISON: -- I appreciate that.

THE COURT: All right. Then I will issue a short Form 4 Order. And I'm sure I will see you all, or somebody will see you all, back on another motion, not -- at some point. Hopefully not. Maybe this resolves it, but we'll see.

MR. JERNIGAN: Thank you, Judge Newman.

THE COURT: Thank you.

MR. MORRISON: Thank you.

THE COURT: Thank you. All right. You all take care.

MR. JERNIGAN: Bye.

THE COURT: Bye-bye.

(End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Kershaw)

I, DANA KNIGHT, 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 Common Pleas for Kershaw County, South Carolina, on the 19th day of December, 2022.

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

February 18, 2023

Dana Knight

Dana Knight, CDLT-283
Transcriber

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Christine Jernigan, Plaintiff, v. Kershaw County, South Carolina, Defendant.	**CASE NO. 2023-CP-28-00538** **NOTICE OF MOTION AND MOTION FOR 10-DAY HEARING PURSUANT TO FOIA, S.C. CODE ANN. § 30-4-100(a); EQUITABLE RELIEF; AND SCHEDULING ORDER**

TO: DEFENDANT KERSHAW COUNTY, SOUTH CAROLINA ("KCSC"), AND DAVID MORRISON, ESQ., ANTICIPATED ATTORNEY OF RECORD FOR KCSC

Respectfully submitted,

By: /s/Justin A. Jernigan

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This 28th day of July 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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APPENDIX OF EXHIBITS

Plaintiff's July 24, 2023, Complaint

Ex. A: Pre-suit email correspondence between undersigned counsel, KCSO, KCSC, and both KCSO and KCSC's pre-suit counsel from late July 2022 to late August 2022

Ex. B: Plaintiff's FOIA Request submitted to KCSC on August 11, 2022

Ex. C: KCSC's August 18, 2022, FOIA Response, CD Optical Disc, and CFS2022-39001

Ex. D: November 17, 2022, CFS2022-39009, disclosed by KCSO on December 2, 2022

Ex. E: November 17, 2022, CFS2022-39001, disclosed by KCSO on December 2, 2022

Ex. F: December 19, 2022, Hearing Transcript before Judge Jocelyn Newman, in *Christine Jernigan, et al. v. KCSO*, 2022-CP-28-00782 (filed Sept. 12, 2022) ("782 case")

Plaintiff's July 28, 2023, Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order

Ex. G: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret'd, in *Christine Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) ("967 case")

Ex. H: July 28, 2023, Affidavit of Plaintiff's Undersigned Counsel Justin A. Jernigan, Esq.

Ex. I: Feb. 23, 2023, Affidavit of Plaintiff Christine Jernigan in the 967 case

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PLEASE TAKE NOTICE THAT Plaintiff Christine Jernigan ("Mrs. Jernigan") respectfully moves the Honorable Jocelyn C. Newman, current Chief Administrative Judge of this Circuit Court: (*i*) to schedule an initial hearing within ten days of service on Defendant Kershaw County, South Carolina ("KCSC"); (*ii*) to order KCSC to fully respond to and disclose all the records/information of Plaintiff's FOIA Requests within a reasonable time (e.g., ten days) after the 10-Day initial hearing (*see infra* & Compl. ¶84); and (*iii*) to enter a scheduling order at or after the 10-Day initial hearing. This Court's authority to grant the requested relief of the present Motion is provided by the South Carolina Freedom of Information Act ("FOIA") at S.C. Code Ann. § 30-4-100(a), which states in pertinent part (emphasis added):

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must schedule an initial hearing within ten days of the service on all parties*. If the hearing court is unable to make a final ruling at the initial hearing, the court shall *establish a scheduling order* to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this [six month] time period upon a showing of good cause. The court may *order equitable relief* as it considers appropriate, and a violation of this chapter *must* be considered to be an *irreparable injury* for which no adequate remedy at law exists.

In summary, Plaintiff respectfully requests that the Court order KCSC to fully respond to Plaintiff's FOIA Requests and to disclose all public records/information of Plaintiff's FOIA Requests (Compl., Exs. B & A at 22) within ten days after the initial hearing, and particularly the following records that have been unlawfully withheld to date:

- Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson's communications with KCSC and the Kershaw County Sheriff's Office ("KCSO") accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, hereto, ¶¶10, 21; Compl. ¶¶59, 60-61, 68-71, 75, Exs. B at 3-5 & Ex. D.

- Complete, unredacted records and audio recordings of KCSC's previously disclosed, and incomplete, Audio File Nos. 0 to 11, as well as all other records associated with CFS2022-39001. *See* Ex. H, hereto, ¶¶10-20, 22; Compl., ¶¶49-58, 73-74, Exs. B at 3-5, C at 3-5 & E.

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- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, which includes: (*i*) KCSO Officer #45 Joseph Branham (Primary); (*ii*) KCSO Officer #42 Grant Arledge; (*iii*) KCSO Officer #15 Courtney Cochran; (*iv*) KCSO Officer #40 Brian Morris; and (*v*) KCSO Officer/Investigator Miles Taylor. *See* Ex. H, hereto, ¶¶10-22; Compl., Exs. B at 3-5, C at 3-5, D & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, including those officers listed above, and the other KCSO officers personally involved after or around the time the relevant incidents occurred, which includes (*i*) KCSO Lieutenant West – who discussed and/or prepared a report on behalf of Pinedale's Administrator and "owner" Phillip Hudson against undersigned counsel – and (*ii*) KCSO Officer #32 Dustin Tate. *See* Ex. H, hereto, ¶¶10-11, 19, 22; Compl., Exs. B at 3-5; C at 4-5 & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, and the KCSO officers personally involved, including those officers listed above, which includes KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Compl., Exs. B at 3-5 & D.

- Personnel and training information for the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, including KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Compl., Exs. B at 3-5 & D.

I. PROCEDURAL HISTORY

The Complaint in the above-captioned case was filed on July 24, 2023. Count I of the Complaint requests, *inter alia*, declaratory/equitable relief pursuant to FOIA, S.C. Code Ann. §§ 30-4-100(a) & (b), for all of the unlawfully withheld records (e.g., audio recordings) of Plaintiff's FOIA Requests. Compl. ¶¶79-88, Exs. B at 3-5 & A at 22. For records/information of Plaintiff's FOIA Request that have been destroyed or otherwise rendered unavailable by KCSC, Count II seeks declaratory/equitable relief pursuant to the Public Records Act, S.C. Code Ann. §§ 30-4-10, *et seq*. Compl. ¶¶89-94, Ex. B at 3-5.

II. BACKGROUND

On June 28, 2022, Plaintiff's counsel Justin A. Jernigan, Esq. ("Mr. Jernigan" or "undersigned counsel") left messages with KCSO officers/investigators to report concerns

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relating to his grandmother, and Plaintiff Mrs. Jernigan's mother, Ann Martin ("Mrs. Martin"), who is a vulnerable adult pursuant to the Omnibus Adult Protection Act ("OAPA"), S.C. Code Ann. §§ 43-35-5, *et seq.* Ex. H, hereto, ¶¶10-11, 16-17, 22; Compl. ¶¶54-55, Exs. B at 3, C at 4-5, & E. At around 9:44am on June 29, 2022, KCSO Officer #15 Courtney Cochran contacted KCSC Dispatch Operator Tina Hand via phone regarding undersigned counsel's phone messages/reporting to KCSO on June 28, 2023. *Id.* KCSC Operator Tina Hand dispatched/assigned KCSO Officer #45 Joseph Branham (Primary) who – at around 10:30am on June 29, 2022 – spoke with undersigned counsel via phone regarding his grandmother Mrs. Martin and the OAPA criminal/felony concerns. Ex. H, hereto, ¶¶10-11, 20, 22; Compl. ¶58, Exs. B at 3, C at 4-5, & E.

At around 11:00am on the morning of June 29, 2022, Mrs. Martin chose to exercise her right and well-known wish to travel away from a privately-owned, for-profit (~$5,000/month) assisted living facility located in Kershaw County, known as Pinedale, with her daughter Plaintiff Mrs. Jernigan. Ex. H, hereto, ¶¶10, 25-27, Ex. G, hereto, ¶¶12-14 & Ex. I, hereto, ¶¶8, 10-11, 13-14, and 16-17; Compl., ¶37-38, Ex. B at 3-4. After Mrs. Martin chose to travel away from Pinedale with her daughter Plaintiff Mrs. Jernigan, KCSO Patrol Officers #45 Joseph Branham (Primary), #42 Grant Arledge, and #40 Brian Morris were dispatched/assigned by KCSC to pursue them in their respective police vehicles. Ex. H, hereto, ¶¶10, 21; Compl., ¶37-38, Exs. B at 3-4 & D. The KCSO Officers stopped Plaintiff Mrs. Jernigan's vehicle after she and Mrs. Martin traveled away from Pinedale. *Id*.

Undersigned counsel Mr. Jernigan drove to KCSO's primary office in Lugoff, South Carolina, and attempted to intervene on behalf of his mother and grandmother. Ex. H, hereto, ¶¶10, 21; Compl., Ex B at 3-4 & D. Despite undersigned counsel's in-person appeals on behalf

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of his mother and grandmother – and KCSO Officer #15's associated communications, via KCSC Dispatch Operator Tina Procter, that "Justin [Jernigan] is at the Sheriff Dept. and wants to let 42 and 40 know" – KCSO remanded Mrs. Martin to the Pinedale facility. Compl., Ex. D at 2. KCSO indicated that Plaintiff Mrs. Jernigan needed to "contact the court" with respect to her mother Mrs. Martin being remanded to the privately-owned, for-profit Pinedale facility.[1] *See id.*, Exs. D at 2 & E.

We are fortunate to live in a country where we are born with inalienable natural rights. After the police-involved incidents of June 29, 2022, however, neither KCSO nor its attorneys would agree to contact Pinedale and explain that they had made a mistake. Instead, KCSC and KCSO have concealed/destroyed public records and abused the discovery/FOIA process. KCSC and KCSO's goal has been to cover up the true facts and details of their actions on and around June 29, 2022.

III. LEGAL STANDARDS

The below provisions set forth the purpose and intent of the South Carolina Freedom of Information Act.

> 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.

S.C. Code Ann. § 30-4-15 (emphasis added).

[1] A related case is pending before this Court, *Christine Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) (the "967 case"). Ex. H, hereto, ¶¶25-27. A Motion for Temporary Relief was filed in the 967 case on December 6, 2023. The Motion for Temporary Injunction was heard by the Honorable Clifton B. Newman in March 2023. The Motion for Temporary Injunction presently remains pending before Judge Clifton Newman.

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Pursuant to FOIA, all "persons" have the right to inspect, copy, or receive an electronic version of any "public record." S.C. Code Ann. §§ 30-4-20(b) & (c), 30(a)(1). "[P]ublic record" is broadly defined to include all records, regardless of physical form or format, that are "prepared, owned, used, in the possession of, or retained by a public body." S.C. Code Ann. § 30-4-20(c). FOIA is remedial in nature and must "be liberally construed to carry out the purpose mandated by the legislature." *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 281, 580 S.E.2d 163 (Ct. App. 2003).

The essential purpose of FOIA "is to protect the public from secret government activity." *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843 (1994) (citations omitted). FOIA imposes "*an affirmative duty* on the part of public bodies to disclose information." *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991) (emphasis added).

Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), a public body is required – within ten business days for public records less than two years old or within twenty business days for public records greater than two years old – to notify the requestor in writing regarding the public body's determination, reasoning, and final opinion regarding the public availability of each public record requested. If the public body does not provide the required written determination as to the public availability of each public record requested, the FOIA request must be considered approved as to all such nonexempt public records/information. S.C. Code Ann. § 30-4-30(c); *Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 554-55, 762 S.E.2d 687, 688-89 (2014) (holding that the equivocal and evasive FOIA response provided was "manifestly at odds with the clarity mandated by section 30-4-30(c)").

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After the public body delivers the required written response/determination to the FOIA requestor – or if the public body fails to do so – all nonexempt public records/information must thereafter be disclosed within thirty calendar days for public records less than two years old or thirty-five calendar days for public records greater than two years old. S.C. Code Ann. § 30-4-30(c). Any exemptions claimed by the public body in response to a FOIA request must be narrowly interpreted and applied to specific public records of the request. *Evening Post Publ'g. Co. v. City of N. Charlest on*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (citations omitted). Thus, to claim an exemption for specific records of Plaintiff's FOIA requests, KCSC "must show the applicability of a specific FOIA exemption to each requested public record." *Pope v. Wilson*, 431 S.E.2d 432, 448, 427 S.C. 377, 388 (Ct. App. 2019) (citations omitted).

IV. DISCUSSION

Prior to submitting Plaintiff's FOIA Request to KCSC, the Request had initially been submitted to KCSO on July 22, 2022. Ex. H, hereto, ¶¶9-10; Compl., ¶¶33-35, Ex. A at 7-8 & Ex. B. KCSO's Records Department responded on July 25, 2022, by indicating that KCSO could not, and would not, provide any of the communication/dispatch related records of Plaintiff's FOIA Request, and that these records must instead be obtained from KCSC pursuant to FOIA. *Id*. KCSO's evasive/deceptive July 25, 2022, FOIA Response stated in full as follows:

> After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

Id.

On August 11, 2022, Plaintiff's FOIA Request was submitted to KCSC's Clerk to Counsel Merri Seigler and to Assistant County Administrator Lauren Reeder ("Mrs. Reeder").

Ex. H, hereto, ¶¶9-10; Compl. ¶¶29-32, Exs. A at 12, 15-17 & B. KCSC provided its only Response to Plaintiff's FOIA Request on August 18, 2022. Ex. H, hereto, ¶11; Compl. ¶43-44, Ex. C at 2. KCSC's August 18, 2022, FOIA Response, via its pre-suit counsel County Attorney Tommy Morgan, Esq. ("Attorney Morgan"), stated in full as follows:

> I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith *all* documents *not subject to exemption* under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq*. as well as a CD containing *the audio*. If you have any other questions or concerns, do not hesitate to contact me.

Compl., Ex. C at 2 (emphasis added).

KCSC's August 18, 2022, FOIA Response did not attempt to address the availability of the requested records, or to explain how any FOIA exemptions could potentially apply to any of the specific records of Plaintiff's FOIA Request, pursuant to S.C. Code Ann. § 30-4-30(c). *See* Compl., Exs. B at 3-5 & C at 2; *Pope*, 431 S.E.2d at 448, 427 S.C. at 388 (holding that a public body "must show the applicability of a specific FOIA exemption to each requested public record"). It is obviously impossible to determine which specific records of Plaintiff's FOIA Request were available, not available, and/or withheld as potentially exempt by KCSC based upon the bare assertions of its August 18, 2022, Response Letter stating that *all* public records and audio recordings *not subject to exemption* were provided therewith. *Id.*; *Sloan*, 409 S.C. at 554-55, 762 S.E.2d at 688-89 (holding that the public body's equivocal/evasive FOIA response was "manifestly at odds with the clarity mandated by section 30-4-30(c)"). Plaintiff's FOIA Request must be considered approved as to all nonexempt public records/information because KCSC's August 18, 2022, FOIA Response did not even attempt to provide the legally required written determination as to the public availability of each public record of Plaintiff's FOIA Request pursuant to S.C. Code Ann. § 30-4-30(c). *Id.*

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KCSC's August 18, 2022, FOIA Response attached/disclosed one responsive public document, CFS2022-39001, which states that it was printed on August 18, 2022. Ex. H, hereto, ¶11; Compl., ¶49, Ex. C at 4-5. KCSC's August 18, 2022, CFS2022-39001 document, however, surreptitiously omitted (at least) all of the public information concerning the respective KCSC dispatch operators that were personally involved with the associated CFS2022-39001 communications. Compl. ¶¶51-52, *compare* Ex. C at 4-5 *with* Ex. E.

The CD optical disc disclosed by KCSC with its August 18, 2022, FOIA Response Letter contains a total of twelve individual audio recording files of phone calls concerning or involving undersigned counsel, Audio File Nos. 0 to 11. Ex. H, hereto, ¶¶11-20; Compl. ¶53, Ex. C at 3-5. The first four audio recording files, Audio File Nos. 0 to 3, are redacted, incomplete portions of the phone call by KCSO Officer #15 Courtney Cochran to KCSC Dispatch Operator Tina Hand beginning around 9:44am on the morning of June 29, 2022, and ending between 9:46am and 9:47am. Ex. H, hereto, ¶¶13-17; Compl., Exs. C at 3-5 & E. The subject matter of the four redacted/incomplete Audio File Nos. 0 to 3 relates to undersigned counsel's messages/reporting to KCSO on June 28, 2022, relating to his grandmother Mrs. Martin and criminal/felony OAPA exploitation concerns. *Id*.

Audio Files Nos. 4 to 11 are incomplete audio recordings of undersigned counsel's own personal phone communications with several respective KCSC dispatch operators, and one of the two KCSO officers with whom undersigned counsel communicated, respectively, on June 29, 2022. Ex. H, hereto, ¶¶18-20; Compl., Ex. C at 4-5 & E. Specifically, Audio File Nos. 4 to 11 are certain of undersigned counsel's phone communications with KCSC and KCSO on the afternoon and evening of June 29, 2022, unsuccessfully attempting to obtain a public record documenting the relevant June 29, 2022, police-involved incidents of that morning. Ex. H,

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hereto, ¶¶18-20; Compl., Exs. C at 4-5 & E. Portions of undersigned counsel's communications with KCSO on June 29, 2022, were omitted, redacted, and/or removed from the August 18, 2022, Audio Files disclosed by KCSC. *Id.*

KCSC's August 18, 2022, FOIA Response unlawfully withheld all the public records and audio recordings relating to the third-party E-911 call(s) KCSC received on the morning of June 29, 2022, accusing Plaintiff and undersigned counsel of improper or unlawful conduct, and thereby triggering KCSO's police-actions. Compl. ¶¶59-61, Ex. A at 22-24 & Ex. B at 3-5. Undersigned counsel offered to extend the relevant FOIA disclosure deadlines of S.C. Code Ann. § 30-4-30(c) for all of the additional public records (e.g., personnel records) of Plaintiff's FOIA Request (Compl., Ex. B) if KCSC would simply provide the public records and audio recordings of the third-party E-911 call(s) KCSC received on the morning of June 29, 2022, as soon as possible. *Id.* KCSC, via its pre-suit counsel Attorney Morgan, rejected Plaintiff's proposal and stated, "I take no position as to your legal representations or arguments surrounding actions involving Pinedale." *Id.*

To fully resolve the FOIA matters, undersigned counsel then offered to personally inspect and make copies of the public records of Plaintiff's FOIA Request. Compl. ¶¶62-64, Ex. A at 21. KCSC and Attorney Morgan never even bothered to respond to Plaintiff's request for an appointment to personally inspect and make copies of the public records of Plaintiff's FOIA Request. KCSC was obviously not interested in resolving the FOIA matters in good faith and on reasonable terms. *Id.* Instead, KCSC adopted a "so sue me" attitude in an effort to cover up the true facts and details.

Over three months later, on December 2, 2022, KCSO belatedly disclosed the CFS2022-39009 document to Plaintiff, which indicates that it was printed on November 17, 2022. Ex. H,

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hereto, ¶¶21; Compl., Ex. D. The November 17, 2022, CFS2022-39009 document demonstrates that Pinedale's Administrator Phillip Hudson ("Mr. Hudson") called KCSC E-911 on the morning of June 29, 2022, and asserted that Plaintiff and undersigned counsel had committed improper or unlawful acts. *Id*. Mr. Hudson's E-911 call to KCSC on the morning of June 29, 2022, totaled approximately one hour, lasting from 10:55am to 11:53am. *Id.* The November 17, 2022, CFS2022-39001 document – which was also disclosed by KCSO on December 2, 2022 – includes additional requested public information that was surreptitiously hidden/concealed by KCSC from the August 18, 2022, CFS2022-39001 document it disclosed with its FOIA Response. Ex. H, hereto, ¶¶21; *compare* Compl., Ex. C at 4-5 *with* Ex. E.

At the initial hearing before Judge Jocelyn Newman on December 19, 2022, in the related FOIA case *Christine Jernigan, et al. v. KCSO*, 2002-CP-28-00782 (filed Sept. 12, 2022) ("782 case"), KCSO's counsel of record David Morrison, Esq. discussed the still yet-to-be disclosed audio recordings of Mr. Hudson's E-911 call to KCSC on the morning of June 29, 2022. Compl., Ex. F at 7:6-10. Specifically, with respect to Mr. Hudson's approximately one-hour E-911 call to KCSC on the morning of June 29, 2022, Mr. Morrison stated at the December 19, 2022, hearing that he and his associate Cameron DeBoy, Esq. were "going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don't know. But we're going to Kershaw County Dispatch to get that." *Id*.

Over seven months have now passed since the December 19, 2022, initial FOIA hearing before Judge Jocelyn Newman in the 782 case. Over the past seven plus months, KCSO's counsel has never indicated that he attempted to obtain – much less actually disclosed – the June 29, 2022, E-911 audio recording as he indicated that he was going to do at the December 19, 2022, hearing before Judge Jocelyn Newman. Under the circumstances, Plaintiff questions

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whether the audio recording of Mr. Hudson's June 29, 2022, E-911 call to KCSC still exists or if it has been destroyed to cover up the true facts and details.

V. CONCLUSION

Upon the foregoing, Plaintiff respectfully requests that this Court schedule an initial hearing within ten days of service on KCSC; (*ii*) order KCSC to fully respond to and disclose the records/information of Plaintiff's FOIA Requests within ten days after the 10-Day initial hearing; and (*iii*) to enter a scheduling order at or after the 10-Day initial hearing.

Notably, Plaintiff respectfully requests that the Court order KCSC to fully respond to Plaintiff's FOIA Requests (Compl., Exs. B & A at 22), to disclose all public records and information of Plaintiff's FOIA Requests, and to specifically disclose the following records that have been unlawfully withheld by KCSC to date:

- Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson's communications with KCSC and the Kershaw County Sheriff's Office ("KCSO") accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, hereto, ¶¶10, 21; Compl. ¶¶59, 60-61, 68-71, 75, Exs. B at 3-5 & Ex. D.

- Complete, unredacted records and audio recordings of KCSC's previously disclosed, and incomplete, Audio File Nos. 0 to 11, as well as all other records associated with CFS2022-39001. *See* Ex. H, hereto, ¶¶10-20, 22; Compl., ¶¶49-58, 73-74, Exs. B at 3-5, C at 3-5 & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, which includes: (*i*) KCSO Officer #45 Joseph Branham (Primary); (*ii*) KCSO Officer #42 Grant Arledge; (*iii*) KCSO Officer #15 Courtney Cochran; (*iv*) KCSO Officer #40 Brian Morris; and (*v*) KCSO Officer/Investigator Miles Taylor. *See* Ex. H, hereto, ¶¶10-22; Compl., Exs. B at 3-5, C at 3-5, D & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, including those officers listed above, and the other KCSO officers personally involved after or around the time the relevant incidents occurred, which includes (*i*) KCSO Lieutenant West – who discussed and/or prepared a report on behalf of Pinedale's Administrator and "owner" Phillip Hudson against undersigned counsel – and (*ii*) KCSO Officer #32 Dustin Tate. *See* Ex. H, hereto, ¶¶10-11, 19, 22; Compl., Exs. B at 3-5; C at 4-5 & E.

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- Complete, unredacted records and audio recordings by, between, and amongst the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, and the KCSO officers personally involved, including those officers listed above, which includes KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Compl., Exs. B at 3-5 & D.

- Personnel and training information for the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, including KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Compl., Exs. B at 3-5 & D.

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 28th day of July 2023

ATTORNEY FOR PLAINTIFF CHRISTINE. JERNIGAN

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RULE 11(a), SCRCP CERTIFICATION

Counsel for KCSC has not made an appearance in the above-captioned case and undersigned counsel therefore believes that consultation pursuant to Rule 11(a), SCRCP, is not required. In any case, undersigned counsel of record, by the signing and filing the above-captioned Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order in the above-captioned case, certifies pursuant to Rule 11(a), SCRCP, that he maintains a good faith belief that attempts to resolve this matter with KCSC's anticipated counsel of record prior to the filing of this Notice of Motion and Motion would serve no useful purpose.

CERTIFICATE OF SERVICE

Undersigned counsel of record certifies that he served Plaintiff's above-captioned Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order in the above-captioned case by depositing in the U.S. Mail, with proper postage attached, to KCSC and KCSC's anticipated counsel of record on this 28th day of July 2023, as follows:

Defendant KCSC:

Danny Templar
County Administrator
515 Walnut Street
Camden, SC 29020

Defendant KCSC's Anticipated Counsel:

David Morrison, Esq.
Morrison Law Firm, LLC
7453 Irmo Dr., Ste. B
Columbia, SC 29212

Respectfully submitted,

By: /s/Justin A. Jernigan

EXHIBIT G

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW** Christine P. Jernigan and Ann B. Martin, by Christine P. Jernigan as her Agent, Plaintiffs, v. Sharon Wright, Defendant.	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-28-00967** **AFFIDAVIT OF LIEUTENANT COLONEL BILLIE SCHRECK, USAF, RET'D**

Personally, appeared before me the undersigned, who after being duly sworn, deposes, and says:

1. My name is Billie Schreck and I reside at 1302 Patriots Colony Drive, Williamsburg, VA 23188.
2. I retired as a Lieutenant Colonel from the United States Air Force on April 1, 1992, where I served as a Transportation Officer from June 30, 1971 to April 1, 1992.
3. After retiring from the United States Air Force, I began working at the South Carolina State House Blatt Building ("State House Building") as a legislative aide in 1999. I then served as executive assistant to the House Labor Commerce and Industry Committee until I stopped working there in August 2015.
4. I know Ann B. Martin ("Annie") personally and spent 17 years commuting from the Camden, SC area to the State House Building in downtown Columbia, SC with her to work while she was Manager of the State House Building and I served in my various roles.

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5. During our 70 miles of commuting each work day, Annie and I discussed everything from her family, her estate plan, her plans for her later years, her successes, her failures, how to solve the world's problems and everything in between.

6. I moved to Williamsburg, Virginia in September of 2015 and have resided there since that time.

7. At least two years prior to Annie's retirement in late 2013, she was showing signs of significant mental changes including repeating things and being confused.

8. During that period in approximately 2011, Annie would constantly repeat stories over and over without realizing that she already told the same story prior to retelling it again.

9. During that period in approximately 2011, Annie was also often confused about what day of the week it was and would get up to go to work on Sundays without realizing that Sunday is not a work day because she simply didn't realize it was Sunday.

10. Prior to Annie retiring in late 2013, I had many discussions with other workers at the State House Building about Annie's mental decline, her inability to perform work tasks, and that her co-workers were covering work tasks for her as much as they possibly could because they loved her and didn't want to see her embarrassed by not being able to perform those work tasks properly and being called out on that inability.

11. Annie discussed her estate plan, expectations for her later years and her wishes for her later years with me on many occasions during our friendship and commutes back and forth to the State House Building.

12. Annie's primary expectation was to be lovingly cared for by her two daughters and she was absolutely certain that neither one of them would ever place her in a facility in her later years.

13. Annie dreaded the idea of being put in a facility and told me emphatically, on numerous occasions, that she did not want to ever want to live in a facility.

14. Annie made it clear to me on many occasions that she planned to not be put in a facility at any point in her later years and that her plan was for her sweet daughters to take care of her.

15. Annie took me to see the mother-in-law suite, or detached garage with finished room above the garage, at Sharon's residence on two occasions.

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16. Annie took me to see it once when it was being built and then another time once it was completed.
17. Annie expressed to me her excitement that the finished room over the detached garage was going to be her home in her later years.
18. Annie stated that she paid for the construction of the detached garage and finished room over the garage because she was going to live in it in her later years.
19. Prior to the construction of the detached garage and finished room over the garage at Sharon's home, Annie expressed to me how much she loved staying with Christine, having her own space there at Christine's house, spending time with Christine's family and their dogs in Seneca as well.
20. Annie also told me that her estate plan was to leave all of her property and assets equally to both of her daughters and have them equally involved in carrying out her wishes.
21. Annie expected that leaving everything equally to both daughters would ensure that everything would be okay between them in her later years.
22. Annie absolutely did not want to move to the South Hill Condo from her Laurens Street House in 2013 when she made that move.
23. Annie wanted to stay in her house next door to her friends.
24. I wanted Annie to move to the South Hill Condo so I could keep an eye on her as I lived next door to the South Hill Condo, I was worried about her living alone and I knew I could walk next door to check on her if she lived right next to me.
25. When she lived at the South Hill Condo, I would watch for her car to come back every time she went out due to my worrying about her.
26. Annie told me the South Hill Condo was an investment property for Sharon and Jim and she only paid the utilities while she lived there.
27. I was very close friends with Annie while I lived in the Camden, SC area.
28. I moved to Williamsburg, Virginia in September 2015.
29. By the time I moved, Annie's mental decline was so severe that she wouldn't know who I was a lot of times when we would speak to each other.

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30. I talked to Annie a few times on the phone after I moved, but Annie didn't remember who I was on most of those occasions so I have lost touch with her since moving since talking to her now is nothing like talking to her before her mental decline.

31. I did call her once in the middle of a year after I moved and she thought it is was Valentine's Day even though it was June or July of that year.

32. When I first met Annie, she was sharp as a whip, a tough cookie and she ran the State House Building with an iron fist or as a tight ship.

33. It was heartbreaking for me to witness Annie's mental decline and her inability to know who I was when spoke as her mental decline progressed over the years.

34. Annie trusted Sharon and Christine to take care of her, never put her in a facility and share equally in the fruits of her labor.

35. I am saddened to hear that Annie now lives in a facility against her clearly expressed wishes and her daughters are in a contentious situation with each other.

Further the Affiant Sayeth Not.

Lt. Col. Billie Schreck, USAF, Ret'd

Sworn to before me on this the

21st **day of** November **, 2022.**

(L.S.)

Notary Public for State of Virginia

My Commission Expires: 03/31/2023

ERIN CAITLIN McCANTS NOTARY PUBLIC REG # 7847854 MY COMMISSION EXPIRES 3/31/2023 COMMONWEALTH OF VIRGINIA

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF KERSHAW)	
)	**CASE NO. 2023-CP-28-00538**
Christine Jernigan,)	
)	
Plaintiff,)	**Affidavit of Justin A. Jernigan**
v.)	**July 28, 2023**
)	
Kershaw County, South Carolina)	
)	
Defendant.)	
_____)	

Personally appeared before me the undersigned, I, Justin A. Jernigan, being duly sworn and under oath, deposes and states as follows:

1. I am over 18 years of age and otherwise competent to make this Affidavit.
2. I reside in Weddington, North Carolina, County of Union.
3. I am a patent attorney and a member of the South and North Carolina Bars.
4. I am counsel for my mother, Plaintiff Christine Jernigan ("Mrs. Jernigan"), in the above-captioned case.
5. This affidavit is submitted with Plaintiff's Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order in the above-captioned case.
6. This affidavit is based upon personal knowledge, information, and belief.
7. This affidavit is submitted with respect to information and Exhibits submitted with the Complaint in the above-captioned case on July 24, 2023, and Plaintiff's Notice of Motion and Motion submitted herewith.
8. An Appendix of Exhibits, including Exhibits A to F as previously filed with the Complaint in this case, and Exhibits G to I as presently filed, is submitted herewith at Page ii of Plaintiff's Notice of Motion and Motion.
9. Exhibit A of the Complaint includes all of the pre-suit email correspondence from late July 2022 to late August 2022 by, between, and amongst myself; a Kershaw County Sheriff's Office ("KCSO") Records Department employee representative; Defendant Kershaw County, South Carolina ("KCSC") employees Clerk to Counsel Merri Seigler and Assistant County Administrator Lauren Reeder; and both KCSO and KCSC's pre-suit counsel, County Attorney H. Thomas Morgan, Jr., Esq. ("Tommy Morgan" or

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"Attorney Morgan"). Page numbers have been added to the lower right corners of the pages of Exhibit A.

10. Exhibit B is a copy of Plaintiff's FOIA Request which was submitted to KCSC on August 11, 2022. Page numbers have been added to the lower right corners of the pages of Exhibit B.

11. Exhibit C includes scans/copies of (*i*) KCSC's August 18, 2022, FOIA Response Letter; (*ii*) an optical disc KCSC disclosed therewith containing Audio Files Nos. 0 to 11, which are redacted/incomplete phone communications concerning myself on June 29, 2022; and (*iii*) the CFS2022-39001 document enclosed therewith, which indicates it was printed on August 18, 2022. Page numbers have been added to the lower right corners of the pages of Exhibit C.

12. A USB Flash Drive containing Audio File Nos. 0 to 11 is of record in the related FOIA case, *Christine Jernigan, et al. v. KCSO*, 2002-CP-28-00782 (filed Sept. 12, 2022) ("782 case"). I submitted the USB Flash Drive into the record during the April 27, 2023, hearing for Plaintiffs' Motion for Sanction/Contempt before the Honorable Daniel M. Coble in the 782 case.

13. Below is a Table summarizing information regarding Audio File Nos. 0 to 3 of the June 29, 2022, incomplete phone communications of KCSC's disclosed August 18, 2022, optical disc (Ex. C at 3).

File No.	Type	Console No.	Date	Start Time	Duration
0	Audio	4	6/29/2022	9:44:37	0:26
1	Audio	4	6/29/2022	9:45:04	0:47
2	Audio	4	6/29/2022	9:45:58	0:27
3	Audio	4	6/29/2022	9:46:38	0:14

14. With respect to the above Table, Audio File Nos. 0 to 3 are redacted/incomplete portions of a phone call from KCSO Officer #15 Courtney Cochran to KCSC Dispatch Operator Tina Hand, beginning between 9:44am and 9:45am on the morning of June 29, 2022, and ending between 9:46am and 9:47am.

15. The end time of Audio File No. 3 (9:46:38 start time plus 14 second duration) is 9:46:52. Subtracting the 9:46:52 end time of Audio File No. 3 from the 9:44:37 start time of Audio File No. 0 equals a duration of 135 seconds. Adding up the listed durations of Audio File Nos. 0 to 3, however, equals 114 seconds. Thus, 21 seconds were

surreptitiously omitted from the phone call between KCSO Officer #15 Courtney Cochran to KCSC Dispatch Operator Tina Hand on the morning of June 29, 2022, by KCSC.

16. In Audio File Nos. 0 to 3, KCSO Officer #15 Courtney Cochran indicates that I (Justin Jernigan) had left a message with KCSO after initially contacting the hotline for the Vulnerable Adult Investigations Unit of the South Carolina Law Enforcement Division ("SLED") and being referred by KCSO.

17. On June 28, 2022, I did contact the hotline for the Vulnerable Adult Investigations Unit of SLED, and was referred to KCSO, to report suspected criminal/felony exploitation of my grandmother Ann Martin ("Mrs. Martin"), a vulnerable adult and then Kershaw County resident, pursuant to the South Carolina Omnibus Adult Protection Act ("OAPA"), S.C. Code §§ 43-35-5, *et seq*.

18. Audio Files Nos. 4 to 11 (Ex. C at 3) disclosed by KCSC with its August 18, 2022, FOIA Response are audio recordings of undersigned counsel's phone communications with KCSC dispatch operators and one of the two KCSO officers with whom I communicated via phone, respectively, on June 29, 2022, unsuccessfully attempting to obtain a public record documenting the relevant June 29, 2022, police-involved incidents.

19. Portions of my phone communications with KCSO Officer #32 Dustin Tate on the evening of June 29, 2022, were also redacted and/or removed from the August 18, 2022, Audio Files by KCSC.

20. Undersigned counsel's respective phone communications with KCSO Officer #45 Joseph Branham on June 29, 2022, were completely omitted from the CD optical disc (Ex. C at 3) containing the audio recordings, Audio File Nos. 0 to 11, by KCSO.

21. Exhibit D is a copy of Call for Services ("CFS") Log and/or Computer-aided Dispatch ("CAD") Report CFS2022-39009, stating it was printed on November 17, 2022, and was first disclosed on December 2, 2022, by KCSO in the 782 case.

22. Exhibit E is a copy of CFS2022-39001, stating it was printed on November 17, 2022, and was also first disclosed by KCSO on December 2, 2022, in the 782 case.

23. My earlier April 24, 2023, Affidavit submitted in the related 782 case at ¶¶17-18 – Exhibit U of Plaintiffs' Memorandum in Support of Motion for Sanctions/Contempt – contains a good faith error with respect to the November 17, 2022, CFS Logs and/or

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CAD Reports. Notably, I mistakenly indicated in my earlier April 24, 2023, Affidavit that these two logs/reports were first disclosed by KCSO in the 782 case on Sunday, December 4, 2022, rather than Friday evening, December 2, 2022.

24. Exhibit F is a copy of the transcript for the initial hearing in the related 782 FOIA case which was held on December 19, 2022, before the Honorable Jocelyn C. Newman.

25. Exhibit G is a copy of the November 21, 2022, Affidavit of Lt. Col. Billie Schreck USAF, Ret'd, who was my grandmother Ann Martin's close friend and co-worker. This Affidavit is of record in a related case that is pending before this Court, *Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) (the "967 case"). This Affidavit was submitted in support of Plaintiffs' Memorandum in Support of Temporary Injunction in the 967 case.

26. Exhibit I is a copy of the February 23, 2023, Affidavit of Plaintiff Mrs. Jernigan, which was submitted with voluminous attachments on March 15, 2023, in the pending 967 case. The voluminous attachments of the Affidavit have been omitted from Exhibit I as submitted herewith.

27. Plaintiff Mrs. Jernigan's February 23, 2023, Affidavit (Ex. I), and the November 21, 2022, Affidavit of Lt. Col. Billie Schreck USAF, Ret'd (Ex. G), provide background for Plaintiff's Notice of Motion and Motion submitted herewith.

28. Under penalty of perjury, I certify that the information given by me in this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

Sworn to and Subscribed before me this

28 day of JULY, 2023

Notary Public for North Carolina

Signature of Affiant – Justin A. Jernigan

My Commission expires Feb 6, 2028

Fabiola Diaz Garcia
Notary Public
Union County
North Carolina
My Commission Expires: February 6, 2028

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EXHIBIT I

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW** Christine P. Jernigan and Ann B. Martin, by Christine P. Jernigan as her Agent, Plaintiffs, v. Sharon Wright, Defendant.	**IN THE COURT OF COMMON PLEAS** **FOR THE FIFTH JUDICIAL CIRCUIT** **CASE NO.: 2022-CP-28-00967** **AFFIDAVIT OF CHRISTINE P. JERNIGAN**

Personally, appeared before me the undersigned, who after being duly sworn, deposes, and says:

1. My name is Christine P. Jernigan and I reside at 302 Pine Cliff Drive, Seneca, SC 29672.
2. I am above 18 years of age, of sound mind and I have the mental capacity to provide this affidavit.
3. I am the Plaintiff in the above-captioned action both individually and on behalf of my mother, Ann B. Martin, as her Agent.
4. I am the daughter of Ann B. Martin ("Mrs. Martin") and I am the sister of Sharon Wright ("Mrs. Wright").
5. Mrs. Martin has Alzheimer's disease and/or dementia (hereinafter "dementia").
6. While my mother was of sound mind, she made myself and my sister, Mrs. Wright, co-agents of her affairs under a 2006 Durable Power of Attorney ("2006 POA"), which is attached to the Verified Complaint as an Exhibit.
7. My mother, Mrs. Martin, also made a Last Will and Testament in 2006 ("2006 Will"), which is attached as an Exhibit to the Verified Complaint, which provided that both

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my sister Mrs. Wright and myself would be co-personal representatives of Mrs. Martin's estate and which divided Mrs. Martin's estate equally between the two of us in accordance with our mother's known and expressed wishes to treat her two daughters equally.

8. Both prior to executing the 2006 POA and in years when my mother was of sound mind after 2006, Mrs. Martin made it extremely clear to me, Mrs. Wright, her friends and other family members that Mrs. Martin did not want to be placed in a facility in the later years of her life and she wanted to live with, and be in the care of, her family during that period of her life.

9. My mother Mrs. Martin also made it extremely clear to me, Mrs. Wright and others both verbally, and through her estate plan, that she wished to treat myself and Mrs. Wright equally in all respects including related to inheritance through her estate.

10. In accordance with Mrs. Martin's known and expressed wishes that she would not be placed in a facility in her later years, our mother paid for the construction of finished rooms above a detached garage on Mrs. Wright's property in Camden, SC so that our mother could live there with family in her later years.

11. Mrs. Wright has now placed our mother in a residential care facility known as Pinedale Residential Center in Kershaw County, SC ("Pinedale") against her known and expressed wishes, and Mrs. Wright is attempting to keep our mother at Pinedale against her known and expressed wishes despite my known and expressed willingness to allow our mother to live with me at my home in Seneca, SC and to provide for her care at my home.

12. At my home in Seneca, SC, I have a free room for my mother to live in consistent with her known and expressed wishes to live with, and be cared for by, family in her later years.

13. Mrs. Wright informed me on May 20, 2022 that she was going to place Mrs. Martin at Pinedale on a one-month trial basis, that during the one-month trial me and my family could visit at any time, and that after the one-month trial my mother could leave Pinedale with me.

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14. Prior to my mother being placed in Pinedale by Mrs. Wright in late May 2022, my mother was experiencing anxiety concerning the move and I reassured my mother that she could come live with me if she didn't like it there.

15. In response to my reassurance to my mother based upon my belief that the placement at Pinedale was only a one-month trial that could end if my mother chose to end it, Mrs. Wright got angry and refused to allow my mother to go with me and my family on our annual family beach vacation in Garden City, SC from June 4th through June 11th, 2022.

16. The one-month trial at Pinedale was never a one-month trial and, instead, was a permanent move from the beginning.

17. Additionally, Mrs. Wright's assertions that my mother could choose to leave Pinedale at any time proved to be untruthful as well.

18. Mrs. Wright eventually informed me that, in fact, our mother would only be allowed to visit me and my family away from Pinedale once or twice a year for a day or two at a time and that for me to obtain additional time would require me to file suit against her.

19. Mrs. Wright has attempted to use a 2013 Durable Power of Attorney ("2013 POA"), which is attached as an Exhibit to the Verified Complaint and does not revoke the 2006 POA under which I am appointed a co-agent of our mother's affairs, and a 2016 Health Care Power of Attorney ("2016 HCPOA")(Exhibit "A") both of which Mrs. Wright directed Mrs. Martin to sign despite her having dementia at the time that both documents were executed, to justify her actions of placing and keeping Mrs. Martin at Pinedale against her known and expressed wishes.

20. Additionally, Mrs. Wright directed Mrs. Martin sign a new Last Will and Testament in 2019 ("2019 Will"), which is attached to the Verified Complaint as an Exhibit.

21. The 2013 POA, 2016 HCPOA and the 2019 Will were all executed by Mrs. Martin at Mrs. Wright's direction despite Mrs. Wright knowing that Mrs. Martin was suffering from dementia and despite knowing that the terms of those documents were against Mrs. Martin's well known and expressed wishes and expectations as those documents do not treat her daughters equally.

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22. Additionally, I believe the 2013 POA, 2016 HCPOA and the 2019 Will were all executed by Mrs. Martin at Mrs. Wright's direction despite Mrs. Wright knowing Mrs. Martin lacked the testamentary and mental capacity to execute those documents due to the progression of her dementia.

23. Dr. Guy B. Kahler, MD, who was Mrs. Martin's primary care physician prior to his retirement in June of 2022, indicated in a letter dated March 16, 2021 (Exhibit "B") that Mrs. Martin is no longer capable of making informed rational decisions on financial and legal matters on her own due to the progression of her dementia, which was diagnosed since before 2015.

24. I was aware that Mrs. Martin was suffering from mental decline due to dementia at least as early as 2011 or 2012 and, in fact, Mrs. Martin was forced to retire from her job at the State House in November of 2013 due to the progression of her dementia as reflected in the Verified Complaint.

25. Additionally, Mrs. Martin has expressed to me on recent visits to my home that she does not want to go back to Pinedale and wants to live with me in Seneca where she can spend time with family, which is consistent with her known and expressed wishes and expectations.

26. Despite my willingness to allow Mrs. Martin to live at my home in accordance with her expressed wishes when she was of sound mind and her recent in-person assertions, Mrs. Wright has blocked my mother from living with me and has restricted her from even visiting me at my home in Seneca on several occasions.

27. In fact, Mrs. Wright had me pulled over by the Kershaw County Sheriff's Office ("KCSO") in June 2022 when I went to pick Mrs. Martin up from Pinedale for a visit in Seneca and officers took Mrs. Martin from my car and placed her in Mrs. Wright's car.

28. After our mother Mrs. Martin was placed in Mrs. Wright's car by the officers in June 2022, Mrs. Wright took our mother back to Pinedale.

29. Only after I filed this lawsuit did Mrs. Wright, via instructions to Pinedale, allow Mrs. Martin to come visit with me in Seneca, SC on a limited basis.

30. After I learned that Mrs. Wright placed Mrs. Martin at Pinedale and would not allow her to leave to visit me or live with me consistent with her known and presently

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expressed wishes, my attorney sent Mrs. Wright a demand letter ("Wright Demand") dated August 29, 2022, which is attached to the Verified Complaint as an Exhibit, requesting therein that Mrs. Wright allow Mrs. Martin to visit me and live with me, if she so chooses, amongst other demands for a fiduciary accounting relating to Mrs. Martin's estate and financial accounts.

31. Mrs. Wright initially refused to accept delivery of the Wright Demand as it was sent certified mail, return receipt requested on August 29, 2022.

32. My attorney then e-mailed the Wright Demand to Mrs. Wright on September 13, 2022 at 10:43 am (Exhibit "C"), but Mrs. Wright did not confirm that she received it via reply e-mail as requested by my attorney.

33. My attorney was then forced to have the Wright Demand served on Mrs. Wright via a private process server, which was accomplished on September 14, 2022.

34. In response to receiving the e-mailed copy of the Wright Demand on September 13, 2022, Mrs. Wright directed Mrs. Martin to call my attorney and leave two voicemails on September 13, 2022 in an attempt to refute my demands and stop me from standing up for my mother's known and expressed wishes and expectations.

35. The first scripted voicemail Mrs. Wright directed Mrs. Martin to leave on September 13, 2022 was left at 4:42 pm (Exhibit "D") and in it, Mrs. Martin states, "Adam, this is Ann Martin, I want you to stop that…for my…lawyer…huh…I can't."

36. The second scripted voicemail was left about 15 minutes later at 4:57 pm on September 13, 2022 (Exhibit "E") and in it, Mrs. Martin states, "This is Ann Martin...huh…I don't know…alright do I just say…it don't say nothing."

37. The same day, September 13, 2022, Mrs. Martin called me and left a voicemail (Exhibit "F") stating, "Alright Chris, this what you are going through with me is not going to work. I am sorry if you think you doing all of this, but just do not call me or anything else ever."

38. Mrs. Wright is in the background directing Mrs. Martin to say what she says in the three voicemails in an attempt to stop my attempts to address Mrs. Wright's wrongdoing and in doing so she inflicted emotional and psychological harm upon Mrs. Martin, who is a vulnerable adult.

39. On October 18, 2022, I received a voicemail (Exhibit "G") from my mother stating, "I'm just calling to tell you please don't call me anymore and this is your momma or mom Ann Martin."

40. Again, Mrs. Wright directed our mother to call and leave this voicemail and in doing so emotionally and psychologically harmed Mrs. Martin.

41. I was able to pick Mrs. Martin up for a visit over both Thanksgiving from November 21, 2022 through November 29, 2022, and over Christmas from December 16, 2022 through December 28, 2022.

42. The day after Mrs. Martin was returned to Pinedale from the Christmas visit to my home in Seneca, December 29, 2022, I received four voicemails from Mrs. Martin, one of which was inaudible.

43. The first audible voicemail from December 29, 2022 (Exhibit "H") states, "This is mom, Ann Martin, I'm not going to be coming back there so you can just leave me off the dock up there because I don't need to stay there."

44. The second audible voicemail from December 29, 2022 (Exhibit "I") states, "Well this is your mom and I just didn't want…uhh… to have to say anything to you…"

45. The third audible voicemail from December 29, 2022 (Exhibit "J") states, "Do not call or come to my place I am living in now cause I am not going to have anything to do with you anymore."

46. Yet again, Mrs. Wright is there directing Mrs. Martin to say these things as you can hear Mrs. Martin begin to ask someone about what she was saying at the end of the second voicemail and by Mrs. Wright's actions directing Mrs. Martin to leave these voicemails she is inflicting emotional and psychological harm on Mrs. Martin.

47. On January 12, 2023, Mrs. Martin again called me and left a voicemail (Exhibit "K") stating, "Chris I will not be coming back to you. I'm staying where I am. Do not call me anymore. Is that right?"

48. Mrs. Wright is there in the background directing Mrs. Martin to call and leave these voicemails as you can hear Mrs. Martin ask someone "Is that right?" at the end of the voicemail.

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49. Mrs. Wright is inflicting emotional and psychological harm upon Mrs. Martin by directing her to call and leave these antagonistic voicemails in an attempt to further Mrs. Wright's own unlawful interests and desires.

50. Mrs. Martin is a vulnerable adult and should not be involved in the dispute between my sister and myself in the same way a child should not be included in a divorce dispute between parents.

51. Mrs. Martin is a vulnerable adult and needs to be protected from further abuse and harassment by my sister Mrs. Wright.

52. In addition to the obvious negative emotional and psychological effects on Mrs. Martin that Mrs. Wright has caused by directing her to call and read the above-outlined and documented scripts to myself and my attorney, Mrs. Martin exhibited mental, emotional and psychological symptoms that had to be medically treated on September 14, 2022, which is the day following Mrs. Wright's receipt of the Wright Demand and the day after Mrs. Wright forced Mrs. Martin to leave the initial set of voicemails.

53. On September 14, 2022, Melinda, who works for Pinedale, called Camden Family Care, LLC and requested that Christa Boss, FNP prescribe Mrs. Martin meds for anxiety and depression (Exhibit "L").

54. In response, Ms. Boss prescribed 25 mg Zoloft tablets to treat Mrs. Martin's anxiety and depression exacerbated by the actions of Mrs. Wright the previous day.

55. During the first week of July 2022, Mrs. Wright blocked my phone number and subsequently the phone numbers of my family members in Mrs. Martin's phone.

56. After Mrs. Wright blocked all of our phone numbers, I bought Mrs. Martin a second phone so we would be able to communicate and provided it to her during a visit on July 24, 2022.

57. The second phone would not receive calls on October 1st , 2nd and 3rd of 2022 and the second phone could not be located by Pinedale staff when I called and asked them to look for it.

58. Since my mother called on the second phone on October 18, 2022 and left the voicemail attached hereto as Exhibit "G", the second phone will not receive any calls

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and the phone itself cannot be located by Pinedale staff, me or my husband in Mrs. Martin's room at Pinedale.

59. I believe Mrs. Wright took the phone from my mother and hid it from her or threw it away altogether.

60. Mrs. Wright's actions in blocking my ability to communicate with our mother are harmful to her emotionally and psychologically.

61. In addition to the psychological and emotional harm being perpetrated upon our mother by Mrs. Wright, our mother has suffered significantly physically since being placed in Pinedale.

62. To my knowledge, my mother has lost at least approximately 18.7 lbs since she was placed at Pinedale due to her eating habits combined with Pinedale's lack of care.

63. Additionally, I believe my mother has been taken to the hospital for dehydration at least twice since she has been placed at Pinedale.

64. My attorney has requested medical records from my mother's former primary care physician, Dr. Guy Kahler, MD, but he has not responded to the request as he closed his office in June of 2022.

65. The only documentation I have of Mrs. Martin's weight prior to being placed at Pinedale is that she weighed 125.2 lbs on January 11, 2022 according to Dr. Kahler's medical certificate (Exhibit "M") provided to Pinedale in regard to her entry in the facility.

66. Pinedale does not have any documentation of my mother's weight while she has been placed in their care according to the documents provided to my attorney in response to a subpoena for all her medical records from Pinedale.

67. The medical provider that Pinedale and Mrs. Wright has been using to treat my mother's general medical needs, Camden Family Care, LLC, has my mother's weight listed as 133 lbs on 10/14/22, 10/27/22 and 11/30/22 (Exhibit "N") with the 11/30/22 medical record indicating that the patient's weight was self-reported.

68. I believe Mrs. Wright has self-reported my mother's weight incorrectly to Camden Family Care, LLC during telemed doctor's visits on purpose so Mrs. Martin's weight loss would not be documented properly.

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69. No one associated with Pinedale is actually weighing my mother on a regular basis or even periodically as you can simply look at her and see that she is emaciated compared to what she normally looks like when she is nourished properly.

70. It is important to note that Dr. Kahler's medical certificate also indicates that my mother didn't have any issues with her bladder, kidneys or pelvis prior to being admitted to Pinedale.

71. I weighed my mother when she came to visit me over Christmas of 2022.

72. My mother weighed 108.8 lbs on December 20, 2022 (Exhibit "O") shortly after I picked her up for our Christmas visit.

73. My mother then weighed 109.8 lbs on December 28, 2022 (Exhibit "P"), which is the day I took her back to Pinedale.

74. My mother gained a pound while she was visiting me because I simply made sure she drank water and ate regularly.

75. When my mother is at Pinedale, they don't make sure she drinks water or eats sufficient calories and, accordingly, she will only drink coffee, tea, juice or soda if you don't make her drink water, and she will not eat regularly if you do not encourage her to eat.

76. Pinedale only places a tray in my mother's room for breakfast and there is no routine accountability ensuring that she eats a sufficient amount of the food provided, or is drinking enough water to avoid dehydration.

77. The Pinedale staff will inform my mother lunch is served and ask if she will eat in the dining area.

78. My mother usually declines the invitation to eat lunch in the dining area and has a tray delivered to her room instead.

79. I believe that my mother will not walk to the dining room without an escort.

80. I visited my mother at Pinedale again on January 28, 2023 and she weighed only 106.5 lbs during that visit (Exhibit "Q") indicating she has lost another 3 pounds over the last month while in Pinedale's care.

81. The lack of water drinking at Pinedale has caused my mother's dehydration problems, trips to the hospital and is believed to have led to other health related issues including the presence of kidney stones.

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82. The presence of the kidney stones has also led to my mother having blood in her urine.

83. My mother was taken for imaging at Kershaw CT Scan on 10/28/22 and the imaging revealed benign essential microscopic hematuria and kidney stones (Exhibit "R").

84. Kershaw CT Scan also listed my mother's weight as 110 lbs as of 12/2/22, which is shortly after I took her back to Pinedale after her visit in Seneca for Thanksgiving.

85. According to Mrs. Wright's attorney, Mrs. Martin had a stent placed in her on January 3, 2023 (Exhibit "S") presumably to deal with the kidney stone developed due to her dehydration problems caused by the lack of care she receives at Pinedale.

86. My mother is suffering physically in addition to emotionally and mentally due to Mrs. Wright's actions of confining her at Pinedale in contravention of her known and expressed wishes and expectations.

87. As I mentioned previously, I believe my mother has been taken to the hospital at least twice due to dehydration since she has been placed at Pinedale.

88. On October 27, 2022, Mrs. Wright called Camden Family Care, LLC to report that my mother had dark urine, I believe due to dehydration, shortly after she finished a round of antibiotics (Exhibit "T").

89. The following day, October 28, 2022, my mother was taken to MUSC Hospital and was diagnosed with essential benign hematuria, or blood in her urine (Exhibit "U"), which I believe is caused by the kidney stones that are caused by the chronic dehydration.

90. I believe my mother was given IV fluids during the October 28, 2022 visit to MUSC Hospital to get her rehydrated, but I don't see any evidence of that in the medical records.

91. My mother was taken to the MUSC Hospital again on August 2, 2022 to address calculus of other lower urinary tract infection, or bladder stones, amongst other ongoing issues (Exhibit "V").

92. I believe my mother was given IV fluids again on August 2, 2022 to get her rehydrated, but I don't see any evidence of that in the medical records.

93. I was supposed to pick my mother up on August 18, 2022 pursuant to a telephone conversation I had with Mrs. Wright the previous night, but Mrs. Wright told me to

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not come in a telephone call on the morning of August 18, 2022 because my mother had to be taken to the emergency room to get IV fluids due to dehydration, her blood pressure had bottomed out and her weight was down to 113 lbs.

94. Immediately following the call with Mrs. Wright, I was on the phone with my mother and the nurse informed her that Mrs. Wright was coming to pick her up thereby preventing me from seeing my mother and picking her up as planned.

95. I believe the August 2, 2022 MUSC Hospital visit was the day that my mother was taken to the hospital for dehydration and received IV fluids because I do not see any visits to the MUSC Hospital, or any other medical provider, in the relevant time frame according to what Mrs. Wright told me about my mother having to be taken to the hospital to keep me from coming to pick my mother up for a visit on August 18, 2022.

96. I know with 100 % certainty that my mother had to be taken to the MUSC Hospital on December 16, 2022 due to dehydration (Exhibit "W") as I reported her condition to Pinedale staff and accompanied her during treatment.

97. When I arrived to pick my mother up from Pinedale on December 16, 2022 for her Christmas visit to Seneca, SC, she had a visibly dry mouth, appeared pale, was dizzy and had to sit down due to those symptoms.

98. When we got to MUSC Hospital emergency room, they gave her IV fluids and she perked right up and was back to having normal energy levels the remainder of the time she visited with my family in Seneca for Christmas until December 28, 2022 when my husband took her back to Pinedale.

99. The medical records from the December 16, 2022 MUSC Hospital visit do not indicate that my mother received IV fluids, but I watched them administer IV fluids to her that day due to dehydration.

100. The medical records from the MUSC Hospital visit on December 16, 2022 do indicate that my mother should not drink caffeine and should avoid food and drinks that irritate the bladder such as coffee, tea, soda, artificial sweeteners and citrus.

101. Again, my mother will only drink caffeinated coffee, tea, soda, which includes artificial sweeteners, and juice, usually orange juice, when she is at Pinedale because

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no one is caring for Mrs. Martin by ensuring she drinks enough water to avoid dehydration.

102. My mother begged me to not take her back to Pinedale when I had to take her back on December 28, 2022 because she wants to be with family rather than alone in a facility, like Pinedale, that isn't capable of taking care of her properly.

103. It is apparent that my mother is suffering physically in addition to emotionally and psychologically due to her confinement at Pinedale forced upon her by Mrs. Wright in contravention of her known and expressed wishes and expectations.

104. After the above-captioned lawsuit was filed, Mrs. Wright took my mother to a neurologist, Dr. David M. Kopel, MD ("Dr. Kopel"), in what I believe to be an attempt to get documentation she can use to establish a guardianship over my mother.

105. My mother visited Lexington Neurology and saw Dr. Kopel on November 16, 2022 for a consultation and evaluation of her cognitive and decision making abilities (Exhibit "X").

106. Mrs. Wright reported to Dr. Kopel that she placed my mother into assisted living because "Pt family took a trip to the beach and mom got disoriented about which room is hers" in addition to "Pt sometimes have to search for words which is why daughter put her in assisted living."

107. Mrs. Wright also told Dr. Kopel the following about Mrs. Wright's cognitive decline, "Around 2013-2014 she was living by herself but would give money to her deceased husband's co-workers expressing some concern around judgment."

108. Additionally, the medical records from the 11/16/22 visit state, "PCP [Primary Care Physician] felt around 2015 that there was a concern for cognitive deterioration and started donepezil."

109. Donepezil is a cholinesterase inhibitor that is used to improve mental function in patients with dementia, alzheimer's and parkinsons amongst other progressive cognitive diseases, but it does not cure the mental decline and can only slow the mental deterioration due to the diseases it is designed to treat.

110. Dr. Kopel's findings included telling Mrs. Wright the following, "Today, I addressed questions from the patient's daughter about her capacity for decision-making. I emphasized that capacity is a moment to moment determination depending on the

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CASE #23-CI-00098

person's ability to understand the long-term consequences of any specific decision rather than a global statement about a patient's cognition. The patient's daughter was asking whether the patient has capacity to decide whether to travel to her other daughters house and whether she has capacity to stay there long-term. I cannot answer either of these questions definitively as neither of these choices is currently presented to her in the moment, but it seems that the potential consequences of traveling to her other daughter's house are minimal as there is no concern for neglect or abuse and so long as the patient assents, that kind of decision is something she can probably make."

111. It is clear that Dr. Kopel told Mrs. Wright that my mother can decide to go to my house to visit if she desires to do that and shortly thereafter, Mrs. Wright stopped blocking me from picking my mother up for visits to Seneca although she still is keeping her from staying there long-term or permanently by limiting how much medication Pinedale will give to me when I pick her up for visits.

112. I requested, through my attorney, that Mrs. Wright consent to allow Mrs. Martin to visit with my family in Seneca for a month during our Thanksgiving visit and that request was denied with a threat that the police would be called if I kept her past the time frame equal to the amount of time allocated for medication provided by Pinedale for that visit.

113. In addition to the physical, psychological and emotional harm Mrs. Wright has caused my mother by confining her at Pinedale, directing her to call myself and my attorney and read scripts to each of us and not allowing her to travel or live where she wishes freely outside of a facility in accordance with her expressed wishes, Mrs. Wright has attempted to defy my mother's estate plan by siphoning monies out of my mother's individual banking and retirement accounts into accounts where Mrs. Wright is joint account holder with right of survivorship, or payable on death designee, and will be paid the full funds from each account upon my mother's death directly and outside of the probate process.

114. Mrs. Wright, through her attorney, provided a Partial Accounting of my mother's accounts in response to the Wright Demand.

115. A review of the Partial Accounting documents revealed that Mrs. Wright opened a savings account at First Community Bank in October of 2014 for Mrs. Martin with the account number ending in x339, and Mrs. Wright is a joint account holder of that account designated as joint tenant with right of survivorship (Exhibit "Y").

116. The designation of Mrs. Wright as joint account holder with right of survivorship in account ending in x339 means that Mrs. Wright will inherit all funds in that account upon Mrs. Martin's death without probate of those assets and any distribution to myself of my ½ share of those funds.

117. The Partial Accounting revealed that the balance in the account ending in x339 was $185,921.91 as of June 30, 2022 (Exhibit "Z").

118. The Partial Accounting revealed that Mrs. Wright opened a Certificate of Deposit with First Community Bank on December 14, 2015 for Mrs. Martin with the account number ending in x632, and Mrs. Wright is a joint account holder of that account designated as joint tenant with right of survivorship (Exhibit "AA").

119. The designation of Mrs. Wright as joint account holder with right of survivorship in account ending in x632 means that Mrs. Wright will inherit all funds in that account upon Mrs. Martin's death without probate of those assets and any distribution to myself of my ½ share of those funds.

120. The Partial Accounting revealed that the balance in the account ending in x632 was $32,863.88 as of May 13, 2022 (Exhibit "BB").

121. The Partial Accounting revealed that a Certificate of Deposit with First Community Bank was opened on December 3, 2010 by Mrs. Martin with the account number ending in x454 and Mrs. Wright is a joint account holder of that account (Exhibit "CC")

122. It does not appear from the Partial Accounting documents that Mrs. Wright is designated as joint tenant with right of survivorship on the account ending in x454, but she is named as a secondary account holder on the account.

123. The Partial Accounting revealed that the balance in the account ending in x454 was $33,542.75 as of May 3, 2022 (Exhibit "DD").

124. The Partial Accounting revealed that a Certificate of Deposit with First Community Bank was opened on December 3, 2010 by Mrs. Martin with the account number

ending in x456 and Mrs. Wright is a joint account holder of that account (Exhibit "EE").

125. It does not appear from the Partial Accounting documents that Mrs. Wright is designated as joint tenant with right of survivorship on the account ending in x456, but she is named as a secondary account holder on the account.

126. The Partial Accounting revealed that the balance in the account ending in x456 was $33,542.60 as of May 3, 2022 (Exhibit "FF").

127. The Partial Accounting revealed that a checking account was opened by Mrs. Martin on July 2, 2001 at The Bank of Camden, which is now First Community Bank, with the account number ending in x178 and Mrs. Wright is an authorized signer on that account, but not a secondary account holder with rights of survivorship (Exhibit "GG").

128. Despite the Wright Demand requesting records going back ten years from the demand, the account records for the account ending x178 begin on October 7, 2015 and continue to the present.

129. Moreover, the records regarding the account ending x178 produced under the Partial Accounting provide no check images for the time period between October 7, 2015 and June of 2017.

130. A review of the account statements and canceled checks/check images related to account ending in x178 produced under the Partial Accounting between the period from June of 2017 through August of 2022 reveal that Mrs. Wright wrote checks to cash during that time period totaling the sum $54,650.00.

131. A review of the account statements and canceled checks/check images related to account ending in x178 produced under the Partial Accounting between the period from June of 2017 through August of 2022 reveal that Mrs. Wright made cash withdrawals from the account during that time period in the amount of $34,000.00.

132. A review of the account statements and canceled checks/check images related to the account ending in x178 produced under the Partial Accounting between the period from June of 2017 through August of 2022 reveal that Mrs. Wright wrote herself checks from the account during that time period in the amount of $42,754.31.

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133. A review of the account statements and canceled checks/check images related to the account ending in x178 produced under the Partial Accounting between the period from June of 2017 through August of 2022 reveal that Mrs. Wright wrote myself checks from the account during that time period in the amount of $21,000.00.

134. A review of the account statements and canceled checks/check images related to the account ending in x178 produced under the Partial Accounting between the period from June of 2017 through August of 2022 reveal that Mrs. Wright transferred at least $94,000.00 from the account ending in x178, on which she is not a joint tenant with right of survivorship, to the accounting ending in x339, on which she is a joint tenant with right of survivorship.

135. Mrs. Wright provided supplemental financial documents under the Partial Accounting via letter from her attorney dated October 17, 2022 (Exhibit "HH").

136. The supplemental financial documents provided show Mrs. Martin has two annuities that were purchased from Protective Life Insurance Company in February of 2020, but the documents provided do not show who is the beneficiary designated or payable on death designee on those annuities or where the funds came from to fund those annuities.

137. The Protective Life Insurance Company annuity bearing a contract number ending in x741 was issued on 2/12/2020, it had a surrender value of $144,263.08 as of 2/12/2022 and it had a death benefit of $157,907.42 as of 2/12/2022 (Exhibit "II").

138. The Protective Life Insurance Company annuity bearing a contract number ending in x742 was issued on 2/28/2020, it had a surrender value of $71,035.93 as of 2/28/2022 and it had a death benefit of $78,051.58 as of 2/28/2022 (Exhibit "JJ").

139. The supplemental financial documents provided show Mrs. Martin also has a 401(k) provided under the South Carolina Deferred Compensation Program and Mrs. Jernigan and Mrs. Wright are designated as equal beneficiaries thereunder.

140. The supplemental financial documents provided show the balance in Mrs. Martin's 401(k) was $34,025.23 as of 6/30/2022 (Exhibit "KK").

141. My mother's estate plan has always consisted of leaving ½ of everything she has accumulated in terms of funds, assets and other property to myself and ½ of everything to Mrs. Wright.

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142. It is clear that Mrs. Wright has moved a significant portion of my mother's deposit funds and assets into the accounts that she will be paid upon my mother's death in order to avoid ½ of those funds going to me via probate of my mother's estate in contravention of my mother's estate plan.

143. It is also unclear how much more of my mother's deposit funds and assets are in accounts where Mrs. Wright has designated herself as beneficiary or designated payee upon death thereby steering those funds outside of the probate of my mother's estate and directly into her pocket.

144. Based upon the above-outlined facts, documents and circumstances in addition to the information provided by other affiants, I am asking that this Court grant my motion for preliminary injunction to stop Mrs. Wright from falsely imprisoning my mother at Pinedale against her known and expressed wishes and expectations; to forbid Mrs. Wright from continuing to inflict physical, emotional and psychological pain upon my mother; and to freeze my mother's assets so a full accounting can be conducted to determine what Mrs. Wright has done in totality to my mother's deposit funds, retirement accounts, property and other assets pending a final resolution of this case.

Further the Affiant Sayeth Not!

Christine P. Jernigan

Christine P. Jernigan

Sworn to before me on this the

3rd **day of** Feb., **2023.**

(L.S.)

Notary Public for State of South Carolina

My Commission Expires:

MICHELLE PATTEN
Notary Public State of South Carolina
My Commission Expires February 9, 2031

MICHELLE PATTEN NOTARY PUBLIC SOUTH CAROLINA

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AFFIDAVIT OF SERVICE

Case:	Court:	County:	Job:
2023CP2800538	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT	RICHLAND	9277629 (20230730001)

Plaintiff / Petitioner: Christine Jernigan	**Defendant / Respondent:** Kershaw County South Carolina
Received by: Midlands Process Service	**For:** Justin Jernigan
To be served upon: Kershaw County South Carolina	

I, Evan Murphy, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Lauren Reeder, Branch: 515 Walnut St, Camden, SC 29020

Manner of Service: Registered Agent, Jul 28, 2023, 12:55 pm EDT

Documents: 7.24.23 Ex. F, 12.19.22 Transcript.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. E, CFS2002-39001.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. D, CFS2022-39009.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. C, 8.18.22 KCSO FOIA Response.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. B, FOIA Request to KCSC.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. A, July, Aug 2022 Emails.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 KCSC FOIA Summons_Compl.pdf (Received Jul 27, 2023 at 12:00am EDT)

Additional Comments:
1) Successful Attempt: Jul 28, 2023, 12:55 pm EDT at Branch: 515 Walnut St, Camden, SC 29020 received by Lauren Reeder. Ethnicity: Caucasian; Gender: Female;

Evan Murphy 7/31/23

Evan Murphy Date

Midlands Process Service
4711 Forest Dr., Ste. 3 #336
Columbia, South Carolina 29206
803-216-5678

Subscribed and sworn to before me by the affiant who is personally known to me.

Notary Public

7/31/2023 7/29/2031

Date Commission Expires

WILLIAM GRUNDHOEFER
Notary Public
State of South Carolina
My Commission Expires Jul 29, 2031

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Justin A. Jernigan, Esq. | justin.a.jerngian@gmail.com | 864-710-5029 | 7148 Stirrup Court, Weddington, NC 28104

ELECTRONICALLY FILED - 2023 Aug 07 2:15 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

August 7, 2023

The Honorable Jocelyn C. Newman
Richland County Judicial Center
Post Office Box 192
Columbia, SC 29202

Re: Christine Jernigan v. Kershaw County South Carolina ("KCSC")
Case No. 2023-CP-28-00538 (filed July 24, 2023)
Aff. of Service Date/Time - July 28, 2023, 12:55pm
Pl.'s Mot. for 10-Day Hr'g, Inj. Relief, & Sched. Order (filed July 28, 2023)

Dear Judge Newman,

On behalf of Plaintiff, I am writing to bring the above referenced case and pending motion to your attention. As your Honor might recall from a prior hearing in late 2022 (Compl., Ex. F, Dec. 19, 2022, Hr'g Tr.), Section 30-4-100(a) of the South Carolina Freedom of Information Act ("FOIA") was amended in 2017 to place all FOIA complaints on an accelerated track for consideration/resolution (e.g., a "rocket docket"). This is consistent with the purpose and intent of FOIA as set forth at S.C. Code Ann. § 30-4-15 (1978) (e.g., "it is vital in a democratic society that public business be performed in an open and public manner").

The chief administrative judges ("CAJs") of the circuit courts were assigned to implement the accelerated track of 30-4-100(a) by, *inter alia*, scheduling an initial hearing within ten days of service of a FOIA-related summons/complaint upon the defendant(s). *See* S.C. Code Ann. § 30-4-100(a) (1976 & Supp. 2017) ("Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. …").

We do not believe a FOIA plaintiff is required to take affirmative post-filing steps – beyond service-of-process and filing proof thereof – to obtain, *inter alia*, the initial hearing within ten days of service of the FOIA-complaint upon the defendant(s). The above-referenced formal notice of motion and motion in this case is, however, respectfully submitted and directed to your Honor's attention as CAJ for the South Carolina Circuit Court of Common Pleas for the Fifth Judicial Circuit.

We respectfully request that your Honor move this FOIA-case forward in a manner consistent with S.C. Code Ann. § 30-4-100(a).

Respectfully submitted,

s/Justin A. Jernigan
Justin A. Jernigan (S.C. Bar No. 74954)

cc: Danny Templar
David Morrison, Esq.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan
PLAINTIFF(S)

Kershaw County South Carolina
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:

Following a hearing on August 8, 2023, Plaintiff's "...Motion for ... Equitable Relief..." (filed on 7/28/23) is DENIED.

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 08/08/2023 .

Kershaw County South Carolina

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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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.

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

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Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

ELECTRONICALLY FILED - 2023 Aug 15 1:56 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Christine Jernigan, Plaintiff, v. Kershaw County, South Carolina, Defendant.	**CASE NO. 2023-CP-28-00538** **NOTICE OF MOTION AND MOTION FOR CLARIFICATION AND RECONSIDERATION PURSUANT TO RULES 52(a), (b), & 59(e), SCRCP**

TO: DAVID MORRISON, ESQ., ATTORNEY OF RECORD FOR KERSHAW COUNTY, SOUTH CAROLINA ("KCSC")

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

This 15th day of August 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

ELECTRONICALLY FILED - 2023 Aug 15 1:56 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

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C. Formal Service of Process upon KCSC on July 28, 2023…….……5

D. Plaintiff's July 28, 2023, Motion for 10-Day Hearing, Injunctive/Equitable Relief, and Scheduling Order pursuant to S.C. Code Ann. § 30-40-100(a)……..5

E. Follow-up August 7, 2023, Letter to Judge Newman re: Initial Hearing……...…6

F. The 11:00am August 8, 2023, Hearing and Ruling/Order Denying Plaintiff's Requested Relief for Lack of Standing under FOIA……7

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APPENDIX OF EXHIBITS

Plaintiff's July 24, 2023, Complaint

Ex. A: Pre-suit email correspondence between undersigned counsel, KCSO, KCSC, and both KCSO and KCSC's pre-suit counsel from late July 2022 to late August 2022

Ex. B: Plaintiff's FOIA Request submitted to KCSC on August 11, 2022

Ex. C: KCSC's August 18, 2022, FOIA Response, CD Optical Disc, and CFS2022-39001

Ex. D: November 17, 2022, CFS2022-39009, disclosed by KCSO on December 2, 2022

Ex. E: November 17, 2022, CFS2022-39001, disclosed by KCSO on December 2, 2022

Ex. F: December 19, 2022, Hearing Transcript before Judge Jocelyn Newman, in *Christine Jernigan, et al. v. KCSO*, 2022-CP-28-00782 (filed Sept. 12, 2022) ("782 case")

Plaintiff's July 28, 2023, Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order

Ex. G: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret'd, in *Christine Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) ("967 case")

Ex. H: July 28, 2023, Affidavit of Plaintiff's Undersigned Counsel Justin A. Jernigan, Esq.

Ex. I: Feb. 23, 2023, Affidavit of Plaintiff Christine Jernigan in the 967 case

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ELECTRONICALLY FILED - 2023 Aug 15 1:56 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

PLEASE TAKE NOTICE THAT, pursuant Rules 52(a), (b) & 59(e), SCRCP, Plaintiff respectfully moves this Court and the Honorable Jocelyn C. Newman, Chief Administrative Judge ("CAJ"), as follows:

- to provide, pursuant to Rule 52(a), SCRCP, findings and conclusions which constitute the grounds for the Court's August 8, 2023, Order (copied below) denying Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief and Scheduling Order; and

- to reconsider, amend, and/or alter the Court's August 8, 2023, Order (copied below) pursuant to Rules 52(b), 59(e), SCRCP, the underlying record, and the governing law, including S.C. Code Ann. § 30-40-100(a).

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan
PLAINTIFF(S)

Kershaw County South Carolina
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:

Following a hearing on August 8, 2023, Plaintiff's "...Motion for ... Equitable Relief..." (filed on 7/28/23) is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

ELECTRONICALLY FILED - 2023 Aug 15 1:56 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

I. INTRODUCTION

Following an 11:00am initial hearing on August 8, 2023, Judge Newman issued rulings from the bench at around 11:45am. The Court's oral rulings denied Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief and Scheduling Order on the grounds that Plaintiff Christine Jernigan ("Mrs. Jernigan" or "Plaintiff") lacks standing to proceed with this case pursuant to the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-40-100(a). The Court's bench rulings following the hearing were implicitly incorporated into the Court's 11:59am Form 4 Order (*see supra*, page 1). Judge Newman's August 8, 2023, Form 4 Order, however, also states that the Court's Order "does not end the case."

This order ☐ ends ☑ does not end the case.

The Court's August 8, 2023, Form 4 Order is in conflict with the grounds that were announced at the hearing finding that Plaintiff lacks standing and, therefore, cannot proceed with this case. The Court's basis for the August 8, 2023, Form 4 Order is presently in doubt. Plaintiff respectfully requests that Judge Newman clarify the Court's August 8, 2023, Order (*see supra*, page 1) pursuant to Rule 52(a), SCRCP. *See also* S.C Code Ann. 14-3-330.

For the reasons discussed herein below at Section III (page 8), Plaintiff submits that the underlying record and the governing law do not support the announced reasons that Plaintiff lacks standing under FOIA. For example, *compare* S.C. Code Ann. § 30-40-100(a) ("A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both") *with* Compl. ¶1 ("Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee").

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In summary, the present Motion seeks clarification of the August 8, 2023, Order pursuant to Rule 52(a), SCRCP, and reconsideration pursuant to Rules 52(b), 59(e), SCRCP, in view of the underlying record and the governing law, including S.C. Code Ann. § 30-40-100(a).

II. BACKGROUND

A. FOIA Request Submitted to Defendant Kershaw County, South Carolina ("KCSC") on August 11, 2022

A written FOIA Request was submitted to KCSC on August 11, 2022. *See* Compl. ¶30, Exs. A at 15-17 & B. Relevant portions of email correspondence of record between Plaintiff's counsel, KCSC's Clerk to Counsel Merri Seigler, KCSC's Assistant County Administrator Lauren Reeder, and KCSC's pre-suit counsel County Attorney Tommy Morgan, Esq. – dating from August 11 to 12, 2022 – are copied below.

From: Justin Jernigan
Sent: Thursday, August 11, 2022 11:56 AM
To: merri.seigler@kershaw.sc.gov
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

I submitted the attached FIOA request to KCSO on 7/22/22 and received the below email response from Alisha indicating to contact you regarding certain County public records. Can you please provide me with copies of the County call related public records falling within my FOIA Request? Would prefer electronic copies sent via email if possible.

---------- Forwarded message ---------
From: **Justin Jernigan** <jjernigan@apwlaw.us>
Date: Thu, Aug 11, 2022 at 12:24 PM
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
To: merri.seigler@kershaw.sc.gov <merri.seigler@kershaw.sc.gov>, lauren.reeder@kershaw.sc.gov <lauren.reeder@kershaw.sc.gov>

Lauren,

I'm copying you in on my below email also as your name is listed "for questions" regarding County FOI.

Thanks,

From: Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Sent: Thursday, August 11, 2022 1:30 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Fwd: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Please let me know how you'd like to proceed.

LAUREN

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Friday, August 12, 2022 8:18 AM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>; Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I am back in the office and am trying to play catch up. 2 weeks and 2 trips (Denver and Boston) and it's real easy to fall behind.

Let me look into the status of the records themselves. I know you wanted to chat about your concerns. I will do my best to give you a call today but my calendar is pretty tight. Next week it opens back up, however.

I appreciate your understanding.

As demonstrated by the email portions of record that are shown above, KCSC's Assistant County Administrator Lauren Reeder responded on August 11, 2022, by asking County Attorney Tommy Morgan, Esq. to provide instructions for proceeding with respect to the communications-related public records requested. Compl., Exs. A at 15-17 & B. KCSC's pre-suit counsel Attorney Morgan then replied on August 12, 2022, by indicating that he would, in fact, investigate and disclose the requested communications-related public records on behalf of KCSC pursuant to the legal requirements of FOIA. *Id*.

B. Plaintiff's July 24, 2023, Complaint (Counts I & II)

Plaintiff's Complaint was filed on July 24, 2023. Count I seeks declaratory and injunctive relief pursuant to FOIA, S.C. Code Ann. §§ 30-4-100(a) & (b), for requested communications (e.g., E-911 audio recordings) and other records being withheld by KCSC.

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Compl. ¶¶79-88. Count II alternatively seeks declaratory and equitable relief pursuant to the Public Records Act, S.C. Code Ann. §§ 30-1-10, *et seq*. Compl. ¶¶89-94.

C. Formal Service of Process upon KCSC on July 28, 2023

On July 28, 2023, Plaintiff's Summons, Complaint, and Exhibits A to F were formally served upon KCSC. *See* July 31, 2023, Aff. of Service (copied below, in part).

Recipient Name / Address:	Lauren Reeder, Branch: 515 Walnut St, Camden, SC 29020
Manner of Service:	Registered Agent, Jul 28, 2023, 12:55 pm EDT
Documents:	7.24.23 Ex. F, 12.19.22 Transcript.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. E, CFS2002-39001.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. D, CFS2022-39009.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. C, 8.18.22 KCSO FOIA Response.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. B, FOI Request to KCSC.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. A, July, Aug 2022 Emails.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 KCSC FOIA Summons_Compl.pdf (Received Jul 27, 2023 at 12:00am EDT)

Additional Comments:
1) Successful Attempt: Jul 28, 2023, 12:55 pm EDT at Branch: 515 Walnut St, Camden, SC 29020 received by Lauren Reeder. Ethnicity: Caucasian; Gender: Female;

D. Plaintiff's July 28, 2023, Motion for 10-Day Hearing, Injunctive/Equitable Relief, and Scheduling Order pursuant to S.C. Code Ann. § 30-40-100(a)

Plaintiff's Motion for Injunctive/Equitable Relief, with further supporting Exhibits G to I, was filed on July 28, 2023, pursuant to S.C. Code Ann. § 30-40-100(a) which states, in pertinent part:

> [T]he chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing.

There are six categories of withheld KCSC E-911/Dispatch records for which Injunctive/Equitable Relief is requested by Plaintiff in this case, and the requested injunctive relief is necessary to require KCSC to disclose undisputedly public records that have been withheld by KCSC for the past approximately one-year. The categories of unlawfully withheld records are listed in Plaintiff's July 28, 2023, Motion at pages 1-2. *See also* Compl., ¶84. The

first – and most important – public records for which Injunctive/Equitable Relief is necessary to require KCSC to disclose are:

> Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson's communications with KCSC and the Kershaw County Sheriff's Office ("KCSO") accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, hereto, ¶¶10, 21; Compl. ¶¶59, 60-61, 68-71, 75, Exs. B at 3-5 & Ex. D.

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KCSC's counsel of record in this case, David Morrison, Esq., previously *agreed* to provide the above, first listed June 29, 2022, E-911 recordings at the December 19, 2022, initial hearing in the related 782 FOIA case. *See* Compl, Ex. F at 7:6-10, Dec. 19, 2022, Hearing Tr. Specifically, regarding the still yet-to-be disclosed KCSC June 29, 2022, E-911 recordings, Mr. Morrison stated on the record that he and his associate were "going to [KCSC] central dispatch to get that additional recording, if it exists. I presume that it does, but I don't know. But we're going to Kershaw County Dispatch to get that." *Id*.

Almost eight months have now passed since the initial hearing on December 19, 2022, in the related 782 FOIA case. *Id.* KCSC is "arbitrarily and capriciously" violating FOIA by refusing to disclose what are *undisputedly and admittedly* public records. S.C. Code Ann. § 30-40-110(f). Injunctive/equitable relief requiring disclosure of these public records is necessary.

E. Follow-up August 7, 2023, Letter to Judge Newman re: Initial Hearing

On August 7, 2023, Plaintiff filed/submitted a follow-up Letter (copied below, in part) regarding the initial hearing for Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief pursuant to S.C. Code Ann. § 30-40-100(a) (*see* below, in part).

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The chief administrative judges ("CAJs") of the circuit courts were assigned to implement the accelerated track of 30-4-100(a) by, *inter alia*, scheduling an initial hearing within ten days of service of a FOIA-related summons/complaint upon the defendant(s). *See* S.C. Code Ann. § 30-4-100(a) (1976 & Supp. 2017) ("Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. …").

We do not believe a FOIA plaintiff is required to take affirmative post-filing steps – beyond service-of-process and filing proof thereof – to obtain, *inter alia*, the initial hearing within ten days of service of the FOIA-complaint upon the defendant(s). The above-referenced formal notice of motion and motion in this case is, however, respectfully submitted and directed to your Honor's attention as CAJ for the South Carolina Circuit Court of Common Pleas for the Fifth Judicial Circuit.

We respectfully request that your Honor move this FOIA-case forward in a manner consistent with S.C. Code Ann. § 30-4-100(a).

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Given that Plaintiff's Complaint was served upon KCSC on July 28, 2023, it seems that the initial ten-day hearing should have been docketed by the Clerk's Office to take place on August 7, 2023, based on S.C. Code Ann. § 30-40-100(a) and Rule 6(a), SCRCP.

F. The 11:00am August 8, 2023, Hearing and Ruling/Order Denying Plaintiff's Requested Relief for Lack of Standing under FOIA

On August 7, 2023, the initial hearing of S.C. Code Ann. § 30-40-100(a) was scheduled for 11:00am on August 8, 2023. Plaintiff's undersigned counsel and KCSC's counsel of record Mr. Morrison appeared at the August 8, 2023, 11:00am hearing on behalf of the respective Parties via WebEx.

At around 11:45am on August 8, 2023, Judge Newman announced oral rulings from the bench. The Court's bench rulings denied Plaintiff's July 28, 2023, Motion for 10-Day Hearing, Injunctive/Equitable Relief, and Scheduling Order, filed pursuant to S.C. Code Ann. § 30-40-100(a), on grounds that Plaintiff lacks statutory standing to proceed with this case under FOIA.

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Judge Newman entered a Form 4 Order at 11:59am on August 8, 2023 (*see supra*, page 1). The Form 4 Order indicates that Plaintiff's Motion is denied but also states, however, that the Order "does not end the case."

This order ☐ ends ☑ does not end the case.

If Plaintiff lacks standing to proceed with this case as the Court ruled at the hearing, then the August 8, 2023, Order would end the case unless it is reconsidered or amended. If the Court's Order did not end the case for lack of standing, the grounds for denying the Injunctive/Equitable Relief and Scheduling Order are presently unclear and unknown to Plaintiff. Plaintiff respectfully notes, albeit without the benefit of the official hearing transcript, that the Court's comments at the end of the hearing also raise questions regarding how the Court's decision is supported in view of the underlying record and the governing law.

III. ARGUMENT

As Plaintiff's counsel indicated at the hearing, and for the reasons discussed below, FOIA standing is not an issue that can reasonably be subject to dispute in the present case. Plaintiff respectfully submits, however, that the standing issue is not a "simple" issue because it does require a certain amount of statutory interpretation as well as consideration of controlling case law. For these reasons, Plaintiff's counsel previously requested an opportunity at the hearing to address and resolve the standing issue via briefing prior to the Court issuing a ruling on these grounds.

Over 40 years ago – when FOIA was originally enacted – the legislature found that its "provisions 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." S.C. Code Ann. § 30-4-15. An essential purpose of FOIA "is to protect the public from secret

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government activity," and that is why the Injunctive/Equitable Relief and Scheduling Order requested by Plaintiff's July 28, 2023, Motion is necessary. *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843, 846 (1994) (citation omitted).

Under FOIA, all "persons" are provided with the statutory "right to inspect, copy, or receive" a "public record of a public body" upon submission of a "written request for records" to the public body. S.C. Code Ann. §§ 30-4-20(b), 20(c), 30(a)(1) & 30(c). The definition of "person" broadly encompasses any "individual, corporation, partnership, firm, organization or association" without limitation. *Id.*, § 30-4-20(b).

There is not, for example, any statutorily required form that a person needs to use to submit a request for records to a public body pursuant to FOIA. All that is statutorily required by S.C. Code Ann. § 30-4-30(c) is that a "written request" be submitted to a public body by a person (i.e., any individual or entity without limitation). Therefore, the written FOIA request that is submitted to the public body could be a typed or handwritten request for records that is submitted by mail or that is submitted electronically.

The South Carolina Supreme Court has previously addressed the statutory standing requirements that are needed for a plaintiff to seek/obtain declaratory or injunctive relief as a remedy for FOIA-violations under S.C. Code Ann. § 30-40-100(a). In *Freemantle v. Preston*, the Court reversed and remanded the trial court's dismissal of the plaintiff's FOIA claim for lack of standing, holding as follows:

> The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act's requirements. S.C. Code Ann. § 30-4-100(a).…
> …
>
> The legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive

> relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims. On remand, Appellant shall be entitled to pursue his FOIA claims seeking declaratory and injunctive relief.

398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012); *see also Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) ("this Court has held that standing under FOIA does not require the information seeker to have a 'personal stake in the outcome'") (citation omitted).

As the South Carolina Supreme Court held in *Freemantle*, a FOIA-plaintiff need only plead: (*i*) citizenship/residency of the State, and (*ii*) that FOIA has been violated to establish statutory standing pursuant to S.C. Code Ann. § 30-40-100(a). 398 S.C. at 95, 728 S.E.2d at 45. The *Fremantle* Court explicitly stated that "[n]othing more is required." *Id.* Plaintiff, as a citizen/resident of South Carolina, certainly meets the statutory standing requirements in the present FOIA case. *See* Compl., ¶¶1 ("Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee"), 79-88. As a result, Plaintiff respectfully requests that the Court reconsider, alter, or amend the findings/conclusions of its August 8, 2023, Order (*see supra*, page 1). Plaintiff believes that any outstanding issues have been appropriately addressed herein.

The statutory language of S.C. Code Ann. § 30-4-100(a) requires that the CAJs of the circuit courts either (*i*) "make a final ruling at the initial hearing," or (*ii*) "establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing." Plaintiff requests that the Court provide clarification as to what is required moving forward and to place this case on track for final resolution within six months of initial filing pursuant to the requirements of S.C. Code Ann. § 30-4-100(a). Plaintiff will appropriately address any

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outstanding issues as necessary in order to move this FOIA case forward to resolution "at a minimum cost or delay" as mandated by the legislature. S.C. Code Ann. § 30-4-15.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests clarification, reconsideration, and amendment of the Court's August 8, 2023, Order pursuant to Rules 52(a), (b) & 59(e), SCRCP, the underlying record, and the governing law, including S.C. Code Ann. § 30-40-100(a).

Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 15th day of August 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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RULE 11(a), SCRCP, CERTIFICATION

Plaintiff's counsel attempted to contact KCSC's counsel Mr. Morrison twice via phone on the afternoon of Tuesday, August 8, 2023, to discuss the subject matter of the present Motion and the E-911 audio recordings Mr. Morrison again agreed to disclose again at the hearing. Undersigned counsel's phone calls/messages were not returned. Undersigned counsel certifies that he maintains a good faith belief that additional attempts to resolve this time-sensitive matter with KCSC's counsel prior filing the above-captioned Notice of Motion and Motion would serve no useful purpose.

Respectfully submitted,

By: s/Justin A. Jernigan

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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF KERSHAW	)	
Christine Jernigan,	)	C/A #: 23-CP-28-00538
Plaintiff,	)	
	)	**ANSWER ON BEHALF OF DEFENDANT KERSHAW COUNTY SOUTH CAROLINA**
v.	)	
Kershaw County South Carolina,	)	
Defendant.	)	

The Defendant, Kershaw County South Carolina, answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Summons and Complaint fail to state facts sufficient to constitute a cause of action. The Defendant reserves the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

3. As to Paragraph 1 of the Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of those claims, and therefore, denies those claims.

4. Paragraphs 2, 3, 4 and 5 are admitted.

5. As to Paragraph 6, the Defendant denies that the Plaintiff is entitled to any relief.

6. As to Paragraph 7, the Defendant does contest jurisdiction over this action.

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7. Paragraphs 8, 9, 10, 11, 12 and 13 assert legal conclusions which require no response rather than factual allegations. Kershaw County generally admits that it prepares or maintains certain records that are subject to FOIA.

8. As to Paragraphs 14 and 15, Kershaw County admits that it provides dispatch services for various responders within the County, including the Kershaw County Sheriff's Department

9. Paragraph 16 is denied. Kershaw County is not the agent of the Kershaw County Sheriff's Department.

10. As to Paragraph 17, the Defendant admits only that it generates and maintains law enforcement communications records along with other responder records.

11. Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 assert legal conclusions which require no response. Otherwise, they are denied.

12. As to Paragraph 28, the Defendant admits that there have been certain communications between the parties and that some of those communications are attached in Exhibit A to the Complaint.

13. Paragraph 29 is denied.

14. As to Paragraph 30, the Defendant admits that Exhibit B was received.

15. Paragraph 31 is denied.

16. As to Paragraph 32, the Defendant admits that the correspondence is attached as indicated and speaks for itself. The Defendant craves reference to the document itself as the best evidence of its contents.

17. As to Paragraph 33, the Defendant is aware that a similar request had been submitted to the Sheriff's Office. The Defendant denies that Plaintiff has made a FOI request.

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18. As to Paragraphs 34, 35 and 36, the Defendant craves reference to the documents themselves as the best evidence of their content and denies any allegations inconsistent with the documents. The Defendant denies that Plaintiff made a FOI request.

19. As to Paragraph 37, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of those allegations and demands strict proof thereof.

20. As to Paragraph 38, the Defendant admits, upon information and belief, that there was an encounter between the Plaintiff and the KCSO on June 29, 2022.

21. As to Paragraphs 39 and 40, the Defendant denies that Plaintiff made a FOI request.

22. As to Paragraphs 41 and 42, Kershaw County admits it never sought a hearing.

23. Paragraph 43 is denied.

24. As to Paragraph 44, the Defendant craves reference to the document itself as the best evidence of its content.

25. Paragraphs 45, 46 and 47 are denied as stated.

26. Paragraph 48 asserts a legal conclusion which the Defendant which requires no response.

27. As to Paragraph 49, the Defendant admits that the referenced document was submitted in response to Mr. Jernigan's request.

28. Paragraph 50 is admitted.

29. Paragraphs 51 and 52 are denied.

30. As to Paragraph 53, the Defendant admits that audio files and phone recordings were provided.

31. Paragraph 54 is denied.

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32. As to Paragraph 55, the Defendant admits that certain audio files involved Justin Jernigan.

33. Paragraphs 56, 57, 58 and 59 are denied.

34. As to Paragraphs 60, 61, 62 and 63, the Defendant craves reference to the document cited as the best evidence of its contents and denies any allegation inconsistent with the document.

35. Paragraphs 64 and 65 are denied.

36. As to Paragraph 66, the Defendant craves reference to the document itself as the best evidence of its contents.

37. As to Paragraph 67, the Defendant craves reference to the laws of the State of South Carolina regulating the practice of law as the best evidence of what is requested and denies anything inconsistent therewith.

38. As to Paragraph 68, the Defendant admits that after further conversations with Justin Jernigan clarifying his intentions, additional documents were produced.

39. As to Paragraphs 69 and 70, the Defendant craves reference to the document itself as the best evidence of its contents and denies any allegation inconsistent with the document.

40. Paragraph 71 is denied.

41. Paragraph 72 is denied.

42. As to Paragraph 73 and 74, the Defendant admits that after further conversations with Justin Jernigan clarifying his intentions, additional documents were produced in conjunction with the documents alleged in Paragraph 68.

43. Paragraph 75 is admitted.

44. Paragraph 76 is admitted.

45. As to Paragraphs 77 and 78, the Defendant alleges that it appropriately responded to the FOI request.

46. As to Paragraph 79, the Defendant reiterates each and every response and affirmative defense contained in this responsive pleading as if fully stated here.

47. Paragraphs 80, 81 and 82 are denied.

48. As to Paragraphs 83 and 84, the Defendant denies that Plaintiff is entitled to such a declaration.

49. Paragraph 85 is denied.

50. As Paragraph 86, the Defendant denies that Plaintiff is entitled to the relief she seeks.

51. Paragraph 87 is moot and requires no response as a hearing has already been held.

52. As to Paragraph 88, the Defendant denies that Plaintiff is entitled to the relief requested.

53. As to Paragraph 89, the Defendant reiterates each and every response and affirmative defense contained in this responsive pleading as if fully stated here.

54. Paragraph 90 states a legal conclusion which requires no response. The Defendant denies that it has violated that regulation.

55. Paragraphs 91, 92 and 93 are denied.

56. As to Paragraph 94, the Defendant denies that Plaintiff is entitled to any relief.

57. As to the prayer for relief, the Defendant denies that the Plaintiff is entitled to any relief.

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FOR A THIRD DEFENSE

58. Plaintiff's claims are barred pursuant to Rule 4(d)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

59. Plaintiff Jernigan lacks capacity to bring this action.

FOR A FIFTH DEFENSE

60. The term Plaintiff as used throughout the complaint refers to Christine Jernigan and Justin Jernigan interchangeably. The Defendant asserts that Christine Jernigan has never served a FOI request upon the County. Therefore, Christine Jernigan has no claim against the County. While the term Plaintiff has intermittently referred to either Christine Jernigan or Justin Jernigan, the Defendant does not in any way consent to Justin Jernigan, a non-resident, prosecuting this action on his own behalf as the requestor and further does not consent to Christine Jernigan, who never submitted a FOI request, prosecuting this action as a requestor.

FOR A SIXTH DEFENSE

61. Plaintiff Christine Jernigan cannot prosecute a FOI request when she never served a FOI request. The Defendant is entitled to judgment as a matter of law.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant, Kershaw County South Carolina, prays that the Complaint be dismissed with prejudice, for the costs of this action and for such other and further relief as the Court deems just and proper.

(Signature to follow on page 7)

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MORRISON LAW FIRM, LLC

By: *s/ David L. Morrison*
David L. Morrison (Bar #4101)
Cameron W. DeBoy (Bar #104863)
7453 Irmo Drive, Suite B
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E-mail: cameron@dmorrison-law.com

Attorney for Defendant

Columbia, South Carolina

August 28, 2023

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Christine Jernigan, Plaintiff, v. Kershaw County, South Carolina, Defendant.	**CASE NO. 2023-CP-28-00538** **MEMORANDUM IN SUPPORT OF MOTION FOR CLARIFICATION AND RECONSIDERATION**

TO: DAVID MORRISON, ESQ., ATTORNEY OF RECORD FOR KERSHAW COUNTY, SOUTH CAROLINA ("KCSC")

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

This 11th day of September 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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APPENDIX OF EXHIBITS

Plaintiff's July 24, 2023, Complaint

Ex. A: Pre-suit email correspondence between undersigned counsel, KCSO, KCSC, and both KCSO and KCSC's pre-suit counsel from late July 2022 to late August 2022

Ex. B: Plaintiff's FOIA Request submitted to KCSC on August 11, 2022

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Ex. D: November 17, 2022, CFS2022-39009, disclosed by KCSO on December 2, 2022

Ex. E: November 17, 2022, CFS2022-39001, disclosed by KCSO on December 2, 2022

Ex. F: December 19, 2022, Hearing Transcript before Judge Jocelyn Newman, in *Christine Jernigan, et al. v. KCSO*, 2022-CP-28-00782 (filed Sept. 12, 2022) ("782 case")

Plaintiff's July 28, 2023, Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order

Ex. G: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret'd, in *Christine Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) ("967 case")

Ex. H: July 28, 2023, Affidavit of Plaintiff's Undersigned Counsel Justin A. Jernigan, Esq.

Ex. I: Feb. 23, 2023, Affidavit of Plaintiff Christine Jernigan in the 967 case

Plaintiff's September 11, 2023, Memorandum in Support of Motion for Clarification and Reconsideration

Ex. J: August 18, 2023, Hearing Transcript in the Above-Captioned Case

Ex. K: KCSC's September 20, 2022, FOIA Response

Ex. L: Plaintiff's September 22, 2022, Email Reply to KCSC's Sept. 20, 2022, FOIA Response

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Plaintiff Christine Jernigan ("Mrs. Jernigan" or "Plaintiff") respectfully submits this Memorandum in Support of Plaintiff's August 15, 2023, Motion for Clarification and Reconsideration. For the reasons set forth (*i*) herein below, (*ii*) at the August 8, 2023, initial hearing (Ex. J, hereto), (*iii*) in Plaintiff's Motion, and (*iv*) in Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief and Scheduling Order (the "Underlying Motion"), Plaintiff respectfully submits that she has demonstrated (at least) a *prima facie* showing of likelihood of success on the merits to the requested relief.[1]

I. INTRODUCTION

A. The Long-Promised June 29, 2022, E-911/Dispatch Recordings Have ***Still*** Not Been Disclosed

At the August 8, 2023, hearing, KCSC's counsel of record David Morrison, Esq. ("Mr. Morrison") duped Plaintiff and the Honorable Jocelyn C. Newman – Chief Administrative Judge ("CAJ") of the Fifth Judicial Circuit Court of Common Pleas – once again with respect to the long-promised disclosure of the June 29, 2022, E-911 recording public records.

> MR. MORRISION: I'll try to get it done this week and go to Kershaw County and see if there are any audio recordings and if there are I will send them to him. *Maybe that will resolve this. I don't know.*

Ex. J hereto, Aug. 8, 2023, Hearing Tr. ("Ex. J") at 16:25 to 17:3 (emphasis added).

> THE COURT: Mr. Morrison *is going to get you those recordings*, those 911 recordings *as he said he would*.

Id. at 23:21-22 (emphasis added).

> MR. MORRISON: I will go get – *I'll report to Justin by the end of the week as to my progress*.

[1] Plaintiff respectfully requests that Defendant KCSC cure the misstatements of law and fact made at the initial hearing on August 8, 2023, and in its August 28, 2023, Answer. *See* Rule 3.3, RPC, Rule 407; Rule 11(a), SCRCP; and S.C. Code Ann. § 15-36-10.

Id. at 24:1-2 (emphasis added).[2]

As described in Plaintiff's Rule 11(a), SCRCP, Certification for the August 15, 2023, Motion, Mr. Morrison never returned undersigned counsel's phone calls after the August 8, 2023, initial hearing.

> Plaintiff's counsel attempted to contact KCSC's counsel Mr. Morrison twice via phone on the afternoon of Tuesday, August 8, 2023, to discuss the subject matter of the present Motion [for Clarification and Reconsideration] and the E-911 audio recordings Mr. Morrison again agreed to disclose again at the hearing. Undersigned counsel's phone calls/messages were not returned.

Moreover, the above-quoted comments by Mr. Morrison at the August 8, 2023, hearing – "Maybe that will resolve this. I don't know." – are the height of absurdity. Almost one year ago KCSC's pre-suit counsel County Attorney Tommy Morgan, Esq. ("Attorney Morgan") *rejected* Plaintiff's good faith proposal to extend the FOIA-disclosure deadlines for all other requested records if KCSC would simply provide the *still* yet-to-be-disclosed June 29, 2022, third-party E-911/Dispatch Recordings. *See infra* at 15 (citing Ex. A at 23).

B. Controlling Case Law Opposing KCSC's Primary Argument was not Presented to the Court at the August 8, 2023, Hearing

KCSC's primary argument at the August 8, 2023, hearing – i.e., that Plaintiff Mrs. Jernigan purportedly cannot proceed with this case because she was not specifically listed as "*requester*" on the August 2022 FOIA Requests (Ex. B & Ex. A at 22) – is foreclosed by controlling precedent.[3] Pl.'s Motion at 8-11. The South Carolina Supreme Court has previously addressed the minimal statutory standing requirements for FOIA-plaintiffs as follows:

---

[2] S*ee also* Ex. F, Dec. 19, 2022, Hearing Tr., *Christine Jernigan, et al. v. KCSO*, 2002-CP-28-00782 (filed Sept. 12, 2022) ("782 case"), at 7:6-10 (Mr. Morrison initially stated almost eight months ago that he "going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don't know. But we're going to Kershaw County Dispatch to get that").

[3] *See* Ex. J at 13:24-25 (Mr. Morrison: "[T]he requester is Justin Jernigan. Justin Jernigan is a resident of North Carolina); 14:3-4 (same); 16:11-13 (same).

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> The traditional concepts of constitutional standing are *inapplicable* when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act's requirements. S.C. Code Ann. § 30-4-100(a).
> …
>
> The legislature has specifically conferred standing upon *any* citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. *Nothing more is required*. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims. On remand, Appellant shall be entitled to pursue his FOIA claims seeking declaratory and injunctive relief.

Freemantle v. Preston, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012) (emphasis added).

KCSC's lack-of-FOIA-*requester*-standing argument at the August 8, 2023, hearing was unexpected and came out of the blue given that the issue was never the subject of dispute in the related 782 FOIA case. Plaintiff therefore requested leave to brief the purported lack-of-FOIA-standing issue prior to the Court's decision.[4]

C. KCSC Made False Representations with Respect to the Secondary Grounds Announced by the Court at the August 8, 2023, Hearing

The Court noted certain secondary grounds for denying the injunctive/equitable relief and scheduling order of Plaintiff's Underlying Motion. Specifically, the Court stated: "The secondary matter is that you're making a request, a FOIA request, [] to the Sheriff's Department and not to [KCSC] which is a separate entity." Ex. J at 20:11-13.

> I will put on the record that I'd like a secondary matter -- well, I think I've already said it, requesting documents of the Sheriff's Department, documents reporting, et cetera. There are some things that must be gotten from the Sheriff's Department which is a separate entity [from] the Sheriff as a constitutional officer. All of the things that Mr. Morrison indicated earlier.

Ex. J at 23:14-21.

[4] *See* Ex. J. at 15:19-20 (Mr. Jernigan: "I'm not sure if [KCSC's counsel is] asking [the Court] to dismiss the case"); 19:25 ("[I]f this is an issue that the Court wants to rule on, I would like to be able to brief the issue").

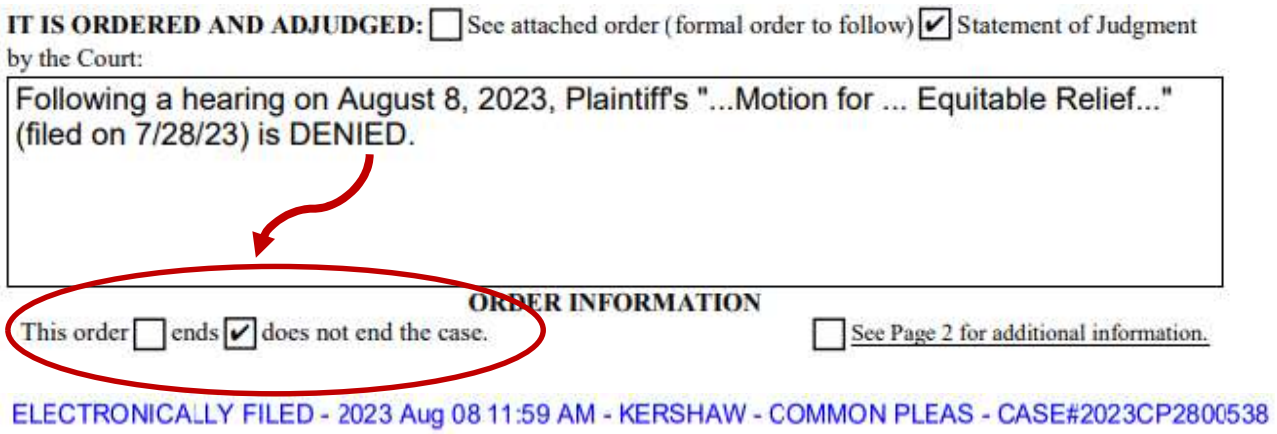
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The Court did not realize that the things that Mr. Morrison had indicated earlier regarding the FOIA Requests supposedly being submitted to the "wrong entity" were misrepresentations. *See* Ex. J at 8:18 to 10:9. Mr. Morrison was aware of the underlying record at the initial hearing because he is also counsel of record in the related 782 FOIA case involving KCSO that has been pending since September 12, 2022.

Even so, Mr. Morrison deceived the Court by asserting that the FOIA Requests were *not properly submitted to and received by* Defendant KCSC. Ex. J at 9:10-11 (Mr. Morrison: "can't base count one for relief against Kershaw County on a … freedom of information request to the Sheriff's Department"). A cursory review of the actual record in this case reveals that KCSC's "submitted to the wrong entity" representations to the Court at the hearing were false. Exs. A at 15-17, 22, B & C at 2; Exs. K & L, hereto. KCSC's purported submitted to the "wrong entity" representations at the hearing are also proven false by admissions contained in KCSC's August 28, 2023, Answer at Paragraph 14 ("As to Paragraph 30, the Defendant admits that Exhibit B was received").

D. The Court's August 8, 2023, Form 4 Order Implicitly Rejected the Primary Grounds Announced at the Hearing

The Court's Form 4 Order indicates only that Plaintiff's Underlying Motion is "denied." The August 8, 2023, Form 4 Order also states, however, that the Court's denial of the injunctive/equitable relief and scheduling order of the Underlying Motion "does not end the case."



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

Following a hearing on August 8, 2023, Plaintiff's "...Motion for ... Equitable Relief..." (filed on 7/28/23) is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

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Given that the Court's August 8, 2023, 11:59am Form 4 Order "does not end the case," the Court implicitly rejected the primary lack-of-FOIA-*requester* standing grounds asserted by KCSC at the hearing.

Pursuant to the expedited resolution provision of S.C. Code Ann. § 30-4-100(a) (1978, Supp. 2017), (*i*) all FOIA violations "must be considered to be an irreparable injury for which no adequate remedy at law exists" by the hearing court; and (*ii*) if the hearing court is unable to "make a final ruling at the initial hearing," the hearing court "shall establish a scheduling order to conclude actions brought pursuant to this chapter [i.e., FOIA] within six months of initial filing." Plaintiff respectfully submits that the August 8, 2023, written Order's "does not end the case" denial of the requested scheduling order of Plaintiff's July 28, 2023, Underlying Motion is inconsistent with the statutory requirement that the hearing court, if unable to make a final ruling at the initial hearing, "*shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing." S.C. Code Ann. § 30-4-100(a) (emphasis added).

E. Required Legal Standards Were Not Applied to Decide Plaintiff's July 28, 2023, Underlying Motion

The South Carolina Supreme Court has explained that the "use of mandatory language is unambiguous" where the duty is specified using terms such as "must" and "shall." *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) ("Under the rules of

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statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement.") (citation omitted). This is true even when a public official possesses broad discretionary powers. *Id.*, 422 S.C. at 308-09, 811 S.E.2d at 767.

In this case, (*i*) all FOIA violations must be considered to be an irreparable injury for which no adequate remedy at law exists by the hearing court; (*ii*) if the hearing court is unable to make a final ruling at the initial hearing, the hearing court shall establish a scheduling order to conclude actions brought pursuant to FOIA within six months of initial filing; and (*iii*) for all orders granting or refusing interlocutory injunctive/equitable relief, the trial court shall set forth the findings of fact and conclusions of law which constitute the grounds of its action. *See* S.C. Code Ann. § 30-40-100(a) & Rule 52(a), SCRCP. Amended findings are needed to account for the governing law applicable to the interlocutory injunctive/equitable relief and scheduling order of the Underlying Motion.

II. LEGAL STANDARDS

A. The Interlocutory Injunctive/Equitable Relief of the Underlying Motion

Typically, a party seeking interlocutory injunctive/equitable relief is required to make a *prima facie* showing of: (*i*) irreparable harm, (*ii*) likelihood of success on the merits, and (*iii*) the absence of an adequate remedy at law. *Rawlinson Road Homeowners Association, Inc., vs. Jackson*, 395 S.C. 25, 35 (Ct. App. 2011). The legislature, however, has mandated that all FOIA violations must be considered "an irreparable injury for which no adequate remedy at law exists" by the hearing court. S.C. Code § 30-4-100(a) (1978, Supp. 2017). Accordingly, a party seeking interlocutory injunctive/equitable relief for FOIA violations need only show a likelihood of success to obtain the requested injunction.

The "likelihood of success" element does not require a party to "prove an absolute right" to the relief; rather, the party seeking injunctive/equitable relief "need only present a fair question to raise as to the existence of such a right." *Peek v. Spartanburg Reg'l Healthcare Sys*., 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005) (citation omitted). If the requesting party makes a "*prima facie* showing" with respect to the injunctive/equitable relief requested, the trial court should issue the injunction. *Id*.

B. Rule 52(a), SCRCP – Findings of Fact and Conclusions of Law for Injunctive/Equitable Relief

For all orders "granting or refusing interlocutory injunctions," the trial court "shall set forth the findings of fact and conclusions of law which constitute the grounds of its action." Rule 52(a), SCRCP.

C. Rules 52(b) and 59(e), SCRCP – Reconsider, Alter, and/or Amend Findings

Rules 52(b) and 59(e), SCRCP, are appropriate means for a party to request that the trial court issue rulings on matters raised but not explicitly ruled upon. *See Talley v. South Carolina Higher Educ. Tuition Grants Comm'n*, 289 S.C. 483, 347 S.E.2d 99, 101 (1986) (holding that issues not raised to and/or ruled upon by the trial court are not preserved for appellate review).

Rules 52(b) and 59(e), SCRCP, are also appropriate vehicles for a party to request that the trial court reconsider, alter, and/or amend the grounds supporting the court's action. "Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and [that] a second motion is not required if the trial court does not specifically rule on the issue so raised." *Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56 (Ct. App. 1999) (citation omitted).

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D. Rule 54(b), SCRCP – Revision of Interlocutory Orders Prior to Final Judgment

Rule 54(b), SCRCP, states that "any order or other form of decision, however designated, which adjudicates fewer than all the claims … is subject to revision at any time before the entry of judgment adjudicating all the claims." The South Carolina appellate courts do not appear to have explicitly interpreted and/or applied Rule 54(b), SCRCP. The Fourth Circuit has held, with respect to Federal Rule of Civil Procedure 54(b), that "a district court retains the power to reconsider and modify its interlocutory judgments … at any time prior to final judgment when such is warranted." *American Canoe Ass'n v. Murphy Farms, Inc*., 326 F.3d 505, 515 (4th Cir. 2003). Accordingly, the power to reconsider and modify interlocutory orders prior to the entry of final judgment is believed to be a matter that is committed to the sound discretion of the trial court.

E. The South Carolina Freedom of Information Act ("FIOA")

Pursuant to FOIA, all "persons" have the statutory "right to inspect, copy, or receive" a "public record of a public body" upon submission of a "written request for records" to the public body. S.C. Code Ann. §§ 30-4-20(b), 20(c), 30(a)(1) & 30(c). FOIA's definition of "person" broadly encompasses any "individual, corporation, partnership, firm, organization or association" without limitation. *Id.*, § 30-4-20(b).

Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), a public body is required – within ten (10) business days for public records less than two years old or within twenty (20) business days for public records greater than two years old – to notify the "person" making the request in writing regarding the public body's determination, reasoning, and final opinion regarding the public availability of each public record requested. If the public body does not provide the required written determination as to the public availability of each public record requested, the

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FOIA request must be considered approved as to all nonexempt public records/information. *Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687, 688-89 (2014) (holding that the DOR's "equivocal and evasive" FOIA response was "manifestly at odds with the clarity mandated by" S.C. Code Ann. § 30-4-30(c)). FOIA imposes "an *affirmative duty* on the part of public bodies to disclose information." *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991) (emphasis added).

F. Rule 8(b), (c) & (d), SCRCP – Responsive Pleading Requirements

KCSC's August 28, 2023, Answer is subject to the responsive pleading requirements of Rule 8(b), (c) & (d), SCRCP (emphasis added):

> **(b) Defenses; Form of Denials.** A party shall state in short and plain terms the *facts* constituting his defenses to each cause of action asserted and *shall admit or deny* the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials *shall fairly meet the substance of the averments denied*. When a pleader intends in good faith to deny only a part or a qualification of an averment, he *shall specify so much of it as is true* and material and *shall deny only the remainder*.
>
> **(c) Affirmative Defenses; Reply.** In pleading to a preceding pleading, a party shall set forth affirmatively the [listed] defenses: … and any other matter constituting an avoidance or affirmative defense. …
>
> **(d) Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, *are admitted when not denied* in the responsive pleading.

The Official Note to Rule 8(b), SCRCP (emphasis added), explains that "every allegation must be *specifically* admitted or denied. Failure to deny constitutes admission." The Official Note to Rule 8(c), SCRCP (emphasis added) explains that one aim of the SCRCP responsive pleading requirements is to avoid "'surprise' defenses" and to "*require* the defendant also to stick to '*fact*' pleading."

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A party "may not deny sufficient information or knowledge with impunity, but is subject to the requirements of honesty in pleading. An averment will be deemed admitted when the matter is obviously one as to which a defendant has knowledge or information. Moreover, a party may be held to the duty to exert reasonable effort to obtain knowledge of a fact." *Djourabchi v. Self*, 240 F.R.D. 5, 12 (D.D.C. 2006) (quoting *David v. Crompton & Knowles Corp*., 58 F.R.D. 444, 446 (E.D. Pa. 1973)).[5]

III. DISCUSSION

A. The Initial FOIA Request (Ex. B) was First Submitted to KCSO on July 22, 2022

The initial written FOIA Request attached to the Complaint as Exhibit B was first submitted to the Kershaw County Sheriff's Office ("KCSO") on July 22, 2022. Ex. A at 17-18. On July 25, 2022, KCSO's Records Department responded in writing by stating that undersigned counsel must contact "*our* central dispatch" to obtain the requested communications records relevant to the events of late June 2022. Ex. A at 17 (emphasis added, copied below). Moreover, KCSO's Records Department asserted in its July 25, 2022, FOIA Response that the communications-related records were the "*only* records of this incident in *our* system." *Id.*

> After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

[5] It is well established that case law interpreting the Federal Rules of Civil Procedure may be considered persuasive authority by the South Carolina courts when applying related language of the SCRCP. *See*, *e.g.*, *Unisun v. Hawkins*, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000) ("where the state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive") (citation omitted).

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The South Carolina Revenue and Fiscal Affairs Office ("RFA") website includes a 2019 Report classifying KCSC as one of sixteen (16) E-911 Organizations in the State that operate under the umbrella of their County Administrator or Manager.[6] The RFA also indicates that there are 15 total E-911 Organizations in the State that operate under the umbrella of either the Chief of Police or County Sheriff's Department. *Id.* Indeed, the RFA indicates that four neighboring, KCSC-adjacent Counties – Richland, Fairfield, Chesterfield, and Lee – operate their E-911/Dispatch Programs under the umbrella of their respective County Sheriff's Department. *Id.* Plaintiff's lack of certainty in and around July/August 2022 as to the E-911/Dispatch arrangement between and amongst KCSO and KCSC was reasonable and understandable under the circumstances.

B. The Initial FOIA Request (Ex. B) was Submitted to Defendant KCSC at Least as Early as August 11, 2022

The initial FOIA Request attached to the Complaint as Exhibit B was submitted to KCSC at least as early as August 11, 2022. Compl. ¶30, Ex. A at 15-17. Relevant email correspondence – dating from August 11 to 12, 2022 – is of record in this case. Ex. A at 15-17.

The initial FOIA Request seeks, *inter alia*, "audio recordings" of any type relating to the events of June 28-29, 2022, described therein, the dispatch operators personally involved, and the officers personally involved. Ex. B at 4-5. In addition, the initial FOIA Request seeks personnel/training records for "all Department employees having any personal involvement regarding the above-described incidents that occurred" on and around June 29, 2022. Ex. B at 4. As noted above, the initial FOIA Request (Ex. B) included a few readily apparent, good faith errors by indicating that the "Dispatch Operator[s]" personally involved were believed to be

[6] *See* RFA Website ("Other Resources" heading), Oct. 4, 2019, Review of 2019 Act 60 (NG 9-1-1) at page 3, https://rfa.sc.gov/programs-services/state-9-1-1-program (last accessed Sept. 11, 2023).

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KCSO (i.e., "Department") employees. *See* Ex. B at 3 ("the Department (Dispatch Operator)"), 4 ("Department dispatch line"), and 5 ("Department employees").

The South Carolina Criminal Justice Academy ("SCCJA") has training and certification requirements for both law enforcement and E-911/Dispatch employees pursuant to Chapter 37 of the South Carolina Code of Regulations. S.C. Code Regs. 37-001 to 074. The SCCJA also receives and adjudicates misconduct allegations against both law enforcement and E-911/Dispatch telecommunications employees. S.C. Code Regs. 37-100 to 112. Law enforcement and E-911/Dispatch are related fields that possess certain overlapping training/certification requirements. *Id.*

C. Defendant KCSC's August 18, 2022, FOIA Response (Ex. C at 2) Did Not Comply with the Legal Requirements of FOIA, S.C. Code Ann. § 30-4-30(c))

KCSC provided its only response to Plaintiff's initial FOIA Request (Ex. B) on August 18, 2022. Exs. H at ¶11, C at 2. County Attorney Morgan's August 18, 2022, FOIA Response on behalf of KCSC stated in full as follows:

> I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith *all* documents not subject to exemption under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* as well as a CD containing *the audio*. If you have any other questions or concerns, do not hesitate to contact me.

Ex. C at 2 (emphasis added).

County Attorney Morgan also indicated on August 18, 2022, that KCSC (and KCSO) unilaterally considered the initial FOIA Request (Ex. B) to be "completed" and were "closing" the matter. Ex. A at 27.

KCSC's August 18, 2022, FOIA Response did not address the public availability of, or explain how any FOIA exemptions could potentially apply to, any of the specific records of the

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initial FOIA Request as required pursuant to S.C. Code Ann. § 30-4-30(c). *See* Exs. B at 3-5 & C at 2; *Pope*, 431 S.E.2d at 448, 427 S.C. at 388 (holding that a public body "must show the applicability of a specific FOIA exemption to each requested public record"). It is unclear what records of the initial FOIA Request (Ex. B) were available, not available, and/or withheld as exempt based upon KCSC's bare assertion "[p]lease find enclosed herewith *all* documents not subject to exemption." Ex. C at 2 (emphasis added); *see Sloan*, 409 S.C. 551, 762 S.E.2d at 688-89 (holding that the DOR's equivocal and evasive FOIA responses were efforts designed to delay "final determination as to the public availability of the requested documents," best characterized as "'we will get to it when we get to it,' which is manifestly at odds with the clarity mandated by section 30-4-30(c)").

D. Unrebutted Evidence of Record Establishes that KCSC's August 18, 2022, FOIA Production was Incomplete and Surreptitiously Redacted

On August 18, 2022, KCSC disclosed one responsive public document – CFS2022-39001 (Ex. C at 4-5) – which indicates that it was printed on August 18, 2022. Ex. H, ¶11. KCSC's August 18, 2022, CFS2022-39001 document, however, omitted all information concerning the respective KCSC dispatch operators that were personally involved with the communications documented therein as demonstrated by the Ex. E, November 17, 2022, CFS2022-39001 document that was subsequently produced by KCSO on December 2, 2022, in the related 782 FOIA case. *Compare* Ex. C at 5 *with* Ex. E at 2.

On August 18, 2022, KCSC also disclosed a CD optical disc that contains a total of twelve individual audio recording files (Audio File Nos. 0 to 11) of phone calls concerning or involving undersigned counsel. Ex. H, ¶¶11-20; Ex. C at 3-5. The first four audio recording files (Audio File Nos. 0 to 3) are redacted portions of the phone call by KCSO Officer #15 Courtney Cochran to KCSC Dispatch Operator Tina Hand beginning around 9:44am on the

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morning of June 29, 2022, and ending between 9:46am and 9:47am. Ex. H, ¶¶13-17 (demonstrating that "21 seconds were surreptitiously omitted"); Exs. C at 3-5 & E. The subject matter of Audio File Nos. 0 to 3 involves undersigned counsel's June 28, 2022, phone messages left with KCSO officers reporting criminal/felony exploitation of a vulnerable adult pursuant to the South Carolina Omnibus Adult Protection Act ("OAPA"). S.C. Code Ann. §§ 43-35-5, *et seq*.

Audio Files Nos. 4 to 11 are incomplete audio recordings of undersigned counsel's phone communications with KCSC dispatch operators, and one of the two KCSO officers with whom undersigned counsel communicated, respectively, via phone on June 29, 2022. Ex. H, ¶¶18-20; Exs. C at 4-5 & E. Specifically, Audio File Nos. 4 to 11 are certain of undersigned counsel's phone communications with KCSC and KCSO employees on the afternoon and evening of June 29, 2022, unsuccessfully attempting to obtain public records documenting the incidents of that morning. Ex. H, ¶¶18-20; Exs. C at 4-5 & E. Portions of undersigned counsel's communications with KCSO officers on June 29, 2022, were omitted, redacted, and/or removed from the August 18, 2022, Audio Files disclosed by KCSC. *Id*.

KCSC's FOIA disclosures on August 18, 2022, unlawfully withheld <u>*all*</u> records and recordings of the third-party E-911/Dispatch call(s) on the morning of June 29, 2022, accusing Plaintiff Mrs. Jernigan and undersigned counsel of improper or unlawful conduct. Ex. A at 22-24 & Ex. B at 3-5. KCSC's FOIA disclosures on August 18, 2022, also unlawfully withheld all audio recordings of any type relating to the dispatch operators personally involved and the officers personally involved during the June 29, 2022, incidents. As demonstrated by the Ex. D, November 17, 2022, CFS2022-39009 document that was subsequently produced by KCSO on December 2, 2022, in the related 782 FOIA case, there are numerous E-911/Dispatch

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communications documented therein for which no audio recordings have ever been disclosed by KCSC.

E. Two Good Faith Proposals Seeking to Fully Resolve the FOIA Matters Amicably on Reasonable Terms in late August 2022 were Rejected/Ignored by KCSC

In late August 2022, near the expiration of Section 30-4-30(c)'s disclosure deadline, undersigned counsel believed that KCSC (and KCSO) would prefer to resolve the FOIA-related matters amicably on reasonable terms (e.g., to avoid wasting taxpayer and judicial resources). On August 23, 2022, undersigned counsel offered, as a mutually beneficial solution, to extend the applicable 30-day disclosure deadline of Section 30-4-30(c) if KCSC (or KCSO) would simply provide the third-party citizen E-911 call records/recordings that triggered KCSO's June 29, 2022, police-actions as soon as possible. Ex. A. at 23. Otherwise, undersigned counsel proposed that KCSC's pre-suit counsel County Attorney Morgan keep Plaintiff "in the loop" moving forward regarding when the additional records of the initial FOIA Request (Ex. B), including the requested personnel/training records for the employees involved, would thereafter be disclosed. Ex. A at 23-24.

Surprisingly, rather than making any effort to avoid wasting time and resources litigating the FOIA-matters, pre-suit counsel County Attorney Morgan rejected Plaintiff's August 23, 2022, settlement proposal that same night at 9:00pm. Ex. A at 22-23. County Attorney Morgan also suggested that undersigned counsel could have contacted his client directly (e.g., KCSC E-911/Dispatch Department Director Patricia Crawford) despite that fact that Attorney Morgan was representing KCSC as its assigned legal counsel on these matters. Ex. A at 23 ("I had previously provided you with her direct address"); *but see* Rule 4.2 ("Communication with Persons Represented by Counsel"), RPC, Rule 407, SCACR.

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Thereafter, on August 24, 2022, undersigned counsel offered to personally inspect and make copies of the public records of the initial FOIA Request (Ex. B) in order to fully resolve the FOIA matters. Ex. A at 21. KCSC's pre-suit counsel County Attorney Morgan never responded to undersigned counsel's August 24, 2022, request seeking to personally inspect and make copies of the public records of the initial FOIA Request (Ex. B).

F. The August 24, 2022, Follow-up FOIA Request to KCSC (Ex. A at 22)

The two-paragraph August 24, 2022, follow-up FOIA Request (Ex. A at 22) to KCSC seeks:

> All public records, including but not limited to, contracts or other documents concerning, explaining, etc. the relationship between KC and KC County Attorney Tommy Morgan. …
>
> All public records concerning training, certifications, etc., with respect to the employees, contractors, or contract employees, etc., involved in the incidents in or around late June 2022 (*see* attached 7.22.22 FIOA request), or becoming involved in any way thereafter, that relate to KCSO/law enforcement's authority to take police action in civil matters, in matters involving power of attorney (POA) documents, and/or to give legal opinions on civil matters or anything concerning POA documents. This request also includes any applicable training, certifications, etc., with respect to the before mentioned individuals and the Resident's Bill of Rights (SC Code §§ 44-81-20, *et seq*.), the Protection of Persons Under Disability (SC Code §§ 62-5-101, *et seq*.), related regulations, and related Federal statutes/regulations.

G. KCSC's September 20, 2022, FOIA Response (Ex. K, hereto) Did Not Comply With the Legal Requirements of FOIA, S.C. Code Ann. § 30-4-30(c))

KCSC's pre-suit counsel County Attorney Morgan provided a FOIA Response to the two-paragraph August 24, 2022, follow-up FOIA Request (Ex. A at 22) on September 20, 2022. Ex. K, hereto. KCSC's September 20, 2022, FOIA Response asserted that no documents existed regarding County Attorney Morgan's employment by KCSC that were not "subject to exemption" or "covered under the attorney-client privilege." Ex. K. As to the second paragraph, KCSC stated that "all documents not subject to exemption will be provided once the records are

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available." *But see Sloan*, 409 S.C. 551, 762 S.E.2d at 688-89 (holding that the DOR's equivocal and evasive FOIA responses were best characterized as "'we will get to it when we get to it,' which is manifestly at odds with the clarity mandated by section 30-4-30(c)").

On September 22, 2023, undersigned counsel responded to KCSC's September 20, 2022, FOIA Response by describing the reasons why the FOIA Response failed to comply with Section 30-4-30(c), and requesting that KCSC provide an updated response. Ex. L, hereto. KCSC never responded to, or attempted to address, any of the noted deficiencies of its September 20, 2022, FOIA Response. *Id.*

IV. ARGUMENT

A. KCSC Does Not Have a Reasonable, Good Faith Basis to Deny (at least) the Averments of Paragraphs 1, 29, and 65 of the Complaint

KCSC has tried to incorporate lack-of-FOIA-standing arguments into the responses of its August 28, 2023, Answer. Plaintiff's Complaint at Paragraph 1 avers, and KCSC's Answer at Paragraphs 3 responds, as follows (emphasis added):

> 1. Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee.
>
> 3. As to Paragraph 1 of the Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of those claims, and therefore, *denies* those claims.

KCSC cannot honestly claim to lack knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 1 concerning Plaintiff Mrs. Jernigan's status as a citizen and resident of South Carolina. The initial FOIA Request submitted to KCSC on August 11, 2022, lists Plaintiff Mrs. Jernigan's home address in Seneca, South Carolina. Exs. B at 3 & A at 15-17. Plaintiff Mrs. Jernigan's February 3, 2023, Affidavit, which is of record in this case (Ex. I, ¶1), affirms that Plaintiff Mrs. Jernigan is a citizen residing in Seneca, South Carolina.

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By exerting minimal efforts, KCSC can look up and confirm Plaintiff Mrs. Jernigan's current address, which has been the same for over the past twenty-five (25) years. *See Djourabchi*, 240 F.R.D. at 12 ("a party may be held to the duty to exert reasonable effort to obtain knowledge of a fact") (citation omitted).

Paragraphs 29, 30, and 65 of Plaintiff's Complaint avers, and KCSC's Answer at Paragraphs 13, 14, and 35 responds, as follows (emphasis added):

> 29. On August 11, 2022, undersigned counsel, as a person under FOIA and as an attorney on behalf of Plaintiff Mrs. Jernigan, submitted a written FOIA Request (Ex. B, hereto) to KCSC. Ex. A at 15-17.
>
> 13. Paragraph 29 is *denied*.
>
> 30. Specifically, on August 11, 2022, Plaintiff's FOIA Request (Ex. B) was submitted to KCSC's Clerk to Counsel Merri Seigler and also to Assistant County Administrator Lauren Reeder ("Mrs. Reeder"). Ex. A at 15-17.
>
> 14. As to Paragraph 30, the Defendant admits that Exhibit B was received.
>
> 65. Undersigned counsel, individually and as an attorney for Plaintiff, submitted a follow up FOIA Request to KCSC via email on August 24, 2022. Ex. A at 22.
>
> 35. Paragraphs 64 and 65 are *denied*.

KCSC does not have a reasonable, good faith basis to deny the above-quoted averments of Plaintiff's Complaint at Paragraphs 29 and 65 concerning undersigned counsel's submission of the respective initial and follow up FOIA Requests to KCSC in August 2022 "as a person under FOIA" and as an "individual." KCSC must admit that undersigned counsel submitted the initial and follow up written FOIA Requests to KCSC as a "person" and "individual" pursuant FOIA. S.C. Code Ann. § 30-4-20(b) (defining a "person" to include "any individual" without limitation). Moreover, it is unreasonable for KCSC to deny that undersigned counsel "submitted" the initial written FOIA Request (Ex. B) to KCSC while simultaneously also

admitting that KCSC nevertheless "received" the initial FOIA Request. *Compare* Answer ¶13 *with* ¶14.

B. The Six Asserted Defenses of KCSC's August 28, 2023, Answer are Inconsequential

1. KCSC's Second Defense is a Purported General Denial

Paragraph 2 of KCSC's August 28, 2023, Answer alleges as follows:

> **FOR A SECOND DEFENSE**
>
> 2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

KCSC's general denial at Paragraph 2 of its Answer is not a legally valid defense. The averments of Plaintiff's Complaint must be deemed admitted pursuant to Rule 8(b) & (d), SCRCP, unless KCSC fairly meets and specifically denies the respective averments that are relied upon by Plaintiff's Complaint in its Answer.

2. KCSC's Alleged Fourth, Fifth, and Sixth Defenses are Foreclosed by Controlling Precedent

KCSC's August 28, 2023, Answer asserts Fourth (¶59) Fifth (¶60), and Sixth (¶61) Defenses as follows (emphasis added).

> **FOR A FOURTH DEFENSE**
>
> 59. Plaintiff Jernigan *lacks capacity* to bring this action.
>
> **FOR A FIFTH DEFENSE**
>
> 60. The term Plaintiff as used throughout the complaint refers to Christine Jernigan and Justin Jernigan interchangeably. The Defendant asserts that Christine Jernigan has *never served a FOI request* upon the County. Therefore, Christine Jernigan has no claim against the County. While the term Plaintiff has intermittently referred to either Christine Jernigan or Justin Jernigan, the Defendant does not in any way consent to Justin Jernigan, a non-resident, prosecuting this action on his own behalf *as the requestor* and further does not consent to Christine Jernigan, who *never submitted a FOI request*, prosecuting this action *as a requestor*.

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FOR A SIXTH DEFENSE

61. Plaintiff Christine Jernigan cannot prosecute a FOI request when she never *served a FOI request*. The Defendant is entitled to judgment as a matter of law.

As discussed *supra* at 18-19, it is unreasonable for KCSC to deny that undersigned counsel is a "person" (i.e., "any individual") as defined by FOIA at S.C. Code Ann. § 30-4-20(b). KCSC's asserted Fourth (¶59), Fifth (¶60), and Sixth (¶61) Defenses of its August 28, 2023, Answer are additional attempts by KCSC to assert lack-of-FOIA-*requester*-standing defenses that are contrary to the governing law and controlling precedent. S.C. Code Ann. § 30-40-100(a) ("A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both"); S.C. Code Ann. § 30-4-15 ("provisions of this chapter [i.e., FOIA] must be construed … 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"); *Freemantle*, 398 S.C. 186 at 194-95, 728 S.E.2d at 44-45 (holding that the plaintiff "pled that he is a citizen of the State and that FOIA has been violated" and "[n]othing more is required" to establish standing); Compl., ¶1 ("Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee"), ¶¶79-88 (Count I – FOIA Violations).

3. KCSC's First and Third Defenses Fail to Provide any Notice or Supporting Facts

Paragraphs 1 and 57 of KCSC's August 28, 2023, Answer assert:

FOR A FIRST DEFENSE

1. The Summons and Complaint fail to state facts sufficient to constitute a cause of action. The Defendant reserves the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

58. Plaintiff's claims are barred pursuant to Rule 4(d)(6) of the South Carolina Rules of Civil Procedure.

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KCSC's First Defense is a conclusory assertion stating that: "The Summons and Complaint fail to state facts sufficient to constitute a cause of action." Answer ¶1. KCSC's First Defense provides no reasoning or notice as to why KCSC imagines that Plaintiff's July 24, 2022, "Summons and Complaint fail to state facts sufficient to constitute a cause of action." *Id.* One aim of the responsive pleading requirements of Rule 8, SCRCP, is to avoid "'surprise' defenses" and to "require the defendant also to stick to 'fact' pleading." Official Note to Rule 8(c), SCRCP. KCSC First Defense (¶1), however, fails to provide any supporting facts or details.

KCSC First Defense further states that KCSC "reserves the right to file a motion pursuant to Rule 12(b)(6), SCRCP." Answer ¶1. KCSC's purported reservation of the "right" to "file a motion pursuant to Rule 12(b)(6), SCRCP," at some later date on some unknown and yet-to-be-identified grounds, violates the responsive pleading requirements of the SCRCP. Plaintiff objects to KCSC's purported reservation of the "right" to file a motion pursuant to Rule 12(b)(6), SCRCP, at some later date on some yet-to-be-identified grounds for which KCSC's August 28, 2023, Answer (¶1) provides no notice of at all.

KCSC's Third Defense is a conclusory assertion stating simply that: "Plaintiff's claims are barred pursuant to Rule 4(d)(6) of the South Carolina Rules of Civil Procedure." Answer ¶58. In other words, KCSC's Third Defense (¶58) is a blanket assertion claiming that KCSC did not receive formal service of Plaintiff's July 24, 2023, Summons and Complaint in compliance with Rule 4(d)(6), SCRCP (copied below).

> **(d)(6) Governmental Subdivision.** Upon a municipal corporation, county or other governmental or political subdivision subject to suit, by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant.

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KCSC's Third Defense (¶58) does not attempt to explain how and/or why KCSC believes that the July 31, 2023, Affidavit of Service of record in this case fails to establish formal service in compliance with Rule 4(d)(6), SCRCP. Plaintiff's July 31, 2023, Affidavit of Service verifies that KCSC's Assistant County Administrator, Lauren Reeder (described therein as a female of Caucasian ethnicity), was personally served with Plaintiff's Summons, Complaint, and Exhibits A to F by Evan Murphy of Midlands Process Service on July 28, 2023, at 12:55pm. *See* July 31, 2023, Aff. of Service. KCSC's Third Defense (¶58) does not provide any notice to Plaintiff regarding the facts and/or reasoning supporting the conclusory assertions that Plaintiff's claims are purportedly "barred pursuant to Rule 4(d)(6) of the South Carolina Rules of Civil Procedure." *But see* Official Note to Rule 8(c), SCRCP.

C. FOIA Standing is Not Reasonably Subject to Dispute in This Case

As the South Carolina Supreme Court held in *Freemantle*, a FOIA-plaintiff need only plead: (*i*) citizenship/residency of the State, and (*ii*) that FOIA has been violated to establish statutory standing pursuant to S.C. Code Ann. § 30-40-100(a). 398 S.C. at 95, 728 S.E.2d at 45. The *Fremantle* Court explicitly held that "[n]othing more is required." *Id.* These requirements are satisfied in the present case.

D. No "Official" KCSC Request Form is Required by S.C. Code Ann. § 30-4-30(c)

As briefly discussed at the hearing, and simply to clarify to the extent this may have been a potential concern, there is no statutorily required FOIA request "form" that a person is required to use to request, obtain, and/or inspect public records. All that is statutorily required by FOIA at S.C. Code Ann. § 30-4-30(c) is that a "written request" be submitted to a public body by a "person" (i.e., any individual or entity without limitation). The "written request" could be a handwritten or typed request for records submitted to the public body by mail. S.C. Code Ann. §

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30-4-30(c). The "written request" could be a handwritten or typed request for records submitted to the public body electronically. *Id.*

E. Plaintiff has Established Likelihood of Success with Respect to the Interlocutory Injunctive/Equitable Relief of the July 28, 2023, Underlying Motion

KCSC's lack-of-FOIA-*requester*-standing arguments at the August 8, 2023, hearing and in the Fourth (¶59), Fifth (¶60), and Sixth (¶61) Defenses its Answer are foreclosed by controlling precedent. *Freemantle*, 398 S.C. at 95, 728 S.E.2d at 45. Moreover, the secondary grounds asserted by KCSC at the August 8, 2023, hearing, were false representations that the FOIA Requests were improperly submitted to the "wrong entity." Ex. J at 8:18 to 10:9. KCSC's August 28, 2023, Answer, admits that the FOIA Request attached as Exhibit B to the Complaint was received by KCSC. *See* Answer at ¶14. Unrebutted evidence establishes that the follow-up FOIA Request (Ex. A at 22) was properly submitted to and received by KCSC. Exs. K & L.

Plaintiff respectfully submits that she has demonstrated at least a *prima facie* showing of likelihood of success on the merits as to the interlocutory injunctive/equitable relief of Plaintiff's July 28, 2023, Underlying Motion. Plaintiff respectfully requests that the Court order KCSC to fully respond to Plaintiff's FOIA Requests and to disclose all public records/information of Plaintiff's FOIA Requests (Compl., Exs. B & A at 22) within ten days, and particularly the following records that have been unlawfully withheld to date:

- Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson's communications with KCSC and the Kershaw County Sheriff's Office ("KCSO") accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, ¶¶10, 21; Exs. B at 3-5 & Ex. D.

- Complete, unredacted records and audio recordings of KCSC's previously disclosed, and incomplete, Audio File Nos. 0 to 11, as well as all other records associated with CFS2022-39001. *See* Ex. H, ¶¶10-20, 22; Exs. B at 3-5, C at 3-5 & E.

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- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, which includes: (*i*) KCSO Officer #45 Joseph Branham (Primary); (*ii*) KCSO Officer #42 Grant Arledge; (*iii*) KCSO Officer #15 Courtney Cochran; (*iv*) KCSO Officer #40 Brian Morris; and (*v*) KCSO Officer/Investigator Miles Taylor. *See* Ex. H, ¶¶10-22; Compl., Exs. B at 3-5, C at 3-5, D & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, including those officers listed above, and the other KCSO officers personally involved after or around the time the relevant incidents occurred, which includes (*i*) KCSO Lieutenant West – who discussed and/or prepared a report on behalf of Pinedale's Administrator and "owner" Phillip Hudson against undersigned counsel – and (*ii*) KCSO Officer #32 Dustin Tate. *See* Ex. H, ¶¶10-11, 19, 22; Exs. B at 3-5; C at 4-5 & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, and the KCSO officers personally involved, including those officers listed above, which includes KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, ¶¶10, 21; Exs. B at 3-5 & D.

- Personnel and training information for the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, including KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Exs. B at 3-5 & D.

F. Amended Findings of Fact and Conclusions of Law are Necessary

The Court stated at the August 8, 2023, hearing: "I'm going to take all factors into consideration [and] what you have provided me is a FOIA request that says that Justin Jernigan is the requester." Ex. J at 20:3-4. The Court also stated, however, that "I don't find that there's a standing requirement to submit a FOIA request," *id.* at 23:8-9, and implicitly rejected the primary lack-of-FOIA-*requester* standing grounds asserted by KCSC at the hearing by entering the Form 4 Order that "does not end the case." Plaintiff respectfully submits that amended findings and conclusions of law are necessary to apply the required legal standards and controlling precedent not considered and accounted for at the hearing. S.C. Code § 30-4-100(a) (requiring that FOIA violations must be considered "an irreparable injury for which no adequate remedy at law exists," and that the hearing court "shall" establish a scheduling order if it cannot

reach a final resolution at the initial hearing); Rule 52(a), SCRCP (all orders "granting or refusing interlocutory injunctions" require the trial court to provide the "findings of fact and conclusions of law which constitute the grounds of its action"); *Freemantle*, 398 S.C. at 95, 728 S.E.2d at 45.

Plaintiff respectfully submits that amended findings of fact and conclusions of law are warranted with respect to the incorrect "submitted to the wrong entity" grounds announced at the August 8, 2023, hearing. Ex. J at 20:11-13; 23:14-21. The Court's "wrong entity" findings of fact and conclusions of law provided at the August 8, 2023, hearing as support for its decision to deny Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief and Scheduling Order are not supported by the record. Exs. A at 15-17, 22, B, C at 2, K & L; Answer ¶14. The South Carolina Supreme Court has indicated that "[a] judge's impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record." *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004); *Ellis v. Procter & Gamble Distrib. Co*., 315 S.C. 283, 285, 433 S.E.2d 856, 857 (1993). Accordingly, amendment and correction are needed to move this case forward.

V. CONCLUSION

Plaintiff respectfully requests clarification and reconsideration of the Court's August 8, 2023, written Order pursuant to Rules 52(a), (b), 54(b) & 59(e), SCRCP, the underlying record, and the governing law.

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Respectfully submitted,

By: s/Justin A. Jernigan

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This 11th day of September 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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EXHIBIT J

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STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA
CIRCUIT COURT 5
COUNTY OF KERSHAW) C.A. NO. 2023-CP-28-00538

Christine Jernigan,
Plaintiff,
Vs.
Kershaw County South Carolina,
Defendant.

H E A R I N G

PRESENT: Justin Jernigan, Esq. and David Morrison, Esq.

DATE: August 8, 2023

LOCATION: South Carolina Circuit Court
5 1701 Main Street
Columbia, SC 29202

JUDGE: The Honorable Jocelyn C. Newman

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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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THE COURT: This was not put on any docket due to the lack of scheduling of it. This is 2023-CP-28-00538, Jernigan versus Kershaw County -- yeah, Kershaw County. This is plaintiff's motion for equitable relief under FOIA and a scheduling order. Mr. Jernigan -- did y'all work anything out or are we still have --

MR. MORRISON: We haven't talked at all.

THE COURT: Okay. All right. Mr. Jernigan, and let me hear your motion.

MR. JERNIGAN: Okay, Judge, I do not know, like you said, this was scheduled and I appreciate the prompt scheduling and decided I needed to be kind of the squeaky wheel here so I thank you for indulging this motion. Have you had a chance to look at the motion or read the materials, Your Honor?

THE COURT: Yes, sir, and I'm familiar with it from the 2022 case as well.

MR. JERNIGAN: Okay. Yes. I thought you might be and in hindsight I did not do a good job of preparing the Court for that hearing. And being an outsider I thought this was done common -- not all the time, but commonly and I've learned to get a motion in ten days, three months is kind of standard, I guess.

So that's kind of what I went with last time, but it kind of got that case behind in scheduling in procedure from my perspective. It's still pending with not much happening so far.

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So I wanted to get this one on an expedited schedule and this time have some specific relief that I'm looking for, rather than a more general, you know, it's the officers involved.

It's me, it's my mom, it's my grandma, it's the dispatch operators involved. I want to get the communications between them. I want to get the audio, the 911 call. You know, it's all the records I asked for. I did not think this was going to require filing two lawsuits to get this information.

As I noted in the brief, and I had somewhat forgotten this, but Mr. Morrison represented -- it's on page 10 of the brief and it's in the transcript if you look through the transcript at the last hearing that he was going to get this 911 call, which was one of the main or important things I was looking for, but nothing has happened in the past seven months.

Mr. Morrison has not offered to get the -- I asked him at the last hearing in April if we could go to the communication center right then to get that 911 tape and I don't know what's going on. We were told at the hearing that tape was coming and it's never been given to me.

As noted, the only audio recordings I got were primarily myself. They primarily involved myself. I did not call 911 on myself. I was told these are all the records by the county, the Sheriff's office. So that's why we're here, you know, almost a year later after the prior case was filed to get some specific relief on these communication records that I'm not

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sure why I have not received them to date.

But any other questions, everything is in the motion, I believe, but I'm willing to go into detail in any way I can help the Court on this.

THE COURT: Mr. Morrison, let me hear from you on the status of where we are, specifically after the 911 call.

MR. MORRISON: Judge, when I got this, I didn't know this hearing was going to take place. I learned about seven o'clock last night that I was going to be covering this hearing today and I --

THE COURT: Let me just -- I'm sorry. I know I interrupted you. Let me just apologize for that. Mr. Jernigan filed this matter and asked for a hearing in 10 days. I believe he filed it maybe on the Friday before I went on vacation. I was out for a week, or maybe it was the Monday of that vacation.

I forget, but it was right at the beginning of my vacation. I then returned to work for two days and it just wasn't on my mind before going to the (indiscernible) convention and then the South Carolina Association for Justice convention, and then I'm scheduled to be out of the Fifth Circuit this week.

I just happened to not have court today and it popped up yesterday. My law clerk reminded me I think we're on day 10, so that's why it was scheduled for last minute just because I've been here, there and everywhere and I was reminded by my clerk yesterday afternoon.

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We then scheduled this last-minute hearing. So I apologize to both of you for the delay in getting it scheduled but also for the last-minute notice, and I understand it's last-minute.

MR. MORRISON: And I'm not fussing about it. I'm just saying I haven't had a chance to look at this very much because it was nine o'clock last night before I got home. I was out of town and I looked at this this morning.

THE COURT: Yes, sir.

MR. MORRISON: I'm fully up to speed on all of this, but I can't address parts of it.

THE COURT: Okay.

MR. JERNIGAN: And just before Mr. Morrison starts I just wanted to say, yeah, the filing of the complaint, you know, I did include the notes this time that the clerk's office recommended because what we learned, or I learned, is that there's no -- there is no -- and I would -- I don't know if we need a committee -- there is no drop-down to say.

I mean I've been going to the end and it's other administrative because there is no solid -- there is no real way to docket this that I can see without filing the ten-day motion. And I did note, you know, the current -- the last clerk that I dealt with like I mentioned everything.

So I don't know if they did flag it to you but, you know, when there hadn't been a motion -- and I have been copying

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Mr. Morrison on the correspondence. I honestly did not -- I assumed he would cover this but then when you guys had the county attorney Tommy who I dealt with before this was filed, I did not know that -- I thought that they had worked that out between themselves.

So, yeah, I'm not trying to delay telling Mr. Morrison about any of this. This has been a known thing that's been available.

MR. MORRISON: I'm not accusing you of that. Not at all. I was just trying to explain my lack of preparation for this --

MR. JERNIGAN: No problem.

MR. MORRISON: Judge, this is very confusing and in this new suit he has used the terms KCSC, which is Kershaw County and KCSO which is Kershaw County Sheriff's office interchangeably. And I get very confused trying to read through these facts because it goes back and forth.

So I thought the best way for me to look at it this morning with the short time to get prepared was to look at it starting with count one and look at it what he's asking and what the basis is. So if you look at count one, in paragraph A he said that the county has been evasive and has been incomplete in disclosing public records and he bases it on Exhibits B and A at page 22.

If you look at Exhibit B, who is the complaint,

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Exhibit B is the FOIA request from July 2022 to the Kershaw County Sheriff's office. That's the subject of the other lawsuit. So that really has nothing to do with Kershaw County because the Sheriff is a constitutional officer of the state.

He's not a county employee. His deputies are employed by the sheriff and they're not county employees. There's lots of law out there saying that the sheriff and his deputies are not county employees. They're not part of the county. It's a separate entity.

So I really can't base count one for relief against Kershaw County on a Kershaw County freedom of information request to the Sheriff's department. So then if you go to count -- to the other thing he's relying on, Exhibit A of page 22, if you look at that, it actually starts at page 21.

It is a follow-up email to Tommy Morgan following up on the same freedom of information request to the Kershaw County Sheriff's department. And then on page two, page 22 of the exhibit, in the middle of that email is what is called a new FOIA request to Kershaw County and its related or sub agencies, including Kershaw County Sheriff's office -- Kershaw County Sheriff's office request of Justin Jernigan.

And that request, if you look at the first paragraph it's all about the relationship between Tommy Morgan and the county. The second paragraph is all about records regarding training, certification, that relates to Kershaw County

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Sheriff's office law enforcement authority to take police action in civil matters involving the power of attorney, or to give legal opinions on powers of attorney, or training regarding the Bill of Rights.

Again, that's all Kershaw County. I'm sorry, I'm getting confused now. That's all Kershaw County Sheriff's Department and the training records and personnel files for those people, those deputies, have been produced in the other litigation.

I'm really confused about where we're going with this because he seems to be trying to enforce things against the Sheriff's department through this lawsuit against the county. What he does want from the county is records regarding his dispatch records and those, I think I produced dispatch records in the other suit because I went to the county and got them and produced dispatch logs.

He did ask if there were any recordings and I did drop the ball on that. I did represent in December I would go to the county and see if I could get those, even though I wasn't representing the county and they weren't a party to that suit. I was going to see if I could get those.

When we came back from that hearing I had discovery requests that turned out to be a lot more onerous than I thought, and we ended up taking several meetings in Kershaw at the Sheriff's Department, several meetings to -- and through the

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process of doing all that I simply forgot.

I don't recall any reminders from Justin about that. Maybe he gave me one but I don't recall it, but I will go get those. Like I said, because I said I would. I will go get -- see if there are any tapes remaining, but otherwise I'm not sure of what this suit is asking for from Kershaw County when all that seems to be based upon is documents served on Kershaw County Sheriff's Department or records that the Sheriff's department would have.

THE COURT: Mr. Jernigan?

MR. JERNIGAN: Yes. This is a pretty basic question I feel like and to confuse the two -- so maybe the best way I got the motion up and there is a summary that starts on page -- the discussion that starts on page six of the motion describes the history of the first submission on July 22 to the Kershaw County Sheriff's office to which they responded we do not have any records.

We have no dash camera. We have no nothing. You have to contact the county to get anything. So I was put in touch with the county attorney. The county attorney did not contact me. He missed two meetings we were supposed to talk, so I followed up by sending my request to the county.

It's a written request, the names on it, yes, I was a little confused who I was dealing with. I did not know that there were these separate entities and there are authorizing

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documents between the two, that I've asked for in discovery. There is no way that the Sheriff's office does not have access to 911 calls, but that's what I've been told.

The statute of limitations was one year. I haven't got any of the communication records for the third parties for the officers involved. I've got communication records that I was involved in myself and those have been redacted. So, you know, I appreciate Mr. Morrison's representation that now, after seven months, after he told us he would get us the 911 call files, he's offering to do it.

I would like an order that all of that stuff specifically be produced. All of these communication records that are in the -- they're at least in the county's possession. So that's why I'm proceeding against the county because the Sheriff's office has given me the runaround and said they can't get them, they can get them, they will get them.

Now they're saying again they're going to get them for us. I am skeptical at this point and I believe it's proper to have an order, as in the December hearing -- there's really a problem with response with these people as well. It's not the production. It's also the response.

When you file a response, you're supposed to address the record as you ordered as explained at the last hearing. It doesn't do any good to send me a notice that's here's all the records and then send me incomplete records. I don't know what

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you did, what you searched, what you're leaving out.

All I really wanted was a print out with the names of the officers involved, the names of the dispatch operators involved, their addresses and contact info, and I wanted a list of like their CLE training on this fourth amendment stuff. I did not want them to scan their high school diplomas, and send me all of this -- you know, there has been no communication on this and there's been no participation.

This is a one-way kind of conversation here. So I need help from the Court to get these records. You know, I don't know why it's been such a problem, but it's been a problem.

MR. MORRISON: Judge, I would like to respond to two things there.

THE COURT: Okay.

MR. MORRISON: (Indiscernible) no communication. We've had at least seven or eight phone calls that lasted over an hour each, and generally this generates to a Justin rant. I guess me and the county against everybody else and after a while you just don't want to put up with that anymore.

I'm happy to work with him as long as we can keep it on a civil level and not to degenerate to something like that. Second, the email or the FOIA request that's contained in the middle of that email says the requester is Justin Jernigan. Justin Jernigan is a resident of North Carolina.

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Under FOIA 3-4-100, any citizen of the state may apply to the Circuit Court for both declaratory and injunctive relief and enforce the provisions of this chapter. Justin Jernigan is not a citizen of the state, and I don't believe he -- it says requester in that email.

I'm not sure that's proper service of a FOIA request anyway, to stick it in the middle of an email where you're responding following up on something against a different entity, but even if it were, Justin Jernigan is not a citizen of South Carolina that can come to this court seeking injunctive and declaratory relief as the requester for that FOIA request.

I still will be happy -- because I said I would, I still would be happy to go and see if there are -- if there is audio. We produced what they produced to us when we requested, but I will go back and see if there is audio just so that we've got that covered.

I think we can work that out very easily, but as far as this proceeding, I don't think he's got a leg to stand on, but I don't think there's any way that the Court can certainly order relief in the plaintiff's favor here today.

The only thing I can see that the Court could do here today is to find that he's not a proper party to bring this proceeding in South Carolina since he's not a resident of South Carolina.

THE COURT: Mr. Jernigan.

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MR. JERNIGAN: I guess, I don't know, Judge. I think that my mom is a resident of South Carolina and I think I'm a person. So if you read FOIA at 30-4-20, it's on page five of the brief in the legal standards. FOIA says all persons, all persons.

It doesn't and limit it to citizens. I mean I'm a citizen of the country. I mean I guess I'm not a resident of the state because I live 15 miles on the other side of the border, but I am an attorney. And FOIA says all persons have the right to inspect and obtain documents.

It doesn't limit it. So this standing argument that I don't have standing to file a FOIA request on behalf of my mom as an attorney, and on behalf of myself, and then bring a lawsuit to enforce it when it's not complied with is -- I mean if Mr. Morrison wants to brief that issue then, you know, I guess we can.

It's a plaintiff's job to allege standing and file their complaint and make their complaint. It's their job to answer it. I'm not sure if he's asking you to dismiss the case, but the case is properly filed. I'm not sure what the holdup would be. We're going to have a hearing in 10 days.

What can't be resolved at the 10 day hearing can be put on a schedule to resolve later. And mainly I want the specific documents and the recordings I'm asking for. If they're not there, I believe they -- if there's stuff that's not

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there, like the 911 call, that stuff has been improperly destroyed. So I want a ruling that the public records act was violated for anything they don't give me that's on that list.

MR. MORRISON: Judge, just to rebut that briefly.

THE COURT: Well, before you get there, if you would direct me to the citizen of this state. Where is that?

MR. MORRISON: 30-4-108.

THE COURT: Okay. Now, go ahead with whatever else you were going to say.

MR. MORRISON: All right. The FOIA request that you see in exhibit -- it's in the middle of the email says requester Justin Jernigan. It does not say Christine Jernigan. It says Justin Jernigan. Justin Jernigan is the requester. Justin Jernigan is not a citizen of the state and injunctive and declaratory relief under 30-4-100 is limited to that lawsuit being brought by any citizen of the state.

So I think that's where he opened his shot. In any event, I don't think it's necessary that the Court would make any rulings here today because there are issues there as to whether they can bring it. I think that's purely a legal issue, but in the meantime I will go -- I'll try to get it done this week because I'm getting ready to start a two week trial later this month in federal court and I want to get as much done now as I can.

I'll try to get it done this week and go to Kershaw

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County and see if there are any audio recordings and if there are I will send them to him. Maybe that will resolve this. I don't know.

MR. JERNIGAN: Judge, I would direct your attention back to the statute that defines persons. All persons have the right to inspect, copy or receive an electronic version of any public record. Now, he's talking about an old statute that said a citizen of the state, which I read to be an attorney of the state.

There used to be citizenship requirements. It used to be a part of Rule 11. If you look at the comments, to be an attorney in court you needed to be a resident of the state. The Bar did not handle that.

There was sort of a legislature and a Bar kind of component of practice before the Court and the rules have been changed to give this -- the discretion to manage who can file a case in this court is mandated by the Supreme Court. If there is a statute that says you have to be an attorney, a resident of the state to bring a FOIA action on behalf of a resident of this state, that is a proposition that I don't know, maybe I should take it up with the Bar because I'm a Bar member and I live 15 minutes across the border, but if you want to read that requirement today that I don't have standing to bring a lawsuit on behalf of my mom because it says on the request my name, any -- there is a conflict in the statute if it says I'm entitled as

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a person to file this request.

I'm entitled to get the documents and so there is no dispute that I filed it at least on behalf of my mom. So if there needs to be like a factual issue here and we need to brief this, I'm fine with doing that, but I have a motion. There is a 10 day hearing requirement.

What can't get resolved at the hearing needs to be put on an expedited schedule to be resolved within six months. I'm not sure that that would be helpful dealing with Mr. Morrison unless we put some guidelines in there that when he responds to discovery it's going to be under oath because he's never actually given any discovery answers under oath that say we destroyed all of the body camera stuff.

It's all attorney argument coming from him so far and there's nothing stopping the Court from issuing an order today for those specific things. I do not see any reason why we can't enter that order and if there is an order, it's not going to take seven months, I assume.

THE COURT: So the problem, Mr. Jernigan, as I see it, is not you acting as counsel on behalf of your mother. If your mother had made the FOIA request and you are simply representing her, and requesting injunctive relief on her behalf --

MR. JERNIGAN: That's what I'm doing in this case.

THE COURT: Well, no, sir, because the FOIA request is made by you. You are the requester.

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MR. JERNIGAN: Okay. I'm not sure that this issue is before the Court today, but I would be happy to explain or brief. So if I put my name as an attorney on behalf of my mom on a FOIA request and ask for information, if I were to make a FOIA request of my own, there's nothing in the statute that says I have to be a citizen or resident of the state to do that. It's not in the definition.

THE COURT: You are correct. What the statute does say is that a citizen of the state may apply to the Circuit Court for a declaratory judgment, injunctive relief, et cetera, et cetera.

MR. JERNIGAN: Yeah. And my mom is applying for relief. I'm her attorney.

THE COURT: Show me where your mom made a FOIA request?

MR. JERNIGAN: She made a FOIA request through me. I'm representing her as an attorney. There's attorneys that bring these cases. There are South Carolina attorneys pro se on behalf of their client. I've cited those cases in the other case.

This fiction that somehow this whole thing is like it wasn't a FOIA request, they don't have to answer it, it can't be enforced, I do not see where that's a problem, but if this is an issue that the Court wants to rule on, I would like to be able to brief the issue.

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MR. MORRISON: Judge, (indiscernible) rule on anything here today.

THE COURT: All right. And I'm going to take all factors into consideration of what you have provided me is a FOIA request that says that Justin Jernigan is the requester. It mentions nothing about a representative capacity whatsoever.

You request documents and then this is -- so that's the initial matter is that you are the requester and not in a representative capacity. There is no indication of that and I'm looking at the document before me. That's the initial matter. The secondary matter is that you're making a request, a FOIA request, is to the Sheriff's Department and not to the county which is a separate entity.

MR. JERNIGAN: Can I please explain? I submitted the same request. There is not a requirement that it be on any kind of particular form. It's just a request in writing. It can be made by email. Okay, yes, I sent it to the Sheriff's Department first. I was told I needed to send it to the county. I sent it to the county employees.

I discussed with the county attorney. I got a letter back from the county attorney. To question whether this was properly submitted to the county when they provided a limited response and said here is all of the recordings and dropped them off, is -- I mean it's insane.

They didn't know this was a FOIA request. It was a

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written FOIA request properly submitted to the county and to the Kershaw County Sheriff's office. Their same attorney represented both of them during the pre-suit. Now Mr. Morrison is involved. So whatever the issue is with I need to write my -- like my mom's name on it or it's not a proper FOIA request, I do not see where the statute says that and I did say I was doing this to protect my family to get this information to see who accused us of crimes and sent the Sheriff's office to pull my mother and my grandmother over and make my grandmother go back to an assisted living facility.

These matters of I am -- I don't understand what the issue is with this requester name because there is not a requirement that the requester be a resident of the state of South Carolina or they can just ignore the request.

I do not think that the General Assembly would have written the statute the way they did if they can then decide later they're just going to ignore the request and not provide the documents because the guy that made the request it turns out he lives in North Carolina and he can't enforce that.

Anyone in the state could file this FOIA case. It's a matter of public information that everyone has the right to. You don't need a specific -- this is probably a special case where I a specific interest in these documents. I don't need a specific interest in the documents.

They are everyone's documents. They're public

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documents made with public money. So if there's some kind of hoots that maybe there is in FOIA that I didn't follow correctly, I do not see what they are and so that's why I would say, sure, you can rule on anything at the hearing, but I would like to be heard on what the specific problem is and if there's any way to construe a statute like FOIA to have these some kind of loopholes where this is not a valid case.

That seems like pretty extreme position when I am the plaintiff and I have alleged these things. If there's any allegations that don't stand up, you know, I'm not sure what to say about that now.

THE COURT: Okay. Well, I was headed down the road on more than one occasion to explain to you what I think the issue is. I've been interrupted now twice while trying to do that. I'm looking at the plain language of the statute that as far as I can tell requires no interpretation.

They could have written a person. They could have written anyone. They could have written a number of things but what is written in the statute is a citizen of the state, which has a very clear meaning. You know, I'm not suggesting -- I'm sorry. Go ahead.

MR. JERNIGAN: I don't know that citizen of the state has a clear meaning, either, because we are citizens of a country. We reside in whichever state we reside in. I don't know that the term citizen of the state -- we're talking about a

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resident of the state, I believe, which is -- I think that's an open question of why did they say citizen of the state.

It's defined as person. There is no citizenship requirement to submit a FOIA request. This is a standing requirement to bring a FOIA request so, okay, whatever we need to do on this, if we need to dismiss it and then I'll ask somebody else, like I'm not sure where to go from here on this.

THE COURT: I don't find that there's a standing requirement to submit a FOIA request. We're dealing with a very specific subsection or subsection of the statute with respect to your request for declaratory or injunctive relief, but now three times I've tried to explain and three times I've been interrupted, so I will not explain.

I will simply deny your request, sir. I will put on the record that I'd like a secondary matter -- well, I think I've already said it, requesting documents of the Sheriff's Department, documents reporting, et cetera. There are some things that must be gotten from the Sheriff's Department which is a separate entity of the Sheriff as a constitutional officer.

All of the things that Mr. Morrison indicated earlier. Mr. Morrison is going to get you those recordings, those 911 recordings as he said he would. He doesn't have a requirement to do so as far as I can tell, and I could be wrong about that, Mr. Morrison (indiscernible).

MR. MORRISON: I am not aware of the requirement

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existing at this point in time but I will go get -- I'll report to Justin by the end of the week as to my progress.

THE COURT: All right. So I'm not going to order him to do that because I don't believe that he has a requirement, that there is a requirement under the law for him to do that, but he will do that for you, Mr. Jernigan, and really I think that Mr. Morrison is correct in his argument. I'll just say that for purposes of the record so that I'm not interrupted again, but your motion is effectively denied, Mr. Jernigan.

MR. JERNIGAN: I understand. Should I propose an order on that or how do you want to handle it?

THE COURT: No, sir. I will do as short form order, just probably a single sentence that indicates -- because when I denied the motion I don't waive any requirement that I make any specific findings of fact or conclusions of law, therefore I won't. I will do a very short order that just simply denies the motion.

MR. JERNIGAN: Okay. I would ask for there to be some findings so there's a record of what I asked for and why it was denied, if that's -- because otherwise I don't know how to move forward with this.

THE COURT: Well, as I said, I don't think I'm required to make those findings of fact and conclusions of law. I'm sure if I am or should have, an appellate court will remand it to me for that very reason. They do that all the time.

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You know, as a -- I don't want to call it a courtesy, but to educate you, Mr. Jernigan, on the reasons I have now three times attempted to explain to you and three times been interrupted. I'm not going to try it again. I don't think that the law requires me to.

It would have been certainly for your benefit for me to do that, but I'm not going to go down that road again unless the appellate court instructs me too. All right? Thank you both.

MR. MORRISON: Thank you, Your Honor.

THE COURT: Thank you.

MR. JERNIGAN: Thank you, Judge.

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CERTIFICATE OF TRANSCRIBER

I, BARBARA J. ENNEKING, CVR-M, 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 South Carolina Circuit Court 5 for Kershaw County, South Carolina, on the 8th day of August, 2023.

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

September 4, 2023



Barbara J. Enneking, CVR-M

Transcriber

EXHIBIT K

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Reply To: Camden

September 20, 2022

Via Email Only
Mr. Justin Jernigan
7148 Stirrup Court
Weddington, NC 28104
jjernigan@apwlaw.us

RE: Freedom of Information Act Request

Dear Mr. Jernigan:

I am responding to your "New FOIA Request" dated August 24, 2022 requesting "all public records, including but not limited to, contracts or other documents concerning, explaining, etc. the relationship between KC and KC County Attorney Tommy Morgan". Please be advised that Kershaw County has made a final determination that there are no documents not subject to exemption or those covered under the attorney-client privilege. As to the second paragraph of your request, all documents not subject to exemption will be provided once the records are available.

If you have any other questions or concerns, do not hesitate to contact me.

Very truly yours,

SMITH ROBINSON HOLLER
DuBOSE AND MORGAN, LLC

H. Thomas Morgan, Jr.
Asst. Kershaw County Attorney

HTM, Jr.:srd

Enclosure

EXHIBIT L

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Gmail Justin Jernigan <justin.a.jernigan@gmail.com>

8.24.22 FOIA Request (Following to 7.22.22 FOIA Request)

1 message

Justin Jernigan <justin.a.jernigan@gmail.com> Thu, Sep 22, 2022 at 11:56 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>

Tommy,

I received your attached Letter dated 9/20/22 responding to my follow up 8.24.22 FOIA Request.

I do not believe that your Client's response and written determination was timely under FOIA. I also do not believe your Client's response (see below) satisfies FOIA's requirements with respect to a final determination as to the availability of the public records requested in Paragraphs 1 and 2 of the 8.24.22 Request. Please re-consider and respond in view of this email.

As context, the 8.24.22 FOIA Request, Paragraph 1, was submitted in response to your position that you had no authorization or authority on behalf of your Client to consider or respond to any of the Non-FOIA issues raised, or to provide any further response with respect to the 7.22.22 Request as to public records that were never addressed or provided by your Client. *See* 8.24.22 Email. The 8.24.22 FOIA Request, Paragraph 2, was submitted in response to your position that the law enforcement actions taken against my mother, grandmother, and myself on 6/29/22 were justified based upon lay person (officer) interpretations and analysis with respect to legal documents and governing laws.

1. All public records, including but not limited to, contracts or other documents concerning, explaining, etc. the relationship between KC and KC County Attorney Tommy Morgan. For example, job descriptions and responsibilities with respect to assigned FOIA requests and for contested/adversarial legal matters Attorney Morgan becomes aware of involving third-parties against KC, third-party attorneys, etc. This request includes any public records or documentation concerning whether the relationship between KC and Attorney Morgan is governed by the S.C. Rules of Prof. Resp. or if the relationship is more limited in any respect. Including, but not limited to, whether Mr. Morgan can ignore disputed legal issues and request that third-party attorneys contact his client directly regarding disputed legal matters.
2. All public records concerning training, certifications, etc., with respect to the employees, contractors, or contract employees, etc., involved in the incidents in or around late June 2022 (see attached 7.22.22 FIOA request), or becoming involved in any way thereafter, that relate to KCSO/law enforcement's authority to take police action in civil matters, in matters involving power of attorney (POA) documents, and/or to give legal opinions on civil matters or anything concerning POA documents. This request also includes any applicable training, certifications, etc., with respect to the before mentioned individuals and the Resident's Bill of Rights (SC Code §§ 44-81-20, et seq.), the Protection of Persons Under Disability (SC Code §§ 62-5-101, et seq.), related regulations, and related Federal statutes/regulations.

Your Letter dated 9/20/22 states in response:

1. "Please be advised that Kershaw County has made a final determination that there are no [public] documents not subject to exemption or those covered under the attorney-client privilege."
2. "As to the second paragraph of your request, all documents not subject to exemption will be provided once the records are available."

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Based on your response to Paragraph 1, the requested public records do exist; i.e., public records prepared, owned, used, in the possession of, or retained by your Client. Your Client, however, is asserting a blanket exemption that "all" of the requested public records, which do exist, are covered by FOIA exemption 30-5-40(a)(7) ("Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships."). To clarify, the 8.24.22 Request does not seek public records covered by attorney-client privilege.

I would respectfully note regarding Paragraph 1 that 30-4-50(a)(6) indicates that "information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies" are public information, and that the public records of the 8.24.22 Request concern the expenditure of public funds or other funds by public bodies (KC/KCSO) in exchange for services. Also, documents relating to contractual arrangements are not exempt from disclosure after such contract is entered, and neither are materials relating to filling a position after the position is filled pursuant to 30-4-40(a)(5), (13). Your Client must have conducted some kind of job search for the position of County Attorney, there should be a job description for the position, and there must be some contract providing for the expenditure of public funds in exchange for services.

Based on your response to Paragraph 2, it is unclear which of the respective public records of Paragraph 2 exist and will be made available. It is also unclear when, if ever, such records may, or may not, be "available." Please specify which of the requested records of Paragraph 2 exist and will be made available. Please also specify when such records will be made available (e.g., what date), and your Client's preferred and/or available format (e.g., electronic copies, etc.), and any associated costs/charges in this respect. If your Clients is asserting that any of the records of the 8.24.22 Request are subject to exemptions, please specify which exemptions are being claimed and which documents to which such exemptions are being applied.

As always, I am available to discuss any questions or concerns.

I trust that you will give this legal matter prompt attention.

Regard's,

Justin
Cell - 864-710-5029

On Tue, Sep 20, 2022 at 3:00 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> Thanks for letting me know.
>
> Justin
>
> On Tue, Sep 20, 2022 at 10:28 AM Tommy Morgan <tommy@smithrobinsonlaw.com> wrote:
>
> > Justin,
> >
> > David Morrison will be handling the defense of this case. I've cc him and his Office Manager, Callie, to this email. I will have them respond to your inquiry.
> >
> > Thanks,
> >
> > Tommy

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SMITH ROBINSON
Forward thinking. Results driven.
Smith Robinson Holler DuBose and Morgan, LLC
www.SmithRobinsonLaw.com

H. Thomas Morgan, Jr.
Assistant Kershaw County Attorney

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From: Justin Jernigan <justin.a.jernigan@gmail.com>
Sent: Tuesday, September 20, 2022 12:18 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: 2022CP2800782; FOIA v. KCSO; Proof of Service

Tommy,

Attached is proof of service as filed in the FOIA case (2022CP2800782) against your client KCSO, which was accepted on 9.15.22 by the Clerk's office.

If you do not consent to email service of this document, please let me know and I will also send a copy to your attention via First Class Mail. I assume you will file a notice of appearance and future filings will be received by you and your paralegal via efiling.

I would prefer to keep any email correspondence on my personal gmail account going forward, and on my personal cell phone, because this is obviously a personal matter unrelated to my firm or intellectual property practice.

Best Regards,

Justin

Cell: 864-710-5029

JERNIGAN, Justin Letter 09.20.2022, 1.pdf
298K

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Justin A. Jernigan, Esq. | justin.a.jerngan@gmail.com | 864-710-5029 | 7148 Stirrup Court, Weddington, NC 28104

ELECTRONICALLY FILED - 2023 Sep 15 10:48 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

September 15, 2023

The Honorable Jocelyn C. Newman,
Chief Administrative Judge ("CAJ")
Richland County Judicial Center
Post Office Box 192
Columbia, SC 29202

Re: Christine Jernigan v. Kershaw County, South Carolina ("KCSC")
FOIA Case No. 2023-CP-28-00538 (filed July 24, 2023)
Pl.'s Mot. for Clarification/Reconsideration (filed Aug. 15, 2023)
Pl.'s Supp. Memo. for Clarification/Reconsideration (filed Sept. 11, 2023) & Ex. J-L.
Hearing Date: To-be-scheduled.

Dear Judge Newman,

On behalf of Plaintiff, I am writing to respectfully note the above referenced motion and memorandum, which includes the August 8, 2023, Hearing Transcript attached thereto as Ex. J. Plaintiff appreciates her honor's courtesy of scheduling both the August 8, 2023, and the December 19, 2022 (782 case), initial 10-Day FOIA hearings on short notice (i.e., hearings not scheduled by the clerk's office). S.C. Code § 30-4-100(a) ("must schedule an initial hearing within ten days of the service on all parties").

Undersigned counsel apologizes for his confusion at the end of the August 8, 2023, Hearing Transcript (Ex. J). Plaintiff expected the typical process for Rule 52(a), SCRCP, findings and conclusions would include requesting/accepting draft proposed written orders and the Court would modify as appropriate prior to issuance.

Before Plaintiff received the August 8, 2023, hearing transcript (Ex. J), Plaintiff's understanding was that the Court had intended to dismiss this 538 FOIA case due to lack of standing pursuant to S.C. Code Ann. § 30- 40-100(a) ("A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both"). Plaintiff's August 15, 2023, motion requests clarification/reconsideration of the lack of standing legal grounds, including based upon controlling precedent not available/presented to the Court at the August 8, 2023, Hearing. *Freemantle v. Preston*, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012).

The Court stated at the hearing, however, that while it agreed with KCSC's asserted legal position it also did not "find that there's a standing requirement to submit a FOIA request." Ex. J at 23:8-9; *see also* August 8, 2023, Form 4 Order (stating that the Order "does not end the case"). KCSC was/is, in fact, seeking "judgment as a matter of law" on purported lack-of-FOIA-*requester*-standing grounds. *See* Answer at ¶¶59-61.

KCSC should acknowledge that its defenses are contrary to controlling precedent and withdraw the purported lack-of-FOIA-*requester*-standing defenses consistent with its duty of candor. KCSC was, and is, asking for this Court to adopt an additional FOIA standing requirement that is contrary to controlling precedent. *Compare* Answer ¶61 ("Plaintiff Christine Jernigan cannot prosecute a FOI request when she never served a FOI request. The Defendant is

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entitled to judgment as a matter of law.") *with Freemantle*, 398 S.C. 186 at 194-95, 728 S.E.2d at 44-45 (holding that the plaintiff "pled that he is a citizen of the State and that FOIA has been violated" and "[n]othing more is required" to establish standing).

Prior to receiving the August 8, 2023, hearing transcript (Ex. J), Plaintiff was not aware that this Court had also adopted a secondary factual ground asserted by KCSC that the initial hearing; i.e., that the initial FOIA request was purportedly submitted to the wrong entity. Ex. J at 20:11-13, 23:14-21. The Court's factual findings were based upon misrepresentations of the actual record by KCSC. Ex. J at 9:10-11 (Mr. Morrison: "can't base count one for relief against Kershaw County on a … freedom of information request to the Sheriff's Department"). Plaintiff respectfully requests clarification/reconsideration consistent with the actual record, including admissions of KCSC's Answer ¶14 ("As to Paragraph 30, the Defendant admits that Exhibit B was received"). Plaintiff believes that KCSC should withdraw its "submitted to the wrong entity" misrepresentations of fact consistent with its duty of candor.

Plaintiff also respectfully requests her honor's consideration of Section 30-4-100(a)'s standard that FOIA violations "must be considered to be an irreparable injury for which no adequate remedy at law exists" at the initial hearing. In this respect, a FOIA-plaintiff need only present a "*prima facie* showing" to the injunctive/equitable relief requested.

Moreover, Plaintiff respectfully notes the Section 30-4-100(a) standard that, if the hearing court (CAJ) is unable to make a final determination at the initial hearing, the hearing court "shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing."

This Court previously imposed scheduling (and discovery) requirements upon KCSO in the related 782 FOIA case at the December 19, 2022, hearing, "I think that [KCSO] should do a written response, almost like you're responding to interrogatories or requests for production, as to each item set forth in the FOIA request," Ex. F. at 15:5-20, and in the Court's December 28, 2022, Form 4 Order ("Defendant[] shall fully comply with the South Carolina Freedom of Information Act *vis-a-vis* Plaintiff's requests within 20 days of the hearing."). The Court's instructions to KCSO at the December 19, 2022, hearing were on point with controlling precedent interpreting and applying the "written response" requirement of Section 30-4-30(c). *See Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687, 688-89 (2014) (holding that the DOR's "equivocal and evasive" FOIA response was "manifestly at odds with the clarity mandated by" Section 30-4-30(c)).

In the present case, Plaintiff has already narrowed down and identified the categories of responsive public records as to the initial FOIA request (Ex. B, Ex. A at 15-17). Plaintiff believes that she has established a *prima facie* showing based upon the record before the Court, which now also includes the August 8, 2023, Hearing Transcript (Ex. J), and the controlling legal standards requiring that FOIA violations "must be considered to be an irreparable injury for which no adequate remedy at law exists." S.C. Code Ann. § 30-4-100(a).

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Lastly, Plaintiff respectfully notes that the Court's assistance in this case is necessary for the below copied additional reasons of Plaintiff's September 11, 2023, Supporting Memorandum at pages 1-2.

> MR. MORRISION: I'll try to get it done this week and go to Kershaw County and see if there are any audio recordings and if there are I will send them to him. *Maybe that will resolve this. I don't know.*

Ex. J hereto, Aug. 8, 2023, Hearing Tr. ("Ex. J") at 16:25 to 17:3 (emphasis added).

> THE COURT: Mr. Morrison *is going to get you those recordings*, those 911 recordings *as he said he would*.

Id. at 23:21-22 (emphasis added).

> MR. MORRISON: I will go get – *I'll report to Justin by the end of the week as to my progress*.

Id. at 24:1-2 (emphasis added).

As described in Plaintiff's Rule 11(a), SCRCP, Certification for the August 15, 2023, Motion, Mr. Morrison never returned undersigned counsel's phone calls after the August 8, 2023, initial hearing.

> Plaintiff's counsel attempted to contact KCSC's counsel Mr. Morrison twice via phone on the afternoon of Tuesday, August 8, 2023, to discuss the subject matter of the present Motion [for Clarification and Reconsideration] and the E-911 audio recordings Mr. Morrison again agreed to disclose again at the hearing. Undersigned counsel's phone calls/messages were not returned.

Respectfully submitted,

By: s/Justin A. Jernigan
Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
*
COUNTY OF KERSHAW * TRANSCRIPT OF RECORD

----------x
CHRISTINE JERNIGAN, *
*
Plaintiff, *
*
vs. * Case No. 2023-CP-28-00538
*
KERSHAW COUNTY, SOUTH *
CAROLINA, *
*
Defendant. *
----------x

August 27, 2024

B E F O R E:

The Honorable Jocelyn Newman, Presiding Judge

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

Justin A. Jernigan, Esq.
Attorney for the Plaintiff

David L. Morrison, Esq.
Attorney for the Defendant

Recorded by: DCRP Court Monitor Renee Standera

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
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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 9:10 a.m.:)

THE COURT: Just for the record, this is 2023-CP-28-00538, Jernigan versus Kershaw County.

Why can I hear myself?

COURT MONITOR: It's coming through the mic.

THE COURT: Okay. Yes, sir?

MR. MORRISON: Good morning, Judge. We're here for a trial on this matter. I have two motions to make prior to trial, but I have a different motion to make now.

THE COURT: Okay.

MR. MORRISON: I don't know -- I have not heard from Mr. Jernigan. I texted him Saturday night to give him a heads-up on one of the motions I was going to make today. The motions I was going to make today were a motion for judgment on the pleadings on the same grounds that you heard during the sanctions motion some time ago and ruled upon, although Mr. Jernigan wouldn't let you state your ruling. That's part of the root of the problem in a lot of this case, Judge.

The other motion I was going to make was a motion to disqualify Mr. Jernigan as the attorney in this case because he can't be an attorney and a lawyer in the -- an attorney and a witness in the same case.

I guess it's not necessary to make either of those, but I will move to dismiss the case now, since we're here for trial,

and they're not here.

THE COURT: Yeah. Mr. Jernigan has not appeared, nor has Christine Jernigan, the plaintiff. They both received -- well, at least Mr. Jernigan has received notice of Christine, through her attorney. And so, they have not appeared.

I have not received any communication, correspondence, phone calls, anything, so the motion to dismiss is granted.

MR. MORRISON: Judge, let me add one more ground to that.

THE COURT: Yes, sir.

MR. MORRISON: I also move to dismiss for judgment on the pleadings under the ground that the complaint is in the name of Christine Jernigan. The FOIA request is in the name of Justin Jernigan. Christine Jernigan didn't bring a FOIA request, so there's nothing for her to enforce.

Justin Jernigan is not a citizen of the state of South Carolina, and the enforcement of a FOIA request under the statute 30-4-100 is limited to citizens of this state. Justin is not a citizen of this state. So, even if he were a plaintiff, he can't bring an enforcement action under the FOIA statute, and I would move to dismiss on that ground as well. You've already ruled on that ground in a prior hearing, although you didn't get to state it in the record or put it in your order because Mr. Jernigan wouldn't let you.

THE COURT: Right. I think what I was doing -- now, I needed to make sure that that was clear in the pleadings. I

know I've heard that assertion, but...

MR. MORRISON: Judge, the summons and complaint is entitled, "Christine Jernigan."

THE COURT: Yes, sir.

MR. MORRISON: The exhibits to the summons and complaint -- let me get the right one -- I think it's E.

THE COURT: A, B, C, D, E.

MR. MORRISON: I'm sorry; that's not the right one.

THE COURT: No.

MR. MORRISON: Let me get the right one. It's Exhibit B, is the FOIA request. It's addressed to Kershaw County Sheriff's Department.

THE COURT: I see it.

MR. MORRISON: And the requestor on the FOIA request is Justin Jernigan.

THE COURT: Yes, sir. So, your motion for judgment on the pleadings is granted. So, we're going to dismiss, failure to prosecute. In the alternative, motion for judgment on the pleadings is granted. Because it's a dismissal, I will need a proposed order.

MR. MORRISON: Okay.

THE COURT: If you would e-File that.

MR. MORRISON: I'll be glad to.

THE COURT: Thank you.

MR. MORRISON: Thank you, Judge.

THE COURT: All right. Thank you, folks.

(The above hearing was adjourned at 9:47 a.m.)

CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: Christine Jernigan v. Kershaw County

2023-CP-28-00538

DATE OF HEARING: 8/27/24

COURT REPORTER/MONITOR: DCRP

****

I, Bobbi Fisher, 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 and supporting information*, **and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.**



_/s/ Bobbi Fisher_____

Bobbi Fisher, RPR and Certified Transcriber

Date Prepared: 12/27/24

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF $1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

ELECTRONICALLY FILED - 2024 Oct 17 3:27 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF KERSHAW	)	
Christine Jernigan,	)	C/A #: 23-CP-28-00538
Plaintiff,	)	**ORDER GRANTING MOTION TO DISMISS FOR FAILURE TO PROSECUTE AND GRANTING JUDGMENT ON THE PLEADINGS AND DISMISSING THIS CASE WITH PREJUDICE**
v.	)	
Kershaw County South Carolina,	)	
Defendant.	)	

This matter came before the court on Tuesday, August 27, 2024, for a non-jury trial term of court. Two cases appeared on the roster for trial. All parties were properly notified of the term of court.

Neither Plaintiff, Christine Jernigan, nor her counsel, Justin Jernigan appeared. The Defendant and their witnesses were present and ready to proceed to trial. Plaintiff had not communicated with the Court or with Defendant's counsel and had not requested a continuance.

At the call of the case, counsel for Kershaw County made two motions. Both motions were heard and granted. Counsel moved to dismiss the case for failure to prosecute. The Defendant was present with their witnesses and ready to proceed. Due to the absence of Plaintiff for a properly noticed non-jury trial term of court and the lack of communication from Plaintiff, that motion is granted. *See, McComas v. Ross*, 626 S.E.2d 902, (Ct.App. 2006). Normally, this motion would result in the case being dismissed without prejudice. If this were the only motion pending, that normal result would follow. However, the ruling on the motion for judgment on the pleadings, addressed below, dictates that this case must be dismissed with prejudice.

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Kershaw County also moved for judgment on the pleadings. This is a Freedom of Information enforcement action that is highly disputed. Christine Jernigan is the Plaintiff. Justin Jernigan represents her but is not a party to the action.

Plaintiff attached the Freedom of Information Act request to the complaint as Exhibit B. That request was originally served upon the Kershaw County Sheriff's Department. Subsequently, the same FOIA request was served upon Kershaw County by Justin Jernigan. The Court has examined the request. The request clearly indicates that the requestor is Justin Jernigan, not Christine Jernigan. Mr. Jernigan did not indicate that the request was made in a representative capacity.

Kershaw County moved for judgment on the pleadings on these grounds: (1) Christine Jernigan, plaintiff, never made a FOIA request and therefore had no FOIA request to enforce; (2) Justin Jernigan, who made the FOIA request, was not a party to this litigation and therefore could not enforce the FOIA request; (3) Even if he were a party, Justin Jernigan, who resides in North Carolina, cannot bring an enforcement action pursuant to S.C. Code Section 30-4-100. The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied.

As to ground (1), the record clearly reflects that Christine Jernigan is the sole plaintiff. However, the record also reflects that the FOIA request she seeks to enforce was made by Justin Jernigan. Christine Jernigan did not make a FOIA request. Therefore, she has no FOIA request to enforce.

As to ground (2), Justin Jernigan is not a plaintiff in this case. Instead, he is counsel of record for Christine Jernigan. Christine Jernigan is the sole plaintiff. However, he is the

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requestor on the FOIA request attached to the complaint and served upon Kershaw County. He cannot prosecute this case as a party to the litigation when he is not a party.

As to ground (3), even if Justin Jernigan were a party to this case, he cannot bring a FOIA enforcement action since he is not a citizen of the State of South Carolina. The court's file clearly shows that his address is in Weddington, N.C. The Freedom of Information Act specifically describes who can bring an enforcement action. While the act allows any person to make a FOIA request, enforcement is governed by Section 30-4-100 which states:

> (A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter….

A Freedom of Information Act with enforcement limited to state citizens is appropriate and lawful. The United States Supreme Court denied a challenge to Virginia's citizens-only FOIA statute. *See, McBurney v. Young*, 133 S.Ct. 1709, 569 U.S. 221 (2013). The reporter's summary of the opinion states in the syllabus:

> Virginia's FOIA exists to provide a mechanism for Virginia citizens to obtain an accounting from their public officials; noncitizens have no comparable need. Moreover, the distinction between citizens and noncitizens recognizes that citizens alone foot the bill for the fixed costs underlying recordkeeping in the Commonwealth.

McBurney, 569 S.Ct. 1709, 1711.

> The Court has repeatedly stated that the Constitution does not guarantee the existence of FOIA laws.

569 S.Ct. @ 1712.

> Insofar as there is a "market" for public documents in Virginia, it is a market for a product that the Commonwealth has created and of which the Commonwealth is the sole manufacturer. A State does not violate the dormant Commerce Clause when, having created the market through a state program, it "limits benefits generated by (that) state program to those who fund the state treasury and whom the State was created to serve.

569 S.Ct. @ 1712-1713.

The United States Supreme Court stated that a citizen-only FOIA enforcement provision "provides a service that is related to state citizenship." 569 S.Ct. @ 1713. South Carolina's FOIA does the same thing. Enforcement is limited to citizens of South Carolina. South Carolina citizens foot the bill for the infrastructure for the recordkeeping and are the recipients of state services. Since Justin Jernagin is not a resident of South Carolina, even if he were a plaintiff in this action, he cannot bring an enforcement action.

Consequently, Defendant's motion for judgment on the pleadings is granted on all grounds asserted. This case is dismissed with prejudice.

AND IT SO ORDERED.

_____
Honorable Jocelyn Newman

_____, 2024

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Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Dismissal

So Ordered

Jocelyn Newman

ELECTRONICALLY FILED - 2024 Oct 28 11:02 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW)	
)	CASE NO. 2023-CP-28-00538
Christine Jernigan,)	
)	**PLAINTIFF'S**
Plaintiff,)	**MOTION TO RECONSIDER**
v.)	
)	
Kershaw County, South Carolina,)	
)	
Defendant.)	
_____)	

Please take notice that, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff Christine Jernigan ("Plaintiff") respectfully moves this Court and the Honorable Jocelyn C. Newman, Chief Administrative Judge ("CAJ"), to alter or amend the Court's October 17, 2024, Order:

(*i*) dismissing this action for failure to prosecute because neither Plaintiff nor undersigned counsel appeared for the August 27, 2024, scheduled term of non-jury court which, as communicated to the Court on August 30, 2024, was due to a docketing error/oversight by undersigned counsel; and

(*ii*) granting Defendant Kershaw County South Carolina's ("KCSC's") motion for judgment on the pleadings, denying Plaintiff's August 15, 2023, Motion for Reconsideration, and dismissing this case with prejudice, because Plaintiff was not specifically designated or listed as the "requestor" on the FOIA requests at issue; i.e., dismissing due to alleged lack-of-FOIA-requestor statutory standing by Plaintiff, who is a life-long resident of this State, to proceed with this case under S.C. Code Ann. § 30-4-100(A) ("A *citizen of the State* may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter [i.e., FOIA].") (emphasis added).

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As noted above, the October 17, 2024, Order denied Plaintiff's August 15, 2023, Motion for Reconsideration of the August 8, 2023, Form 4 Order denying Plaintiff's "…Motion for Equitable Relief…" pursuant to S.C. Code Ann. § 30-4-100(A) (filed on July 28, 2023). Plaintiff's August 15, 2023, Motion for Reconsideration was denied in connection with granting judgement on the pleadings due to lack-of-FOIA-requestor standing under S.C. Code Ann. § 30-4-100(A). This issue was first raised at the hearing on Auguust 8, 2023, and was briefed in Plaintiff's August 15, 2023, Motion. Disposition of the first August 15, 2023, Motion for Reconsideration has resulted in a substantively altered judgment. *Compare* August 8, 2023, Form 4 Order *with* October 17, 2024, four-page written Order. Plaintiff respectfully notes that issues raised on reconsideration herein, including but not limited those relating to subsequently decided authority (e.g., *Osmundson v. School District 5*, App. No. 2023-000104 (Ct. App., June 26, 2024)), could not have been raised previously in an initial/first motion for reconsideration.

The grounds for this Motion are, among others, as follows:

1. Rule 59(e) of the South Carolina Rules of Civil Procedure allows a party to file a motion to alter or amend the judgment no later than ten days after receipt of the written notice of the entry of the order.

2. "A motion under Rule 59(e) long has been viewed as a 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778–79 (2004).

3. Rule 59(e) allows a party "to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously made." *Id.* at 21, 602 S.E.2d at 779. "A party may wish to file [a 59(e)] motion when she believes the court has misunderstood, failed to

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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*. at 24, 602 S.E.2d at 780.

4. "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.* (emphasis in original).

5. "Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and [that] a second motion is not required if the trial court does not specifically rule on the issue so raised." *Coward Hund Const. Co. v. Ball Corp*., 336 S.C. 1, 4, 518 S.E.2d 56 (Ct. App. 1999) (citation omitted).

6. The Complaint in the present case (the "538 FOIA case") was filed on July 24, 2023, in the Court of Common Pleas for the Fifth Judicial Circuit, Kershaw County.

7. Count I seeks declaratory and injunctive relief pursuant to FOIA, S.C. Code Ann. §§ 30-4-100(a) & (b), for requested communications (e.g., E-911 audio recordings) and other indisputable public records that have been unlawfully withheld by KCSC. Compl. ¶¶79-88.

8. Count II seeks – for records of the FOIA Request that have potentially been destroyed by KCSC – declaratory and equitable relief pursuant to the Public Records Act, S.C. Code Ann. §§ 30-1-10, et seq., and Declaratory Judgments Act. Compl. ¶¶89-94.

9. The Public Records Act precedes FOIA at Chapter 1, Title 30 and incorporates FOIA's definition of "public record" therein. *See* S.C. Code Ann. §§ 30-1-10(a), 30-4-20(c). FOIA would be rendered meaningless if public bodies could simply destroy, rather than disclose, requested "public record(s)" in violation of the legal requirements of FOIA and the Public Records Act. *Id*.; *Ballard v. Newberry Cnty*., 432 S.C. 526, 534, 854 S.E.2d 848, 852 (Ct. App. 2021) (holding that "[d]estruction of pertinent documents covered by a then-pending FOIA request could very well present" a viable cause of action).

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10. "The interpretation of a statute is a question of law." *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016) (citations omitted).

11. "[W]e must first attempt to construe a statute according to its plain language, and if the language of a statute is plain, unambiguous, and conveys a clear meaning, 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" *Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310-11, 831 S.E.2d 429, 432 (2019) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

12. The prevailing rule of statutory interpretation is that "use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement." *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (citation omitted). Moreover, statutory provisions are generally regarded as mandatory when, as in the present case, the power or duty to which it relates is for the security or protection of important rights. *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981) (citation omitted).

13. Our Legislature's findings regarding the purpose of FOIA are as follows:

> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter *must* be construed so as to make it possible *for citizens, or their representatives*, to learn and report fully the activities of their public officials *at a minimum cost or delay* to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (emphasis added).

14. The South Carolina Supreme Court has held that FOIA is remedial in nature and should be liberally construed to carry out its purpose. *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001). An essential purpose of FOIA "is to

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protect the public from secret government activity." *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843, 846 (1994) (citation omitted).

15. Pursuant to FOIA, all "persons" have the statutory "right to inspect, copy, or receive" a "public record of a public body" upon submission of a "written request for records" to the public body. S.C. Code Ann. §§ 30-4-20(b), 20(c), 30(a)(1) & 30(c). FOIA's definition of "person" broadly encompasses any "individual, corporation, partnership, firm, organization or association" without limitation. *Id*., § 30-4-20(b).

16. The original version of Section 30-4-100(A) provided all citizens of the State with the right "to apply to the circuit court for injunctive relief to enforce the provisions of [FOIA]." 1978 Act No. 593, Section 11.[1]

17. Effective May 26, 1987, the General Assembly amended Section 30-4-100(A) to mandate that all FOIA violations "must be considered an irreparable injury for which no adequate remedy at law exists." 1987 Act No. 118, Section 8.

18. During the 2017 round of updates, the General Assembly amended S.C. Code Ann. § 30-4-100(A) (effective May 19, 2017, emphasis added) to include the below procedural mandates and deadlines that the CAJ's of the circuit courts are required to follow upon the filing of a FOIA case:

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

[1] H*2727 (Rat #0739, Act #0593 of 1978) General Bill.

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19. The above-noted 2017 FOIA amendments impose "time constraints within which determinative hearings on the requests for relief *must* be made." 2017 Act No. 67 (H. 3352), Section 4, Effect of Amendment (emphasis added). The CAJ's of the circuit courts were assigned to fulfill the expedited scheduling/time requirements via the last round of amendments to H. 3352. *See* S. Journal (Wed., May 10, 2017), 122d Gen. Assemb., 1st Reg. Sess., at 36-39 (S.C.).

20. On May 2, 2017, when H. 3352 was considered by the Judiciary Committee, Senator Margie Bright Matthews, Esq., of Colleton County, noted that the CAJs were available to decide FOIA matters locally on an expedited basis. Senator Matthews explained that adding the scheduling/time constraints would "create an avenue of filing FOIA requests like a temporary [injunction] motion so that it would have [to be] fast-tracked within ten days." S. Judiciary Comm. Meeting, 122d Gen. Assemb., 1st Reg. Sess. (S.C. May 2, 2017), available at https://www.scstatehouse.gov/video/ archives.php, at 01:53:00 to 1:54:50; Rule 65, SCRCP.

21. The General Assembly also provided public bodies with a corresponding right to seek declaratory relief and an expedited hearing under Section 30-4-110(A) via the 2017 FOIA amendments. Accordingly, the public body has a duty to file an action seeking declaratory relief with respect to: (*i*) alleged "unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests," or (*ii*) where the public body "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). KCSC did not request a hearing or seek declaratory relief pursuant to Section 30-4-110(A) in this case.

22. "The General Assembly has the power and authority to change the statutes in any manner in which, in its best judgment, it may deem wise." *Fort Sumter Hotel v. S.C. Tax*

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Comms., 201 S.C. 50, 60, 21 S.E. 2d 393, 397 (1942). The circuit courts can "now only carry out by its order the plain meaning and intent of the statutes as they appear on the books today. That course alone constitutes the cornerstone of constitutional government." *Id.*[2]

23. The South Carolina Court of Appeals, on June 26, 2024, reversed and remanded a prior dismissal (on technical/procedural grounds) of Plaintiff Osmundson's FOIA action for failure to request and have the court hold the initial hearing within 10 days of service. *Osmundson*, App. No. 2023-000104. Osmundson argued that the statute imposes the duty on the court to schedule the 10-day hearing without a requirement for the FOIA plaintiff to do anything further other than to request it (which the plaintiff did in his complaint). *Id.* at *3.

24. Our Court of Appeals found that "the legislative intent behind the ten-day requirement was to benefit FOIA applicants;" "A review of the legislative history indicates the amendments to the FOIA since its enactment have been to expand rights; thus, we find the purpose of the ten-day requirement was to expedite resolution, not to erect a procedural barrier;" and held that the circuit court erred in dismissing the FOIA action on technical/procedural grounds. *Osmundson*, App. No. 2023-000104.

25. The Court of Appeals in *Osmundson* held, pursuant to the plain and unambiguous language of Section 30-4-100(A), that the circuit court is responsible for scheduling an initial hearing within ten days of the service on all parties. Based on the plain and unambiguous language of Section 30-4-100(A), if the hearing court is unable to make a final ruling at the initial 10-day hearing, as in the present case, the court must thereafter establish a scheduling

[2] *Quoting* Judge Grimball (Charleston County) compelling compliance with procedural due process rights of the 1935 Alcoholic Liquors Act.

order and conclude actions brought pursuant to this chapter within six months of initial filing; i.e., by January 24, 2024.

26. An initial written FOIA Request was submitted to KCSC by undersigned counsel in this case (at least) as early as August 11, 2022. *See* Compl. ¶30, Exs. A at 15-17 & B.

27. On July 28, 2023, Plaintiff's Summons, Complaint, and Exhibits A to F were formally served upon KCSC. *See* July 31, 2023, Aff. of Service.

28. Plaintiff requested that the court schedule/hold an initial 10-day hearing and proceed pursuant to the procedures/deadlines of Section 30-4-100(A).

29. On July 28, 2023, Plaintiff filed an expedited Motion requesting: (*i*) the initial ten-day hearing required by Section 30-4-100(A); (*ii*) injunctive/equitable relief ordering KCSC to fully respond to, and disclose the records of, the FOIA Requests; and (*iii*) a scheduling order to conclude proceedings within six months.

30. Plaintiff's July 28, 2023, Motion establishes that KCSC's August 18, 2022, FOIA Response was conclusory and evasive, and that its corresponding disclosure was incomplete and surreptitiously redacted.

31. On August 7, 2023, Plaintiff filed/submitted a follow-up Letter to CAJ Newman regarding the initial hearing on Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief and Scheduling Order, and requested that the court proceed and bring this case to a final resolution in accord with the procedural requirements and deadlines set forth at S.C. Code Ann. § 30-40-100(A).

32. Six categories of unlawfully withheld KCSC E-911/Dispatch records, for which Injunctive/Equitable Relief will apparently be necessary to ever obtain, are set forth in Plaintiff's

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July 28, 2023, Motion at pages 1-2. Compl., ¶84. The first – and most important – of the specific public records for which Injunctive/Equitable Relief is necessary are:

> Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson's communications with KCSC and the Kershaw County Sheriff's Office ("KCSO") accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, hereto, ¶¶10, 21; Compl. ¶¶59, 60-61, 68-71, 75, Exs. B at 3-5 & Ex. D.

33. Following an 11:00am WebEx hearing on August 8, 2023, Judge Newman issued oral rulings from the bench denying Plaintiff's July 28, 2023, Motion for Equitable Relief on grounds that Plaintiff lacks statutory standing to proceed with this case pursuant to the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-40-100(A).

34. Judge Newman's bench rulings were implicitly incorporated into the Court's 11:59am Electronic Form 4 Order denying Plaintiff's July 28, 2023, Motion for Equitable Relief and Scheduling Order. Inconsistently, however, Judge Newman's August 8, 2023, Form 4 Order places a lower left "check mark" indicating that the Court's August 8, 2023, Order "does not end the case" on grounds that Plaintiff lacks statutory FOIA standing.

35. Plaintiff's August 15, 2023, Motion for Reconsideration respectfully requested that Judge Newman clarify and state/explain the grounds for the Court's August 8, 2023, Order denying Plaintiff's July 28, 2023, Motion for Equitable Relief.

36. Plaintiff's August 15, 2023, Motion for Reconsideration explains why the underlying record and the governing law do not support Court's August 8, 2023, Order denying Plaintiff's July 28, 2023, Motion, including on grounds that Plaintiff lacks statutory standing to proceed with this case. *Compare* S.C. Code Ann. § 30-40-100(a) ("A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both") *with* Compl. ¶1

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("Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee") & Oct. 28, 2024, Decl. of Justin A. Jernigan, *submitted herewith*.

37. The South Carolina Supreme Court has previously addressed the minimal statutory standing requirements for FOIA-plaintiffs as follows:

> The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act's requirements. S.C. Code Ann. § 30-4-100(a). …
>
> The legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims. On remand, Appellant shall be entitled to pursue his FOIA claims seeking declaratory and injunctive relief.

Freemantle v. Preston, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012) (emphasis added).

38. In reaching its October 17, 2024, decision dismissing this case for lack-of-FOIA-requestor standing, the court misunderstood the arguments before it, failed to consider the South Carolina Supreme Court's holding in *Freemantle*, and failed to consider the legal ramifications of its decision, which justifies reconsideration.

39. It is also clear, pursuant to *Osmundson*, App. No. 2023-000104 and the plain statutory language, that the court misunderstood the arguments and record before it, and failed to follow the requirements and deadlines explicitly provided by S.C. Code Ann. § 30-4-100(A), which justifies reconsideration of the dismissal for failure to prosecute.

40. From the outset, Plaintiff has diligently petitioned and implored the court to follow the statutory procedural protections and deadlines explicitly provided to all FOIA litigants by S.C. Code Ann. § 30-4-100(A) to resolve this case.

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41. On July 28, 2023, Plaintiff filed an expedited Motion requesting equitable relief and seeking for this court afford Plaintiffs the rights and protections that have been granted to all FOIA litigants by Section 30-4-100(A). Under Section 30-4-100(A), this court was required to enter a scheduling order to resolve this case by the 6-month statutory deadline for concluding the proceedings in this case; i.e., no later than January 24, 2024.

42. After Plaintiff's July 28, 2023, Motion for Equitable Relief and Scheduling Order was denied via the August 8, 2024, Form 4 Order, Plaintiff diligently requested reconsideration on August 15, 2023.

43. Plaintiff followed up on the August 15, 2023, Motion for Reconsideration, including via a Cover Letter to CAJ Newman dated September 15, 2024, which is of record in this case.

44. Undersigned counsel subsequently followed up with CAJ Newman's law clerk on October 24, 2023, regarding Plaintiff's August 15, 2023, Motion for Reconsideration. The judge's law clerk responded on October 27, 2023, stating that the Plaintiff "will receive a ruling on your Motion in the near future." *See* Ex. A, hereto. Instead of ruling on Plaintiff's August 15, 2023, Motion for Reconsideration, as a matter of law given that this is a FOIA "paper case" involving no disputed facts, the court set this case on the non-jury roster calendar for the August 27, 2024, term.

45. Undersigned counsel believes setting this case on the non-jury roster calendar for the August 27, 2024, term was an error/oversight, given that case dispositive appealable issues remained outstanding before the court with respect to Plaintiff's August 15, 2023, Motion for Reconsideration, including the FOIA-requestor-standing issues.

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46. Undersigned counsel intended to contact the court, and opposing counsel regarding, prior to the August 27, 2024, hearing date to address the above-noted legal inconsistencies, and thereby avoid the burden, travel, and associated expenses of holding an unnecessary in-person hearing. Undersigned counsel's position is consistent with the law clerk's response on October 27, 2023, stating that Plaintiff "will receive a ruling on your Motion in the near future." *See* Ex. A, hereto.

47. Indeed, there was no basis for conducting any "trial" on August 27, 2024, because the court already found lack-of-FOIA-requestor standing under S.C. Code Ann. § 30-4-100(A) as the basis for denying Plaintiff's July 28, 2023, Motion for Equitable Relief and Scheduling Order. This was the explicit basis for the October 17, 2024, Order granting judgment on the pleadings to KCSC.

48. There never were any disputed material facts in this case providing a basis to conduct any non-jury "trial." Plaintiff's July 28, 2023, Motion for Equitable Relief and Scheduling Order was fully briefed, and was unopposed on the merits by KCSC.

49. No discovery has taken place in this case to date, and no witness testimony is relevant or needed to decide this FOIA case seeking disclosure of what are undisputedly public records. This case should have been decided on an expediated basis, like a motion for a temporary injunction, following the 10-day hearing date as was intended and unambiguously mandated by our General Assembly.

50. Due to a docketing error/mistake, undersigned counsel for Plaintiff neglected to contact the court and opposing counsel prior to the scheduled August 27, 2024, hearing. After realizing this mistake, undersigned counsel promptly contacted the court and opposing counsel

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regarding the matter on August 30, 2024. Oct. 28, 2024, Decl. of Justin A. Jernigan & Ex. A, *submitted herewith*.

51. Despite undersigned counsel's unfortunate docketing error/mistake, the court's failure to follow the procedures required by Section 30-4-100(A) forced Plaintiff into an untenable situation.

52. The CAJ's law clerk indicated in October 2023 that Plaintiff would receive a ruling "in the near future" regarding the lack-of-FOIA-requestor-standing issue. It was the CAJ's responsibility to ensure that proceedings in this FOIA case were completed no later than 6-months from filing (i.e., by Jan. 24, 2024) pursuant to Section 30-4-100(A), and as strictly interpreted by *Osmundson v. School District 5*, App. No. 2023-000104 (Ct. App., June 26, 2024).

53. A litigant should not be forced to call the courts repeatedly and insist that a resolution be reached in a timely manner as required by statute (i.e., by January 24, 2024).

54. The October 17, 2024, Order suggests that a litigant who honestly expects the court to follow its own "in the near future" statements to its undersigned counsel, and the statutory procedures mandated by Section 30-4-100(A), can be thrown out of court completely for failing to attend an unnecessary non-jury "trial" proceeding that was erroneously set seven months after expiration of the statutory deadline mandated by Section 30-4-100(A).

55. This case was fully briefed and ready for determination on the merits at the time of the August 8, 2023, hearing, and all further delays were ultimately caused by failure of the judicial system to meet its statutory obligations mandated by Section 30-4-100(A).

56. The CAJ is statutorily required to schedule a timely hearing and resolve FOIA claims in a timely manner as mandated by Section 30-4-100(A) in order to ensure FOIA's purpose of public transparency.

57. The October 17, 2024, Order tosses Plaintiff out of court entirely due to tenuous technicalities that have nothing to do with the merits of this case.

58. The October 17, 2024, Order raises as-applied constitutionality concerns to the extent an out-of-state resident member of the South Carolina Bar (undersigned counsel) is not allowed to represent a citizen of this State in the same manner as a in-state member of the South Carolina Bar. *See*, *e.g.*, *Ballard v. Newberry Cnty*., 432 S.C. 526, 854 S.E.2d 848 (Ct. App. 2021). Our legislature no longer imposes conditions or governs the practice of law in this State, and FOIA Section 30-4-100(A) should not be construed to impose any such limitation on the practice of law in this State by an attorney who happens to be an out-of-state resident member of the South Carolina Bar (undersigned counsel)

59. The October 17, 2024, four-page Written Order was issued around seven months after the January 24, 2024, statutory deadline mandated by Section 30-4-100(A).

In sum, Plaintiff wishes for the Court to reconsider the October 17, 2024, Order, fully consider all facts before the Court, and the precedent that has been presented. Plaintiff respectfully requests that the Court reconsider its October 17, 2024, Order dismissing this case for failure to prosecute and granting Defendant KCSC judgment on the pleadings due to lack-of-FOIA-requestor standing under Section 30-4-100(A).

[*Signature block on following page*]

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Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 28th day of October 2024

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF KERSHAW	**CASE NO. 2023-CP-28-00538**
Christine Jernigan, Plaintiff, v. Kershaw County, South Carolina Defendant.	**Affidavit of Justin A. Jernigan** **October 28, 2024**

Personally appeared before me the undersigned, I, Justin A. Jernigan, being duly sworn and under oath, deposes and states as follows:

1. I am over 18 years of age and otherwise competent to make this Affidavit.
2. I have a residence located in Weddington, North Carolina, County of Union.
3. I am a patent attorney and a member of the South and North Carolina Bars.
4. I am counsel for my mother, Plaintiff Christine Jernigan ("Plaintiff"), in the above-captioned case.
5. Plaintiff has been a life-long citizen and resident of South Carolina, presently residing in Seneca, County of Oconee.
6. This affidavit is submitted with Plaintiff's Motion for Reconsideration in the above-captioned case.
7. This affidavit is based upon personal knowledge, information, and belief.
8. This affidavit is submitted with respect to information and Exhibits of the Motion submitted herewith.
9. I submitted the underlying FOIA requests at issue in this case, as a person under FOIA and as an attorney on behalf of Plaintiff Mrs. Jernigan, to Defendant KCSC.
10. This case is a personal matter, is outside of my typical scope of practice, and I have not had the benefit of paralegal assistance.
11. As reflected by the record/docket of this case, I have diligently prosecuted this case and attempted to obtain the court's compliance with the procedural requirements and deadlines mandated by FOIA at Section 30-4-100(A).

JAJ - 10/28/24

12. To supplement the current record/docket in this case, Exhibit A of the ~~Complaint~~ Motion includes certain correspondence, dating from August 2023 to October 30, 2024, by, between, and amongst myself, CAJ Newman's law clerks, and KCSC's counsel of record, David Morrison, Esq.

13. The information I provided to the court in the correspondence of Exhibit A is true and correct.

14. Under penalty of perjury, I certify that the information given by me in this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

Sworn to and Subscribed before me this

28th day of October, 2024

T. Gustafson
Notary Public for South Carolina

Signature of Affiant – Justin A. Jernigan

My Commission Expires March 10, 2026

My Commission expires _____

T. GUSTAFSON NOTARY PUBLIC SOUTH CAROLINA

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EXHIBIT A

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Gmail **Justin Jernigan <justin.a.jernigan@gmail.com>**

Re: 2023CP2800538; Pl.'s Pending 8/15/23 Motion to Clarify/Reconsider

1 message

Justin Jernigan <justin.a.jernigan@gmail.com> Fri, Aug 30, 2024 at 5:23 PM
To: Jocelyn Law Clerk Newman <jnewmanlc@sccourts.org>
Cc: David Morrison <david@dmorrison-law.com>, Callie Morrison <callie@dmorrison-law.com>, Cheryl Truesdale <cheryl.truesdale@kershaw.sc.gov>

Dear Mr. Mikell,

I am counsel for Plaintiff in the above referenced case. Counsel for Defendant Kershaw County, Mr. David Morrison, Esq., is also copied on this email. Prior email correspondence with Judge Newman's former law clerk (Ms. McDaniel), dating from August to October 2023, is included in the email chain below.

Due to a docketing error/oversight, I failed to make an appearance on behalf of Plaintiff at the Tuesday, August 27, 2024, Roster Meeting. Plaintiff sincerely apologizes for missing the Roster Meeting. If helpful, Plaintiff would respectfully request that the court schedule a brief status conference (via telephone or zoom) in the present case.

As highlighted in the email chain below, Ms. McDaniel indicated on October 27, 2023, that Plaintiff would receive a ruling on the pending August 15, 2023, Motion to Clarify/Reconsider denial of injunctive relief, etc. This Motion, however, is still pending. The Order denying injunctive relief is subject to appeal, and Plaintiff believes that a ruling on the Motion to Clarify/Reconsider is needed to move this case forward.

Thanks,

Justin Jernigan
864-710-5029

On Fri, Nov 3, 2023 at 3:59 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> Ms. McDaniel,
>
> Thanks for the update.
>
> Plaintiff filed the Motion with a request for hearing via the e-file system, but understands that a hearing on the matter is discretionary. Plaintiff believes that a hearing/teleconference ruling on the record for Plaintiff's Motion would also be within the Court's discretion.
>
> Best,
>
> Justin
>
> On Fri, Oct 27, 2023 at 11:13 AM Newman, Jocelyn Law Clerk (Bailey McDaniel) <jnewmanlc@sccourts.org> wrote:
>
> > Mr. Jernigan,
> >
> > Thank you for your email. You will receive a ruling on your Motion in the near future.

ELECTRONICALLY FILED - 2024 Oct 28 11:02 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Best,

Bailey S. McDaniel

Law Clerk for Judge Jocelyn Newman

South Carolina Judicial Branch

From: Justin Jernigan <justin.a.jernigan@gmail.com>
Sent: Tuesday, October 24, 2023 1:49 PM
To: Newman, Jocelyn Law Clerk (Bailey McDaniel) <jnewmanlc@sccourts.org>
Cc: David Morrison <david@dmorrison-law.com>; Callie Morrison <callie@dmorrison-law.com>; Cameron W. DeBoy <cameron@dmorrison-law.com>
Subject: 2023CP2800538; Pl.'s Pending 8/15/23 Motion to Clarify/Reconsider

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Ms. McDaniel,

I'm writing to follow up with respect to Plaintiff's pending August 15, 2023, Motion for Clarification/Reconsideration in the above-referenced 538 FOIA case.

Plaintiff's August 15, 2023, Motion for Clarification/Reconsideration has not been scheduled for hearing. Plaintiff would respectfully request that Judge Newman set this Motion for hearing/resolution at the Court's earliest convenience unless the Court intends to decide the matter without oral argument.

thanks,

Justin

864-710-5029

On Fri, Sep 15, 2023 at 12:56 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> Dear Ms. McDaniel,
>
> Following up on my below August 16, 2023, email/notice, attached hereto are as-filed/stamped copies of Plaintiff's September 11, 2023, Supp. Memo. for

ELECTRONICALLY FILED - 2024 Oct 28 11:02 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Clarification/Reconsideration and Exs. J-L. Exhibit J is a copy of the transcript of the August 8, 2023, hearing.

Also attached hereto is a copy of Plaintiff's September 15, 2023, Cover Letter to Judge Newman re: the August 15, 2023, Motion and September 11, 2023, Memo.

Please bring these matters to the Court's attention at your next meeting with the Judge to discuss scheduling/motion related matters.

Best regards,

Justin

On Wed, Aug 16, 2023 at 10:17 AM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> Dear Ms. McDaniel,
>
> Rule 52(d), 59(g), SCRCP, both indicate that: "A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion."
>
> A copy of Plaintiff's August 15, 2023, Motion for Clarification/Reconsideration to Judge Newman is attached to this email.
>
> If the Rules require and/or the Judge prefers sending a paper/hard-copy please let me know.
>
> Thanks,
>
> Justin A. Jernigan
>
> 864-710-5029
>
> justin.a.jernigan@gmail.com
>
> ---------- Forwarded message ---------
> From: <efiledonotreply@sccourts.org>
> Date: Tue, Aug 15, 2023 at 2:03 PM

ELECTRONICALLY FILED - 2024 Oct 28 11:02 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Subject: Accepted Notice: Your filing, Re: 2023CP2800538 - (899) Admistrative Law/Other - Motion/Reconsider, was accepted
To: <justin.a.jernigan@gmail.com>

To:	Justin A. Jernigan	justin.a.jernigan@gmail.com
From:	efiledonotreply@sccourts.org	
Date:	2023-08-15 13:56:15.03	
Subject:	Your electronic filing, Re: 2023CP2800538 - (899) Admistrative Law/Other - Motion/Reconsider, was accepted by CIRCUIT COURT.	

Case Number:	2023CP2800538
Case Type:	(899) Admistrative Law/Other
Document Type:	Motion/Reconsider
Reason(s) :	(none provided)

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan
PLAINTIFF(S)

Kershaw County South Carolina
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:

Plaintiff's Motion to Reconsider (filed on 10/28/24) is DENIED. The motion was not timely filed and is not meritorious.

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 11/21/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

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.

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

RECEIVED
Dec 16 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge
Civil Action No. 2023-CP-28-00538

Christine Jernigan……Appellant,

v.

Kershaw County
South Carolina……...Respondent.

NOTICE OF APPEAL

Appellant appeals the lower court's Orders: (1) entered on August 8, 2023, denying Appellant's Motion for Equitable Relief; (2) entered on October 17, 2024, dismissing the action with prejudice, and denying Appellant's Motion to Reconsider (8/8/23 Order); and (3) entered on November 21, 2024, denying Appellant's October 28, 2024, Motion to Reconsider (10/17/24 Order). Copies of these Orders are attached hereto. Appellant timely filed a Rule 59 Motion to Reconsider upon receiving notice of the October 17, 2024, Order, and received notice of the Order denying the Rule 59 Motion on November 21, 2024.

Respectfully submitted,

By: /s/Justin A. Jernigan
Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANT

December 16, 2024

RECEIVED
Dec 16 2024
SC Court of Appeals

EXHIBIT A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan
PLAINTIFF(S)

Kershaw County South Carolina
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:

Following a hearing on August 8, 2023, Plaintiff's "...Motion for ... Equitable Relief..." (filed on 7/28/23) is DENIED.

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 08/08/2023 .

Kershaw County South Carolina

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

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.

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

EXHIBIT B

ELECTRONICALLY FILED - 2024 Oct 17 3:27 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF KERSHAW	)	
Christine Jernigan,	)	C/A #: 23-CP-28-00538
	)	
Plaintiff,	)	
	)	**ORDER GRANTING MOTION TO DISMISS FOR FAILURE TO PROSECUTE AND GRANTING JUDGMENT ON THE PLEADINGS AND DISMISSING THIS CASE WITH PREJUDICE**
v.	)	
	)	
Kershaw County South Carolina,	)	
	)	
Defendant.	)	
	)	

This matter came before the court on Tuesday, August 27, 2024, for a non-jury trial term of court. Two cases appeared on the roster for trial. All parties were properly notified of the term of court.

Neither Plaintiff, Christine Jernigan, nor her counsel, Justin Jernigan appeared. The Defendant and their witnesses were present and ready to proceed to trial. Plaintiff had not communicated with the Court or with Defendant's counsel and had not requested a continuance.

At the call of the case, counsel for Kershaw County made two motions. Both motions were heard and granted. Counsel moved to dismiss the case for failure to prosecute. The Defendant was present with their witnesses and ready to proceed. Due to the absence of Plaintiff for a properly noticed non-jury trial term of court and the lack of communication from Plaintiff, that motion is granted. *See, McComas v. Ross*, 626 S.E.2d 902, (Ct.App. 2006). Normally, this motion would result in the case being dismissed without prejudice. If this were the only motion pending, that normal result would follow. However, the ruling on the motion for judgment on the pleadings, addressed below, dictates that this case must be dismissed with prejudice.

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Kershaw County also moved for judgment on the pleadings. This is a Freedom of Information enforcement action that is highly disputed. Christine Jernigan is the Plaintiff. Justin Jernigan represents her but is not a party to the action.

Plaintiff attached the Freedom of Information Act request to the complaint as Exhibit B. That request was originally served upon the Kershaw County Sheriff's Department. Subsequently, the same FOIA request was served upon Kershaw County by Justin Jernigan. The Court has examined the request. The request clearly indicates that the requestor is Justin Jernigan, not Christine Jernigan. Mr. Jernigan did not indicate that the request was made in a representative capacity.

Kershaw County moved for judgment on the pleadings on these grounds: (1) Christine Jernigan, plaintiff, never made a FOIA request and therefore had no FOIA request to enforce; (2) Justin Jernigan, who made the FOIA request, was not a party to this litigation and therefore could not enforce the FOIA request; (3) Even if he were a party, Justin Jernigan, who resides in North Carolina, cannot bring an enforcement action pursuant to S.C. Code Section 30-4-100. The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied.

As to ground (1), the record clearly reflects that Christine Jernigan is the sole plaintiff. However, the record also reflects that the FOIA request she seeks to enforce was made by Justin Jernigan. Christine Jernigan did not make a FOIA request. Therefore, she has no FOIA request to enforce.

As to ground (2), Justin Jernigan is not a plaintiff in this case. Instead, he is counsel of record for Christine Jernigan. Christine Jernigan is the sole plaintiff. However, he is the

ELECTRONICALLY FILED - 2024 Oct 17 3:27 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

requestor on the FOIA request attached to the complaint and served upon Kershaw County. He cannot prosecute this case as a party to the litigation when he is not a party.

As to ground (3), even if Justin Jernigan were a party to this case, he cannot bring a FOIA enforcement action since he is not a citizen of the State of South Carolina. The court's file clearly shows that his address is in Weddington, N.C. The Freedom of Information Act specifically describes who can bring an enforcement action. While the act allows any person to make a FOIA request, enforcement is governed by Section 30-4-100 which states:

> (A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter….

A Freedom of Information Act with enforcement limited to state citizens is appropriate and lawful. The United States Supreme Court denied a challenge to Virginia's citizens-only FOIA statute. *See, McBurney v. Young*, 133 S.Ct. 1709, 569 U.S. 221 (2013). The reporter's summary of the opinion states in the syllabus:

> Virginia's FOIA exists to provide a mechanism for Virginia citizens to obtain an accounting from their public officials; noncitizens have no comparable need. Moreover, the distinction between citizens and noncitizens recognizes that citizens alone foot the bill for the fixed costs underlying recordkeeping in the Commonwealth.

McBurney, 569 S.Ct. 1709, 1711.

> The Court has repeatedly stated that the Constitution does not guarantee the existence of FOIA laws.

569 S.Ct. @ 1712.

> Insofar as there is a "market" for public documents in Virginia, it is a market for a product that the Commonwealth has created and of which the Commonwealth is the sole manufacturer. A State does not violate the dormant Commerce Clause when, having created the market through a state program, it "limits benefits generated by (that) state program to those who fund the state treasury and whom the State was created to serve.

569 S.Ct. @ 1712-1713.

The United States Supreme Court stated that a citizen-only FOIA enforcement provision "provides a service that is related to state citizenship." 569 S.Ct. @ 1713. South Carolina's FOIA does the same thing. Enforcement is limited to citizens of South Carolina. South Carolina citizens foot the bill for the infrastructure for the recordkeeping and are the recipients of state services. Since Justin Jernagin is not a resident of South Carolina, even if he were a plaintiff in this action, he cannot bring an enforcement action.

Consequently, Defendant's motion for judgment on the pleadings is granted on all grounds asserted. This case is dismissed with prejudice.

AND IT SO ORDERED.

_____
Honorable Jocelyn Newman

_____, 2024

ELECTRONICALLY FILED - 2024 Oct 17 3:27 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

ELECTRONICALLY FILED - 2024 Oct 17 3:27 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Dismissal

So Ordered

Jocelyn Newman

EXHIBIT C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan
PLAINTIFF(S)

Kershaw County South Carolina
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:

Plaintiff's Motion to Reconsider (filed on 10/28/24) is DENIED. The motion was not timely filed and is not meritorious.

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 11/21/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

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.

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

RECEIVED
Dec 16 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge
Civil Action No. 2023-CP-28-00538

Christine Jernigan……Appellant,

v.

Kershaw County
South Carolina……Respondent.

PROOF OF SERVICE

I hereby certify that the foregoing Notice of Appeal is being served by email to counsel for the Respondent David Morrison at david@dmorrison-law.com. A copy of the Notice of Electronic Filing for the notice of appeal filed with the clerk of the lower court is attached.

Respectfully submitted,

By: /s/Justin A. Jernigan
Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANT

December 12, 2024

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2023CP2800538

Official File Stamp:	12-16-2024 05:07:16 PM
Court:	CIRCUIT COURT Common Pleas Kershaw
Case Caption:	Christine Jernigan VS Kershaw County South Carolina
Document(s) Submitted:	Appeal/Notice of Appeal to Court of Appeals - Exhibit/Filing of Exhibits - Exhibit/Filing of Exhibits - Exhibit/Filing of Exhibits
Filed by or on behalf of:	Justin A. Jernigan

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

David Leon Morrison for Kershaw County South Carolina
Cameron W. DeBoy for Kershaw County South Carolina
Justin A. Jernigan for Christine Jernigan

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

RECEIVED
Jun 02 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-002127
Case No. 2023-CP-28-0538

Christine Jernigan, ... Appellant,

v.

Kershaw County South Carolina, ... Respondent.

MOTION TO DISMISS APPEAL

The Respondent Kershaw County hereby moves for the dismissal of the appeal filed by the Appellant Christine Jernigan. Pursuant to Rule 240(b), SCACR, the Respondent requests that the time limits for perfecting the appeal be deemed automatically stayed until this motion is decided.

BACKGROUND

This is an appeal from a Freedom of Information Act action. By Order filed October 17, 2024, the trial court granted a motion to dismiss for failure to prosecute when the Appellant failed to appear at trial scheduled on August 27, 2024. The trial court also granted the Respondent's motion for judgment on the pleadings in that same order. On October 28, 2024, the Appellant filed a motion to reconsider pursuant to Rule 59(e), SCRCP. Thereafter, the trial court issued a Form

Order filed November 21, 2024, and ruled that "[t]he motion was not timely filed and is not meritorious." The Appellant then filed a notice of appeal on December 16, 2024.

LEGAL ANALYSIS

The Appellant failed to file a timely notice of appeal, and for that reason, this Court lacks appellate jurisdiction. In its Form Order filed November 21, 2024, the trial court ruled that the Appellant's motion to reconsider "was not timely filed." While the Appellant included that Form Order in her notice of appeal, when the Appellant filed her Appellant's Initial Brief which establishes the issues raised on appeal, the Appellant did not appeal or raise as an issue on appeal that the trial court's finding that her motion to reconsider "was not timely filed" was in error. That issue is not mentioned or addressed in the Statement of Issues on Appeal nor in the Argument section on that Initial Brief. In fact, there is no issue on appeal directed at the Form Order filed November 21, 2024, nor any substantive discussion of that Form Order in the Appellant's Initial Brief.

Therefore, given the current posture of this appeal and initial briefing, it is clear that the Appellant has not appealed the trial court's explicit ruling that her motion to reconsider "was not timely filed." It is well-settled that "an unappealed ruling, right or wrong, is the law of the case." *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285 (2012). Thus, the law of this case – whether correct or not – holds that the Appellant's motion to reconsider was not timely filed.

Rule 203(b)(1), SCACR, provides: "When a *timely* motion ... to alter or amend the judgment … has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion." Rule 203(b)(1), SCACR. (Emphasis added). Likewise, Rule 59(f), SCRCP provides: "The time for appeal for all

parties shall be stayed by a *timely* motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions." Rule 59(f), SCRCP. (Emphasis added). Thus, in order for a motion to reconsider brought pursuant to Rule 59(e) to stay the time for appeal, that motion must be "timely."

In the case at bar, however, the trial court issued an unappealed ruling that the motion to reconsider "was not timely filed," and as a result, the filing of that motion to reconsider did not stay the time for filing the notice of appeal. Instead, the Appellant had thirty days from the filing date of the October 17, 2024 Order in which to file her notice of appeal, but the notice of appeal was not filed until December 16, 2024. That was too late, and accordingly, this Court lacks appellate jurisdiction.

While it appears that the trial court may very well have been in error in ruling that the motion to reconsider "was not timely filed," that does not impact the analysis of appellate jurisdiction. As mentioned, under clear South Carolina precedent, the trial court's unappealed ruling that the motion to reconsider was untimely filed – whether right or wrong – constitutes the law of this case. In addition to not appealing that ruling in her Appellant's Initial Brief, the Appellant never preserved that issue by the filing a subsequent Rule 59(e) motion calling any error regarding the timeliness of the motion to reconsider to the trial court's attention and giving that court the opportunity to correct such error.[1]

As is well-settled, the law on issue preservation in South Carolina mandates that an error be first called to the trial court's attention in order to preserve an issue for appeal. That is also

[1] This rule of law is also consistent with the longstanding precedent that "South Carolina appellate courts do not recognize the 'plain error rule,' under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Thus, this Court cannot rectify or correct any timeliness issue that was not challenged in the court below and was not raised on appeal to this Court.

the case where an error is initially made in an order resolving a motion to reconsider. As this Court has held, "[w]hen a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal." *In re Timmerman*, 331 S.C. 455, 502 S.E.2d 920, 922 (Ct. App. 1998). The reason for that is clear: the trial court must have "the opportunity promptly to correct their own alleged errors." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 779 (2004).[2] *See also*, *Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673, 675 (1993) (issue not preserved for appeal where the ruling is made first in a post-trial order and is not challenged by a subsequent Rule 59(e) motion); *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d 859, 859 (Ct. App. 1993) (where a theory of relief was first raised in the lower court's order, appellant must challenge this theory with a Rule 59(e) motion); *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000) ("The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments").

Thus, in addition to failing to appeal the trial court's ruling that the motion to reconsider "was not timely filed," the Appellant also failed to raise any timeliness error to the trial court before filing her appeal. Moreover, as stated in Rule 6(b), SCRCP, "[t]he time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order." Rule 6(b), SCRCP. *See also*, *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206, 207 (1985) ("[s]ervice of the

[2] *See*, *Sweeney v. Sweeney*, 420 S.C. 69, 800 S.E.2d 148 (Ct. App. 2017) (finding "[b]ecause the family court did not have the opportunity to rule upon the issue or *correct any alleged mistakes in its final order*, we find it unpreserved for our review"). (Emphasis added).

notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served"). Thus, this Court lacks jurisdiction to take any corrective action even if it may wish to do so.

CONCLUSION

In sum, the law of this case establishes that the Appellant's motion to reconsider "was not timely filed," and as a result, the filing of the notice of appeal on December 16, 2024, was not timely, meaning that this Court lacks appellate jurisdiction. The Respondent respectfully requests that the Court dismiss this appeal for lack of appellate jurisdiction.

Respectfully submitted,

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June 2, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-002127
Case No. 2023-CP-28-0538

Christine Jernigan, ... Appellant,

v.

Kershaw County South Carolina, ... Respondent.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Respondent, does hereby certify that service of the **Motion to Dismiss Appeal** in the above-captioned matter was made upon all counsel of record by email only this the 2nd day of June 2025, as follows:

Justin A. Jernigan, Esquire
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s/ Andrew F. Lindemann

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RECEIVED
Jun 02 2025
SC Court of Appeals

June 2, 2025

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Christine Jernigan v. Kershaw County South Carolina
Appellate Case Number: 2024-002127
Civil Action Number: 2023-CP-28-0538
Our File Number: 290.20826

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as Amended April 24, 2024), please find enclosed for filing the **Motion to Dismiss Appeal** with regard to the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

My firm's check for the $50.00 filing fee will be sent to the Court via U.S. Mail. If you have any questions, please advise.

Thank you for your assistance.

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jac
Enclosure

cc: Justin A. Jernigan, Esquire *(w/ Enclosure, Via Email Only)*
David L. Morrison, Esquire *(w/ Enclosure, Via Email Only)*

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Jun 12 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan……..……..……..…..…… Appellant,

v.

Kershaw County South Carolina……..……..……...…..…..……...Respondent.

RETURN IN OPPOSITION TO MOTION TO DISMISS APPEAL

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Appellant Christine Jernigan ("Appellant" or "Mrs. Jernigan"), pursuant to Rule 240(e), SCACR, respectfully submits this Return in Opposition to the June 2, 2025, Motion to Dismiss for alleged lack of appellate jurisdiction filed by Respondent Kershaw County South Carolina ("Respondent" or "KCSC").

I. INTRODUCTION

Respondent's Motion to Dismiss asserts that Appellant's Monday, October 28, 2024, Rule 59(e) Motion to reconsider the circuit court's October 17, 2024, Written Order – which was indisputably "timely" pursuant to Rules 203(b)(1) & 263(a), SCACR, subsequently became "not timely filed," and therefore did not stay the time for appeal, due to alleged later-occurring procedural missteps or deficiencies. (MTD at 5). As a result, Respondent contends that Appellant's December 16, 2024, Notice of Appeal also became not timely filed, "and for that reason, this Court lacks appellate jurisdiction." (MTD at 2).

Rather than applying Rules 203(b)(1) & 263(a), SCACR, to the calendar – which clearly establish that Appellant's Monday, October 28, 2024, Rule 59(e) Motion was filed prior to expiration of Rule 203(b)(1)'s 10-day deadline – Respondent instead contends that "the law of the case … holds that the Appellant's motion to reconsider was not timely." (MTD at 2). Specifically, because the November 21, 2024, Form 4 Order states that the "Motion to Reconsider (filed on [Monday] 10/28/24) is DENIED. The motion was not timely filed and is not meritorious," Respondent argues Appellant was required to thereafter file another Rule 59(e) motion to reconsider the November 21, 2024, Form 4 Order, and to specifically seek reversal of the November 21, 2024, Form 4 Order on appeal (i.e., in Appellant's April 2, 2024, Initial Brief). (MTD at 3).

In sum, Respondent's Motion contends that this Court lacks appellate jurisdiction to hear the present appeal because Appellant is procedurally barred from obtaining reversal of the November 21, 2024, Form 4 Order denying Appellant's timely-filed Monday, October 28, 2024, Rule 59(e) Motion as "not timely filed and [] not meritorious." In other words, Respondent's Motion argues that this Court must ignore the actual facts and Rules 203(b)(1) & 263(a), SCACR, and instead find that this Court lacks appellate jurisdiction based on the circuit court's November 21, 2024, Form 4 Order denying Appellant's Rule 59(e) Motion.

As an initial matter, Respondent's arguments claiming that the circuit court's November 21, 2024, Form 4 Order is an "unappealed ruling," and therefore unassailable as "the law of this case," are incorrect. (MTD at 2-3). Appellant has, *inter alia*, raised Issues on Appeal concerning whether the circuit court's underlying October 17, 2024, Written Order erred by dismissing this action. If this Court reverses the underlying Order's dismissal of this action, alleged errors in the November 21, 2024, Form 4 Order denying Appellant's October 28, 2024, Rule 59(e) Motion to reconsider the underlying Order become irrelevant. In other words, if the underlying Order is reversed, there is no need for this Court to then correct alleged errors in the circuit court's Form 4 Order declining to reconsider the underlying Order

As discussed in detail herein below, this Court should deny Respondent's Motion to Dismiss for lack of appellate jurisdiction because: (*i*) Appellant's Monday, October 28, 2024, Rule 59(e) Motion was indisputably "timely" pursuant to Rules 203(b)(1) & 263(a), SCACR, and controlling precedent; (*ii*) Respondent's arguments for dismissal are based on purported procedural missteps/deficiencies which do not affect this Court's appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCACR; and (*iii*) The alleged procedural missteps or deficiencies

argued by Respondent are secondary/remaining issues, or purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address.

II. BACKGROUND

The Background Section of Respondent's Motion to Dismiss for alleged lack of appellate jurisdiction (quoted below) is incomplete, and the allegations contained therein are not supported by affidavit or other documents as required pursuant to Rule 240(c)(3), SCACR.

> This is an appeal from a Freedom of Information Act action. By Order filed October 17, 2024, the trial court granted a motion to dismiss for failure to prosecute when the Appellant failed to appear at trial scheduled on August 27, 2024. The trial court also granted the Respondent's motion for judgment on the pleadings in that same order. On October 28, 2024, the Appellant filed a motion to reconsider pursuant to Rule 59(e), SCRCP. Thereafter, the trial court issued a Form Order filed November 21, 2024, and ruled that "[t]he motion was not timely filed and is not meritorious." The Appellant then filed a notice of appeal on December 16, 2024.

(MTD at 1-2).

As discussed in the Statement of the Case section of Appellant's April 2, 2025, Initial Brief, this Appeal arises from a two-count action seeking declaratory/equitable relief pursuant to the Freedom of Information Act ("FOIA"), S.C. Code Ann. §§ 30-1-10, *et seq*. (Count I), and the Public Records Act, S.C. Code Ann. §§ 30-1-10, *et seq*. (Count II). (Appx., pp. 1-2, 137-38). Appellant's April 2, 2025, Initial Brief raises the below Issues on Appeal:

A. Whether the circuit court erred in denying Appellant's Motion for Equitable Relief

1. The circuit court erred by finding that Appellant, a life-long resident of South Carolina, lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A)

2. Appellant's Motion for Equitable Relief established a *prima facie* showing of likelihood of success on the merits to the requested relief

    a. KCSC's August 18, 2022, FOIA Response did not comply with the legal requirements of FOIA, Section 30-4-30(c)

b. The record establishes that KCSC's August 18, 2022, FOIA disclosure was incomplete/redacted

B. Whether the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A)

C. Whether the circuit court erred in granting Respondent's oral motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds

1. The circuit court's application of FOIA, Section 30-4-100(A)'s statutory standing provision leads to a result that is plainly absurd

2. There was no basis for a non-jury trial on August 27, 2024, that could support the circuit court's Dismissal for Failure to Prosecute

(Appx, p. 137).

The Statement of the Case section of Appellant's April 2, 2025, Initial Brief discusses the relevant underlying facts and procedural history "insofar as necessary to an understanding of" the Issues on Appeal pursuant to Rule 208(b)(1)(C), SCRAP. Portions of Appellant's Statement of the Case (*see* Appx., pp. 145-50) are quoted below with citation to the Appendix of Exhibits submitted herewith in brackets:

> Appellant's July 24, 2023, Complaint requests that the circuit court schedule 'an initial hearing within ten days of the date of service of this Complaint upon KCSC' pursuant to the legal requirements of FOIA, Section 30-4-100(A). [Appx., pp. 15, 17] …
>
> Appellant filed an expedited Motion on July 28, 2023, requesting: (*i*) the initial ten-day hearing required by Section 30-4-100(A); (*ii*) injunctive/equitable relief ordering KCSC to fully respond to and disclose the records of the FOIA Request pursuant to the legal requirements of FOIA, Section 30-4-30(c); and (*iii*) a scheduling order to conclude proceedings in this case within six months of filing (the "Motion for Equitable Relief"). [Appx., pp. 21-22, 31]. …
>
> Pursuant to FOIA, Section 30-40-100(A), "[a] citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter." At the initial hearing on August 8, 2023, Judge Newman issued rulings from the bench denying Appellant's July 28, 2023, Motion for Equitable Relief on grounds that Appellant Mrs. Jernigan, who is a

life-long resident of this State [Appx., pp. 2, 106], lacks standing to proceed with this case because she was not specifically listed as "requester" on the FOIA Request [Appx., p. 47, lns. 23-25; p. 48, lns. 3-5; p. 50, lns. 10-16]. …

Judge Newman entered a Form 4 Order on August 8, 2023, stating: "Following a hearing on August 8, 2023, Plaintiffs '… Motion for… Equitable Relief…' (filed on 7/28/23) is DENIED." [Appx., p. 61]. …

The circuit court's August 8, 2023, Form 4 Order denied Appellant's [July 28, 2023,] Motion for Equitable Relief on lack-of-FOIA-requester standing grounds, effectively ending the present case. The August 8, 2023, Form 4 Order is also an appealable order, as a matter of right, pursuant to S.C. Code Ann. § 14-3-330(4). …

Appellant timely-filed an August 15, 2023, Motion, and September 11, 2023, supporting Memorandum with Exhibits J to L, seeking clarification and reconsideration of the August 8, 2023, Form 4 Order pursuant to Rules 52(a), (b) ("in granting or refusing interlocutory injunctions the court shall … set forth the findings of fact and conclusions of law which constitute the grounds of its action"), & 59(e), SCRCP (collectively, the "Motion to Clarify/Reconsider"). [Appx., pp. 64-78 (Motion)]. …

Rather than issuing a ruling on Appellant's pending [August 15, 2023,] Motion to Clarify/Reconsider, however, the present case was instead placed on the circuit court's non-jury roster calendar for the August 27, 2024, term. Given that the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, and no ruling on the pending August 15, 2023, Motion to Clarify/Reconsider had been entered, there was no basis for the circuit court to schedule or conduct a non-jury trial on August 27, 2024. [Appx., pp. 101-02]. Unfortunately, due to a docketing error/mistake, undersigned counsel neglected to contact the circuit court and opposing counsel regarding these matters prior to the scheduled August 27, 2024, term of non-jury court. [Appx., pp. 102-03]. After realizing this error/mistake, undersigned counsel promptly contacted the court and opposing counsel on August 30, 2024. [Appx. pp. 101-02, 106-07, 109].

On October 17, 2024, the circuit court entered an Order denying Appellant's [August 15, 2023,] Motion to Clarify/Reconsider, and granting KCSC's August 27, 2024, oral Motion for Judgment on the Pleadings, on grounds that Appellant lacked statutory standing to proceed under FOIA, Section 30-4-100(A); *i.e.*, lack-of-FOIA-requester standing. [Appx., pp. 86-90]. The October 17, 2024, Order states in part: 'The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied.' [Appx., p. 87].

> Despite affirming the August 8, 2023, Form 4 Order's determination that Appellant lacked statutory standing to proceed under FOIA, Section 30-4-100(A), the October 17, 2024, Order also grants KCSC's August 27, 2024, oral Motion to Dismiss for Failure to Prosecute on grounds that neither Appellant nor undersigned counsel appeared for the scheduled non-jury trial on August 27, 2024. [Appx., p. 86]. …
>
> On October 28, 2024, Appellant *timely-filed* a Motion to Reconsider the October 17, 2024, Order pursuant to Rule 59(e), SCRCP (the "Rule 59(e) Motion to Reconsider"). [Appx., pp. 90-105]. The circuit court denied Appellant's Rule 59(e) Motion to Reconsider via a Form 4 Order entered on November 21, 2024. [Appx., p. 113]. Appellant *timely-filed and served* a Notice of Appeal on December 16, 2024. [Appx., pp. 116-132]. The orders subject to appeal include (*i*) the August 8, 2023, Form 4 Order; (*ii*) the October 17, 2024, [Written] Order, and (*iii*) the November 21, 2024, Form 4 Order. [*Id.*].

(Appx., pp. 145-50 (emphasis added)).

III. ARGUMENT

A. Appellant's Monday, October 28, 2024, Rule 59(e) Motion was indisputably "timely" pursuant to Rules 203(b)(1) & 263(a), SCACR, and controlling precedent

Our Supreme Court has held that "'[t]imely' is a temporal term," and as used in Rule 203(b)(1), SCACR, "it means *only* that the post-trial motion – in this case a Rule 59(e) motion – was served … not later than ten days from the date of receipt of written notice of the entry of the order the merits of which the [post-trial] motion purports to address." *Swing v. Swing*, Op. No. 28266, *5 (S.C. Sup. Ct. filed Mar. 12, 2025) (Davis Adv. Sh. No. 11 at 11) (emphasis added, internal fn omitted). The grounds for Respondent's Motion to Dismiss – that Appellant's Monday, October 28, 2024, Rule 59(e) Motion was "not timely filed" – conflict with this controlling precedent holding that "timely is a temporal term."

Appellant's Monday, October 28, 2024, Rule 59(e) Motion was obviously timely filed/served not later than ten days from entry of the circuit court's October 17, 2024, Written Order in accord with the requirements of Rules 203(b)(1) & 263(a), SCACR. (Appx., pp. 86-90 & 91-112). The calendar establishes that October 27, 2024, was a Sunday and, accordingly, the

ten-day deadline ran until the end of the next day; i.e., Monday, October 28, 2024. Appellant's Monday, October 28, 2024, Rule 59(e) Motion was, indisputably, a timely-filed motion pursuant to the requirements of Rules 203(b)(1) & 263(a), SCACR. *See Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 810 S.E.2d 856, 858, 422 S.C. 211, 215 (2018) (holding that "the South Carolina Appellate Court Rules control" with respect to determining whether an appeal was timely for purposes of establishing appellate jurisdiction).

In *Swing*, our Supreme Court reiterated the "fairly emphatic explanation [previously] given by the *Elam* Court" holding that "timely post-trial motions <u>*always*</u> stay the time for appeal unless the motion fits into one of the two 'exceptions' initially set forth in *Coward Hund* and *Quality Trailer*." *Swing*, Op. No. 28266 at *8 (emphasis added). The two potential exceptions are not relevant to Respondent's Motion to Dismiss for alleged lack of appellate jurisdiction. *See id.* (citing cases where Rule 59(e) motions were inappropriately successive or procedurally improper).

Appellant's timely filed/served Monday, October 28, 2024, Rule 59(e) Motion stayed the time for appeal; Appellant's December 16, 2024, Notice of Appeal was timely filed/served within thirty (30) days after receipt of the November 21, 2024, Form 4 Order denying Appellant's Rule 59(e) Motion (Appx., pp. 113, 116-32); and, accordingly, this Court clearly has appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCRAP. Appellant respectfully requests that this Court deny Respondent's Motion to Dismiss for alleged lack of appellate jurisdiction.

B . Respondent's arguments for dismissal are based on alleged procedural missteps or deficiencies which do not affect this Court's appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCACR

As noted above, our Supreme Court has held "that 'timely' is a temporal term," and as used in Rule 203(b)(1), SCRAP, "it means *only* that the post-trial motion" was filed/served not later than ten days from receipt/entry of the order the post-trial motion purports to address. *Swing*, Op. No. 28266 at *5 (emphasis added). The *Swing* Court reiterated the *Elam* Court's prior holding that "timely post-trial motions *always* stay the time for appeal unless the motion fits into" one of the two previously-recognized "exceptions" which are not relevant or at issue with respect to Respondent's Motion to Dismiss for alleged lack of appellate jurisdiction. *Swing*, Op. No. 28266 at *8 (emphasis added, citations omitted).

The *Swing* Court explicitly rejected the parties' position that "the question as to the timeliness of the appeal is whether any Rule 59(e) motion somehow runs afoul of a rule of procedure." *Id.* at *9. As the *Swing* Court explained, "[i]t should simplify the matter for everyone to learn that this is not the correct view. Rather, the 'rule' is Rule 203(b)(1), which provides in plain language that a 'timely' motion stays the time for appeal for all parties." *Id.*

Respondent's Motion to Dismiss contends that this Court lacks appellate jurisdiction, because Appellant did not (*i*) file another Rule 59(e) motion requesting reconsideration of the November 21, 2024, Form 4 Order's statements that "the motion was not timely filed and is not meritorious;" and (*ii*) specifically seek and argue for reversal of the November 21, 2024, Form 4 Order on appeal (i.e., in Appellant's April 2, 2024, Initial Brief). (MTD at 3). Therefore, rather than answering the question as to the timeliness of this appeal based on Rule 203(b)(1), SCACR, as required by *Swing*, Respondent's arguments for dismissal are based on purported subsequent procedural missteps or deficiencies which do not affect this Court's appellate jurisdiction.

This is not a case where, pursuant to timeliness requirements of Rule 203(b)(1), SCACR, "this Court lacks [appellate] jurisdiction to take any corrective action even if it may wish to do so." (MTD at 5). Appellant respectfully requests that this Court deny Respondent's Motion to Dismiss for lack of appellate jurisdiction because Respondent's arguments for dismissal are based on purported subsequent procedural missteps or deficiencies which do not affect this Court's appellate jurisdiction pursuant to Rule 203(b)(1), SCACR.

C. The alleged procedural missteps or deficiencies argued by Respondent are secondary/remaining issues, or purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address

As set forth in Section II above (p. 6), Appellant's Statement of the Case includes, *inter alia*, the below facts and procedural history:

> On October 28, 2024, Appellant *timely-filed* a Motion to Reconsider the October 17, 2024, Order pursuant to Rule 59(e), SCRCP (the "Rule 59(e) Motion to Reconsider"). [Appx., pp. 90-105]. The circuit court denied Appellant's Rule 59(e) Motion to Reconsider via a Form 4 Order entered on November 21, 2024. [Appx., p. 113]. Appellant *timely-filed and served* a Notice of Appeal on December 16, 2024. [Appx., pp. 116-132]. The orders subject to appeal include (*i*) the August 8, 2023, Form 4 Order; (*ii*) the October 17, 2024, [Written] Order, and (*iii*) the November 21, 2024, Form 4 Order. [*Id.*].

(Appx., pp. 150 (emphasis added)).

Appellant respectfully submits that her timely filed/served December 16, 2024, Notice of Appeal, and April 2, 2025, Initial Brief, comply with the applicable South Carolina Appellate Court Rules. (Appx., pp. 116-32 & 133-168). Notably, Appellant respectfully submits that her April 2, 2025, Initial Brief properly raises, explains, and argues the Issues on Appeal in accord with the requirements of Rule 208(b)(1), SCACR. As set forth in Section II above (pp. 3-4), the three primary Issues on Appeal are:

> (A) Whether the circuit court erred in denying Appellant's [July 28, 2023,] Motion for Equitable Relief;

> (B) Whether the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A); and
>
> (C) Whether the circuit court erred in granting Respondent's oral motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds

(Appx, p. 137).

In summary, the Issues on Appeal concern whether the circuit court erred in denying Appellant's July 28, 2023, Motion for Equitable Relief, and in dismissing this case via its October 17, 2024, Written Order, by finding that Appellant, a life-long resident of South Carolina, lacks standing to proceed with this case pursuant to FOIA, Section 30-4-100(A) (i.e., lack-of-FOIA-requester standing). (*Id.*). Pursuant to Rule 208(b)(1)(B), SCACR, "[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal."

A potential exception to Rule 208(b)(1)(B) is provided by Rule 220(c), which states that the appellate court *may* "affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." This Court "may review additional sustaining grounds raised by a respondent, and 'if convinced it is proper and fair to do so, rely on them or any other reason' raised on appeal and appearing in the record to affirm the lower court's judgment." *Cowburn v. Leventis*, 366 S.C. 20, 35 n.4, 619 S.E.2d 437, 446 n.4 (Ct. App. 2005) (citation omitted) (declining to address additional sustaining grounds because the court was "not convinced it [was] proper and fair to do so"). Moreover, an appellate court is not required to address unnecessary secondary or remaining issues raised by the appellant on appeal when the disposition of a prior issue raised on appeal is dispositive. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

Appellant respectfully submits that this Court should resolve this appeal based on the Issues on Appeal that have been raised Appellant. *See* Rule 208(b)(1)(B), SCACR. In the present case, if this Court reverses the circuit court's underlying Orders denying Appellant's Motion for Equitable Relief and dismissing this action, it would then be unnecessary for this Court to address and correct a remaining issue raised on appeal arguing that the circuit court erred by denying the Monday, October 28, 2024, Rule 59(e) Motion to reconsider the reversed underlying Order. Thus, the alleged procedural missteps and deficiencies argued by Respondent's Motion to Dismiss concern secondary/remaining issues, or purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address.

Once this Court reverses an erroneous underlying order dismissing an action, alleged errors in the order denying the appellant's Rule 59(e) motion to reconsider the reversed underlying order become irrelevant. For instance, in *Osmundson v. School District 5* this Court interpreted FOIA, Section 30-4-100(A) based on its plain meaning, as a matter of first impression. 443 S.C. 610, 614-16, 905 S.E.2d 418 (Ct. App. 2024). This Court's decision in *Osmundson* is also cited/discussed in Appellant's April 2, 2025, Initial Brief. (Appx., pp. 9, 23-25). The *Osmundson* Court held, pursuant to Section 30-4-100(A), that the circuit court erred in dismissing the FOIA action on technical/procedural grounds because the circuit court is responsible for scheduling the required initial hearing within ten days of service on all parties. 905 S.E.2d at 419-21.

The appellant in *Osmundson* had also raised a secondary or remaining issue on appeal arguing that the circuit court erred in denying his Rule 59(e) motion to reconsider on procedural grounds; i.e., his failure to provide a copy of the motion to the court within ten days of filing

pursuant to Rule 59(g), SCRCP. 905 S.E.2d at 421. The appellant in *Osmundson* had not, however, filed another Rule 59(e) motion challenging the denial of his first Rule 59(e) motion based on Rule 59(g), SCRCP, prior to raising the issue on appeal. The *Osmundson* Court held that, [b]ecause we reverse and remand based on the circuit court's erroneous dismissal of the action, we need not address this argument." 905 S.E.2d at 421 (citing *Futch*, 335 S.C. at 613, 518 S.E.2d at 598). After reversing the circuit court's underlying order dismissing the action, the alleged errors in the order denying the appellant's Rule 59(e) motion to reconsider the reversed underlying order became irrelevant. *Id.*

Appellant respectfully requests that this Court deny Respondent's Motion to Dismiss for lack of appellate jurisdiction because the alleged procedural missteps or deficiencies argued by Respondent are (*i*) secondary/remaining issues, or (*ii*) purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address to resolve this appeal.

IV. CONCLUSION

For the reasons set forth herein, Appellant respectfully requests that this Court deny Respondent's Motion to Dismiss for lack of appellate jurisdiction. In summary, Appellant respectfully submits that: (*i*) Appellant's Monday, October 28, 2024, Rule 59(e) Motion was indisputably "timely" pursuant to Rules 203(b)(1) & 263(a), SCACR, and controlling precedent; (*ii*) Respondent's arguments for dismissal are based on purported procedural missteps or deficiencies which do not affect this Court's appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCACR; and (*iii*) The alleged procedural missteps or deficiencies argued by Respondent are secondary/remaining issues, or purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address to resolve this appeal.

Respectfully submitted,

By: s/Justin A. Jernigan

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ATTORNEY FOR APPELLANT

June 12, 2025

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Jun 17 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-002127
Case No. 2023-CP-28-0538

Christine Jernigan, ... Appellant,

v.

Kershaw County South Carolina, ... Respondent.

REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

The Respondent Kershaw County has moved to dismiss this appeal for the lack of appellate jurisdiction. As the record demonstrates, on October 28, 2024, the Appellant Christine Jernigan filed a motion to reconsider pursuant to Rule 59(e), SCRCP; however, the trial court ruled that "[t]he motion was not timely filed." *See*, Form Order filed November 21, 2024. Based on her Initial Brief and the issues on appeal raised therein, it is clear that the Appellant has not appealed the trial court's explicit ruling that her motion to reconsider "was not timely filed." Importantly, "an unappealed ruling, right or wrong, is the law of the case." *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285 (2012). Thus, the law of this case – whether correct or not – holds that the Appellant's motion to reconsider was not timely filed.

Because that motion was not timely filed, then the deadline for filing a timely appeal was not stayed by the filing of that Rule 59(e) motion, and hence, the filing of the notice of appeal on December 16, 2024, was not timely. Accordingly, this Court lacks appellate jurisdiction and must dismiss the appeal.

In response to the motion to dismiss the appeal, the Appellant attempts to challenge the trial court's explicit ruling that her motion to reconsider "was not timely filed." However, it is too late for her to challenge that ruling at this stage of the appeal, where the Appellant both failed to appeal from that ruling in her Initial Appellant's Brief and failed to seek reconsideration from the trial court prior to even filing her appeal. Notably, the Appellant does not dispute that she committed those very errors, but instead disputes their impact on this Court's appellate jurisdiction. The Appellant refers to those errors as "alleged procedural missteps or deficiencies which do not affect this Court's appellate jurisdiction." She is incorrect in that regard.

The Appellant complains that the Respondent does not acknowledge the timeliness of her motion to reconsider; however, the law of the case already holds – right or wrong – that the motion "was not timely filed." That is the unappealed ruling of the trial court. To reiterate, at this point, it makes no difference whether that ruling was correct or not – *the untimeliness of the motion to reconsider is the law of the case*. And, because that motion to reconsider was untimely, that means that the filing of the notice of appeal was also untimely, and as a result, this Court lacks appellate jurisdiction.

Contrary to the Appellant's assertion, her "procedural missteps or deficiencies" cannot be corrected at this stage of the litigation, and this Court has no jurisdiction to excuse those errors. As the Supreme Court has held, "[s]ervice of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206, 207 (1985).

As a pertinent example of this rule applied under similar circumstances, in *Connor v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002), the Supreme Court actually reversed this Court for granting the appellant's motion to correct the record and for accepting a backdated notice of appeal where the court lacked appellate jurisdiction to do so. 560 S.E.2d at 610. The same limitations on appellate jurisdiction apply in this appeal.

In sum, the Respondent respectfully renews its request that the Court dismiss this appeal for lack of appellate jurisdiction.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

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Counsel for Respondent Kershaw County

June 17, 2025

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Jun 17 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-002127
Case No. 2023-CP-28-0538

Christine Jernigan, ... Appellant,

v.

Kershaw County South Carolina, ... Respondent.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Respondent, does hereby certify that service of the **Reply Memorandum in Support of Motion to Dismiss Appeal** in the above-captioned matter was made upon all counsel of record by email only this the 17th day of June 2025, as follows:

Justin A. Jernigan, Esquire
Email: justin.a.jernigan@gmail.com

David L. Morrison, Esquire
Garfield Spreeuwers Law Group
Email: david@gslawsc.com

s/ Andrew F. Lindemann

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*Also Admitted in North Carolina

June 17, 2025

RECEIVED
Jun 17 2025
SC Court of Appeals

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Christine Jernigan v. Kershaw County South Carolina
Appellate Case Number: 2024-002127
Civil Action Number: 2023-CP-28-0538
Our File Number: 290.20826

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as Amended April 24, 2024), please find enclosed for filing the **Reply Memorandum in Support of Motion to Dismiss Appeal** with regard to the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

If you have any questions, please advise.

Thank you for your assistance.

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jac
Enclosure

cc: Justin A. Jernigan, Esquire *(w/ Enclosure, Via Email Only)*
David L. Morrison, Esquire *(w/ Enclosure, Via Email Only)*

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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July 08, 2025

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Mr. Cameron W. DeBoy, Esquire
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Suite 1800
Columbia SC 29201

Mr. Andrew F. Lindemann, Esquire
PO Box 6923
Columbia SC 29260

Re: Christine Jernigan v. Kershaw County
Appellate Case No. 2024-002127

Dear Counsel:

Enclosed is the decision of the Court. The initial brief of respondent and designation of matter is due within thirty (30) days of the date of this letter.

Very truly yours,



CLERK

The South Carolina Court of Appeals

Christine Jernigan, Appellant,

v.

Kershaw County South Carolina, Respondent.

Appellate Case No. 2024-002127

ORDER

On June 2, 2025, Respondent filed a motion to dismiss this appeal, arguing this court lacked appellate jurisdiction because the circuit court found Appellant's motion to reconsider was not timely filed, which was not challenged in a subsequent motion to reconsider or in Appellant's initial brief and, as a result, the motion to reconsider did not toll the time for serving the notice of appeal. *See* Rule 203(b)(1), SCACR (stating that "[w]hen a timely . . . motion to alter or amend the judgment . . . has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion"); *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance."). On June 12, 2025, Appellant filed a return, arguing that if this court reverses the circuit court's underlying order, then the order denying Appellant's motion to reconsider "become[s] irrelevant." Further, Appellant, relying on *Swing v. Swing*, 445 S.C. 340, 914 S.E.2d 158 (2025), argues its motion to reconsider "was indisputably 'timely'" and any "purported procedural missteps/deficiencies . . . do not affect this [c]ourt's appellate jurisdiction." On June 17, 2025, Respondent filed a reply. After careful consideration of the filings, we deny the motion to dismiss. However, this order merely allows the appeal to proceed at this time and does not finally determine whether the underlying order is subject to immediate review.

Stephanie P. McDonald

FOR THE COURT

Columbia, South Carolina

FILED
Jul 08 2025

cc:
Justin A. Jernigan, Esquire
David Leon Morrison, Esquire
Cameron W. DeBoy, Esquire
Andrew F. Lindemann, Esquire

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Oct 06 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan,…….……..……..……..…..……Appellant,

v.

Kershaw County South Carolina,…….……..……..…..……..Respondent.

CERTIFICATE OF SERVICE

I hereby certify that the Record on Appeal is being served by email to counsel for Respondent as follows: David Morrison, Esq., at david@gslawsc.com, and Andrew Lindemann, Esq., at andrew@ldlawsc.com.

Respectfully submitted,

By: s/Justin A. Jernigan

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ATTORNEY FOR APPELLANT

September 16, 2025