

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

William H. Bailey, Jr.,

Plaintiff,

vs.

Marilyn Hatley, individually and as Mayor of
the City of North Myrtle Beach, Michael G.
Mahaney, Christopher Noury, and the City of
North Myrtle Beach,

Defendants,

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-08446

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS INDIVIDUAL
DEFENDANTS**

(Does not end case.)

FILED
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CLERK OF COURT
FREEDOM OF INFORMATION

Statement of Case

The matter came before the Court upon Defendants' motion to dismiss the individual defendants from Plaintiff's Freedom of Information Act lawsuit. A hearing was held on the motion on March 5, 2014. Present at the hearing was the Plaintiff William H. Bailey, Jr., and his attorney Kenneth Moss, Esq. Michael W. Battle, Esq. was present and represented the Defendants.

Plaintiff's lawsuit seeks a declaratory judgment and injunctive relief under South Carolina's Freedom of Information Act in connection with the manner in which the City of North Myrtle Beach held meetings in executive session prior to regularly scheduled meetings in 2013. The issue before the court is whether the above named individuals are proper party defendants under South Carolina's Freedom of Information Act.

Analysis and Findings

Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of South Carolina Freedom of Information Act in appropriate cases as long as such application is made no later than one year

following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of the act must be considered to be an irreparable injury for which no adequate remedy at law exists.

In the present case, Plaintiff is suing Marilyn Hatley, Michael G. Mahaney, Christopher Noury, in their individual capacities together with the City of North Myrtle Beach for acts that violate the public meetings provisions of FOIA. "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power. S.C. Code Ann. § 30-4-20. Meetings are acts of a public body.

The FOIA was created to allow citizens to 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. S.C. Code Ann. § 30-4-15 (2007). FOIA's equitable relief provisions are directed at those improper actions taken by the public body. Only the public body can perform such acts that are subject to FOIA's equitable provisions. See *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 327-28, 701 S.E.2d 39, 47-48 (Ct. App. 2010).

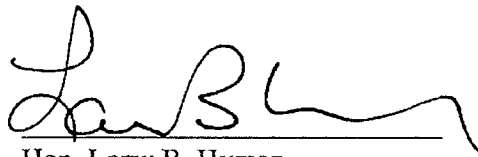
FOIA does provide criminal penalties for individuals who willfully cause public bodies to perform acts that violate FOIA. S.C. Code Ann. § 30-4-110 (Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor). In the present case, Plaintiff seeks an order in equity to stop the public body from allegedly violating the public meeting provisions of FOIA. Therefore, the proper party defendant is the public body and in this case the sole proper party defendant is the City of North Myrtle Beach. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 327-28, 701 S.E.2d 39, 47-48 (Ct. App. 2010). Also see: *Truesdale v. U.S. Dep't of Justice*, 657 F. Supp. 2d 219, 226 (D.D.C. 2009);

Tipton, IV v. Hire Right, No. 1:12-CV-175, 2013 WL 5670886 (M.D. Ga. Oct. 16, 2013); and *Amawi v. BOP*, No. 13-cv-00536-GPM, 2013 WL 3467074 (S.D. Ill. July 10, 2013).

There are FOIA cases in South Carolina where individuals have been named as parties. However, the Court appears ^{TO ME} treat such individual defendants as being one in the same as the public body because it is the public body that has allegedly violated FOIA. See *Lambries v. Saluda Cnty. Council*, 398 S.C. 501, 502, 728 S.E.2d 488, 489 (Ct. App. 2012), reh'g denied (July 25, 2012). One case that has addressed the question of whether individual defendants are proper party defendants in FOIA claims found that the claims against the individuals should be dismissed under *Rule 12 (b) 6, SCRPC*. See *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 327-28, 701 S.E.2d 39, 47-48 (Ct. App. 2010). For the forgoing reasons, I find and conclude the facts as stated in Plaintiff's complaint in the above captioned lawsuit fail to state a FOIA cause of action against the individual defendants. *Rule 12 (b) 6, SCRPC*.

NOW THEREFORE, IT IS HEREBY ORDERED, Defendants' Motion to Dismiss Marilyn Hatley, Michael G. Mahaney, and Christopher Noury from the above captioned lawsuit is hereby granted. Plaintiff's claims against those individuals are hereby dismissed with prejudice.

March 20, 2014



Hon. Larry B. Hyman
Judge, Fifteenth Judicial Circuit
Horry County Court of Common Pleas