

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2013-001880

City of Columbia.....Appellant.

v.

George S. Glassmeyer.....Respondent.

APPELLANT'S FINAL REPLY BRIEF

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LEGAL ARGUMENT ON REPLY

Appellant, City of Columbia (“City”), offers this reply to Respondent’s brief filed December 6, 2013. Throughout his brief, Respondent George S. Glassmeyer (“Glassmeyer”) argues that the public policy articulated in the South Carolina Freedom of Information Act (“FOIA”) compels the disclosure of home and personal email addresses and personal telephone (cell) numbers for applicants to the position of manager for the City. A reading of the FOIA provision relied upon by Glassmeyer, however, does not support this argument.

Specifically, S.C. Code Ann. § 30-4-15 cited at page 5 of Respondent’s brief, states that FOIA is intended to assure that **“public business is performed in an open and public manner** and must be construed so **as to make it possible for citizens. . . to learn and report fully on the activities of their public officials.”** (Respondent’s brief p. 5, emphasis in original) Glassmeyer fails to present any credible argument that an applicant, whether or not a “public official,” waives privacy interests by merely seeking a government position. Indeed, the best argument that Glassmeyer can muster is an alleged “matter of great public importance” in determining whether applicants “reside in the jurisdictional limits of the public body to which they are applying for a leadership position.” (Respondent’s brief p. 12)

Glassmeyer’s argument rings hollow for a number of reasons. First, there is no “jurisdictional limit” upon individuals seeking employment as a city manager. While some may argue that a city manager should reside within the city limits, there is no residency requirement for the position. Second, Glassmeyer does not limit his inquiry to the individual selected for the position. Third, the information provided to Glassmeyer

includes the name of each applicant, the city of residence and the zip code. The only information redacted with regard to residence is the street name and number. Fourth, each application provides an employment history showing the location of the applicants' current and former employment positions.¹ Clearly, this information satisfies any "matter of great public importance" relating to the "jurisdiction" in which the applicants resided at the time of their applications.

Glassmeyer also asserts that there is no competent evidence to support the concern expressed by the City in withholding personal information relating to Ms. Teresa Wilson. (Respondent's brief pp. 11-12) A review of the material provided to Glassmeyer, however, reveals that at the time of her application, Ms. Wilson had a child at home under the age of ten. (R. p. 167; Modified Response to Plaintiff's FOIA Request: Teresa B. Wilson application indicating that she left her employment in Richland School District Two in May 2003 to give birth to her first child and stayed home with her for one year) Glassmeyer's argument that there is no evidence that Ms. Wilson's home address, email and telephone number are unlisted begs the question. The City has no control over whether Ms. Wilson chose to make this information public. The issue before the Court is whether there is a "public interest" in the requested information and whether the City can be compelled to provide this information to Glassmeyer.

Glassmeyer argues that regardless of measures taken by individuals to preserve privacy in their home addresses and contact information, mere application for public

¹ Records provided to Glassmeyer show that applicant Allison Baker resided in Columbia at zip code 29212 and was employed as Senior Assistant City Manager at the time of his application. Applicant Teresa Wilson resided in Columbia at zip code 29212 and was employed as an Assistant City Manager. Applicant Leonard F. ("Frank") Ragan resided in McKinney, Texas at zip code 75070 and was employed as City Manager for the City of McKinney. Applicant William Patrick Pate resided in High Point, North Carolina at zip code 27265 and was employed as Assistant City Manager for the City of High Point. Applicant Jonathan F. Simons, Jr. resided in Easley, South Carolina at zip code 29642 and was employed as City Administrator for the City of Easley. (R pp. 159, 164, 173, 181 and 184)

employment forfeits all right to privacy. Glassmeyer disregards guidance offered in legislation enacted following FOIA to protect individuals against unwelcomed intrusions on privacy. Instead, he would confine application of this public policy to those who seek information for “commercial solicitation” only. (Respondent’s brief pp. 14-15) While it is true that the statutes prohibit commercial use of personal information, the obvious legislative purpose is to protect privacy interests.

In present society, more than when FOIA was first enacted in 1976, the perils of privacy invasion are apparent, manifold and serious. Glassmeyer’s arguments to the contrary, the hazards of disclosing private information to the public at large are not limited to “cold calls” during the dinner hour.² As recognized by the United States Supreme Court in Maracich v. Spears, 570 U.S. ___, 133 S.Ct. 2191, 2198 (2013), government today has a heightened duty to protect citizens “from a growing threat from stalkers and criminals who could acquire personal information” from government sources: This responsibility is not lessened by the availability of personal information from other non-government sources. Id. at 2207.

Glassmeyer’s position undermines privacy interests while serving no public purpose. If Glassmeyer has a genuine concern about the “residence” of the successful candidate, he need only inquire whether she lives within the City’s limits. The current manager’s business location is a matter of public record as is her business telephone number and business email. Disclosure of her personal street address, telephone number and email address will not increase legitimate public access to her office. Similarly, failure to disclose personal contact information of other applicants to the city manager

² When enacting FOIA, the General Assembly could not have anticipated 21st century technology, including a worldwide web that has created not only useful applications, but the opportunity for electronic piracy, including identity theft through use of “personal information.”

position cannot be reasonably construed as depriving the public of information relating to the performance of public business or the activities of public officials.

CONCLUSION

Glassmeyer argues that any information shared in applying for a government position is public information unless there is a specific statute carving out an exemption. This misreads FOIA's exemption from **required disclosure** "information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy..." S.C. Code Ann. § 30-4-10(2) It is asking too much of the General Assembly to catalogue items that fall under the protection of the "personal privacy" umbrella. This is the responsibility of the court, taking into account current measures available to at least attempt preserving a modicum of privacy in an increasingly curious and dangerous environment.

In this instance, compelling disclosure of the withheld personal information will constitute an intrusion into the privacy of those seeking to serve the public. Compulsory disclosure will also render meaningless the "public purpose" aspect of FOIA, subjecting personal information to public curiosity beyond any existing statutory guidance or judicial precedent. For these reasons and those set forth in Appellant's brief, Glassmeyer is entitled to no additional disclosure of personal information regarding the applicants for the city manager position and the award of attorney fees by the trial court should be reversed or remanded for reconsideration in light of this Court's decision.

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January 13, 2014
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing Appellant's Final Reply Brief by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Reply Brief complies with Rule 211(b).

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