

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

George S. Glassmeyer,)

Plaintiff,)

vs.)

City of Columbia.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-03982

ORDER

2014 JUL 23 AM 10:20
JONETTE W. HARRISON
CLERK, D.C. # 653
RICHLAND COUNTY

This matter came before the Court on February 10, 2014 at a hearing on cross motions for Summary Judgment and Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees. Present at the hearing were Kirby Shealy, Esquire, counsel for Plaintiff; and Allen Nickles, Esquire, counsel for Defendant. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, including documentation provided by Defendant for an *in camera* review, Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendant's Motion for Summary Judgment is **DENIED**. Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees is **GRANTED**.

FACTS

This case is a declaratory judgment action arising under the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Plaintiff submitted a FOIA request on April 3, 2013 to the City of Columbia requesting to inspect, among other items, "copies of any and all documents including, but not limited to statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott" and "copies of any and all documents relating to any and all disciplinary actions imposed upon police chief Randy Scott." In response, on or about April 5, 2013 and April 19, 2013, Defendant provided some, but not all, of the requested documents. Specifically, Defendant's FOIA response of April 19, 2013 identified the following materials withheld:

1. Anonymous emails referring to Scott's alleged personal conduct;
2. Unsolicited, unverified complaints referring to Scott's alleged personal conduct; and
3. Third-party, unverified allegations of misconduct by Scott.

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Plaintiff initiated this case on July 10, 2013 by filing a Summons and Complaint. Defendant answered on July 16, 2013. Defendant filed its Motion for Summary Judgment on October 17, 2013. Plaintiff filed his Motion for Summary Judgment and Motion to Strike Defendant's Request for Attorneys' Fees on October 18, 2013. At the hearing, Defendant provided the withheld documents to the Court for *in camera* review.

STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRPC. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

DISCUSSION

I. Motions for Summary Judgment

Defendant claims that the information withheld from disclosure does not fall within FOIA's requirements for disclosure and does not deprive Plaintiff access to information regarding the activities of public officials pursuant to S.C. Code Ann. § 30-4-15. Defendant states the material requested by Plaintiff also includes personal information exempt from disclosure under S.C. Code Ann. § 30-4-40(a)(2). Defendant does not believe that Plaintiff has articulated a public interest to compel disclosure of information regarding the alleged personal conduct of Scott, which Defendant claims is the Plaintiff's burden to prove.

Plaintiff claims that the requested information must be disclosed because Plaintiff believes that the City violated its own City of Columbia Police Department ("Department") Policies and Directives Manual ("Manual") by failing to investigate the allegations set forth in the various complaints against Scott, which would be a matter of public interest. Plaintiff argues that the information withheld cannot be considered private to exempt it from disclosure. In the alternative, Plaintiff argues that the public interest in whether the Department investigated any allegations outweighs any right to privacy Scott may have in the information.

The purpose of FOIA is clearly enunciated in the South Carolina Code:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so

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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. "The essential purpose of the FOIA is to protect the public from secret government activity." *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219, 221 (1991).

Section 30-4-30(a) states: "Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access." Public records are defined as

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. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users... are not considered to be made open to the public under the provisions of this act...

S.C. Code Ann. § 30-4-20(c).

To legally withhold public records under the FOIA, Defendant must prove that the information falls into one of the fifteen exemption categories in Section 30-4-40. The presumption is in favor of disclosure, and the government has the burden of proving that an exemption applies. *Evening Post Pub. Co. v. Berkeley Cnty. School Dist.*, 392 S.C. 76, 708 S.E.2d 745 (2011). FOIA exemptions are construed narrowly to conform to the public purposes of the Act. *Evening Post Pub. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005). Whether an exemption applies is a case-by-case determination. *City of Columbia v. Am. Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996).

Defendants specifically claim Section 30-4-40(a)(2), the personal privacy exemption, applies because the information Plaintiff seeks is of a private nature as it relates to alleged off-duty conduct of Scott. The personal privacy exemption relieves the government from disclosing

Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in

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applications for business licenses and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

After a thorough review of the documents provided to the Court for *in camera* review, the Court first concludes that the documents provided fall within the broad definition of public records. Additionally, none of the exemption categories set forth in S.C. Code Ann. § 30-4-40 apply. While complaints by third parties of improper actions against Scott may be of a personal nature, public disclosure of the complaints would not constitute an unreasonable invasion of personal privacy. Such complaints are mere representations or allegations made by others, whether true or untrue, regarding conduct that may constitute violations of the law or Department policy by Department staff. Some of the materials submitted for *in camera* review are copies of records from family court proceedings. Generally, family court proceedings are available to the public unless sealed. "Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and the state constitution." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006). Therefore, there can be no level of privacy expected in those specific documents.

Moreover, even if the documents were considered "personal" or "private" such that such the information was exempt from disclosure, the South Carolina Supreme Court has instructed that where there is great public interest, disclosure should be made even if the information is of a personal nature. *See Society of Professional Journalists v. Sexton*, 282 S.C. 563, 324 S.E.2d 313 (1984). Both parties cite the case of *Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), to support their argument regarding whether this type of personal information must be disclosed. In *Burton*, the York County Sheriff's Department refused to provide information to the Plaintiff regarding a complaint of alleged illegal and unethical conduct, including falsification of investigative reports, possession of stolen property, abuse of authority, and sexual activity in patrol cars, of four deputy sheriffs who were suspended without pay. *Burton*, 358 S.C. at 344, 594 S.E.2d at 891. The Sheriff's Department claimed some of the information was exempt from disclosure under the personal privacy exemption of

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the FOIA because the information was of a personal nature and disclosing it would constitute an unreasonable invasion of personal privacy.

The South Carolina Court of Appeals held that the privacy exemption did not apply. The Court held that in analyzing whether information is exempt from disclosure based upon privacy, the trial court "must resort to general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual privacy on the one hand against the interest of the public's need to know on the other." *Id.* at 352, 594 S.E.2d at 895. The Court noted that "one of the primary limitations placed on the right of privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest." *Id.* (citations omitted). "Indeed, the Court has held that, as a matter of law, if a person, whether willingly or not, becomes an actor in an event of public or general interest, then the publication of his connection with such an occurrence is not an invasion of his right to privacy." *Id.* (internal quotations omitted). The Court concluded that "the manner in which the employees of the Sheriff's Department prosecute their duties [is] a large and vital public interest that outweighs their desire to remain out of the public eye...Burton and the newspaper did not seek information regarding the off-duty sexual activities of the deputies involved. Rather, the access to information they sought...was focused on the performance of public duties by the Sheriff and his deputies and the response of the Department to allegations of misconduct by the deputies." *Id.*

Defendant in the present case argues that because the Court of Appeals in *Burton* specifically stated that the information to be disclosed did not regard the "off-duty sexual activities of the deputies," the Court of Appeals implied that information regarding the "off-duty sexual activities" of officers should not be disclosed. Therefore, the information requested in the present case is exempt from disclosure because it pertains to alleged off-duty sexual activities of Scott. Plaintiff argues that he does not seek the information because it is related to off-duty sexual activities of Scott, but rather because it relates to whether the Department followed its policies and investigated complaints, which is a matter of public interest. Applying the balancing test required by *Burton* to the present case leads to the conclusion that Plaintiff is entitled, as a member of the public, to inspection of the requested complaints. Just as the plaintiff in *Burton*, Plaintiff seeks information relating to complaints against Scott and the Department's response to complaints. *See Burton*, 358 S.C. at 344, 594 S.E.2d at 891 (requesting records relating to a citizen complaint and the Sheriff's Department's response to the

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complaint and "reports of all complaints or allegations of illegal conduct"). Both in *Burton* and the present case, the information requested was not targeted to sexual activity but general complaints against officers and what the police department did when it received those complaints. Plaintiff only seeks information regarding complaints of "alleged wrongdoing" and "disciplinary action." *FOIA Request of Glassmeyer*, April 3, 2013. The court in *Burton* found that the "manner in which the employees of the Sheriff's Department prosecute their duties to be a large and vital public interest that outweighs their desire to remain out of the public eye." Just as in *Burton*, here, the information sought is "focused on the performance of public duties by the Sheriff...and the response of the Department to allegations of misconduct by the deputies." *Burton*, 358 S.C. at 352, 594 S.E.2d at 895.

Specifically, although the reasons were not given in the Complaint, Plaintiff claimed at the hearing and in its memorandum that the City violated its Manual by failing to investigate the allegations set forth in the various complaints against Scott. Plaintiff claims that the City stated in its April 5 letter to Plaintiff that there are no corresponding internal affairs investigations or disciplinary actions taken against Scott. Plaintiff states that the Department's Manual mandates the investigation of all citizen complaints, "including anonymous" complaints. Plaintiff explains that under the Manual, all sworn officers of the Department are required to comply with both the employee code of ethics and the law enforcement code of ethics, both of which address personal conduct. Further, Section 2, Chap. 6 of the Internal Affairs Policy in the Manual sets forth a requirement for the Department to conduct "an investigation of all citizen complaints, including anonymous complaints." The public has an interest in ensuring that the Department investigated the citizen complaints it admittedly received, whether anonymous emails referring to Scott's alleged personal conduct, unsolicited and unverified complaints referring to Scott's alleged personal conduct, or third-party unverified allegations of misconduct by Scott. The disparity between Defendant's receipt of various complaints against Scott and its failure to investigate the allegations despite Department policy requiring an investigation militates in favor of the public's interest in the allegations and the reason why Defendant chose not to investigate the allegations. If the complaints against Scott allege that he violated the law or used his authority to perform activities which constitute "conduct unbecoming" an officer, the public has a right to know why the Department failed to investigate the allegations or discipline Scott. Therefore, the withheld information should be disclosed.

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Defendant argues in its Motion for Summary Judgment that Fourth Circuit and United States Supreme Court case law interpreting the United States Freedom of Information Act ("US FOIA") and its personal privacy exemption state that once a privacy interest is implicated, the burden should shift to the requester to show a significant public interest in the material. The South Carolina Supreme Court has commented that federal case law interpreting the US FOIA is not binding on state courts interpreting the South Carolina FOIA. *Newberry Pub. Co., Inc. v. Newberry County Comm'n on Alcohol & Drug Abuse*, 308 S.C. 352, 354 n. 4, 417 S.E.2d 870, 872 n. 4 (1992). South Carolina case law clearly holds that the burden is on the government to prove that an exemption applies. *Evening Post Pub. Co., supra*, 392 S.C. 76, 708 S.E.2d 745 (2011). Defendant's application of a Fourth Circuit and United States Supreme Court "burden shifting" analysis with regard to the personal privacy exemption in the federal statute is inconsistent with binding South Carolina precedent interpreting South Carolina's FOIA.

Defendant also argues that compelling public disclosure of anonymous unsubstantiated complaints would allow parties the opportunity to libel and impugn public employees without any fear of recourse, and essentially anonymous complaints could be "self-published." Defendant asserts that sending an anonymous complaint concerning alleged conduct of a public servant does not make that complaint a matter of legitimate public interest of inquiry and the FOIA is not a legitimate vehicle for making anonymous accusations public. Defendant may be correct, but the focus in this case is not on the accusations themselves but the Department's knowledge of the complaints and its response upon receipt. The complaints filed against Scott are merely representations or allegations made by others whether true or untrue. This case focuses not on the content of these allegations, but what steps the Department took upon receipt of the information pursuant to its policies. These documents, and the information they contain, could be appropriately dismissed if they were meritless after an investigation by the Department pursuant to its policies. Therefore, pursuant to the analysis employed in *Burton*, even if Plaintiff's request appeared to implicate private or personal information regarding Scott, there exists a significant public interest regarding Scott's activities and the Department's response that substantially outweighs his right to privacy. Defendant must disclose the information withheld.

II. Motion to Strike Attorney's Fees

In its Answer, Defendant prays for attorneys' fees. In response, Plaintiff filed a Motion to Strike Defendant's Request for Attorneys' Fees on October 18, 2013. Defendant is not


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entitled to attorneys' fees because it is not the "person or entity seeking such relief" by bringing an action to enforce the provisions of the FOIA. See S.C. Code Ann. § 30-4-100(b); *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 288-89, 580 S.E.2d 163, 170 (Ct. App. 2003). Therefore, Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees is **GRANTED**.

ORDER

For the reasons stated above, it is therefore **ORDERED** that Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendant's Motion for Summary Judgment is **DENIED**. Defendant must provide to Plaintiff the information it withheld within thirty days of receipt of this Order. Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees is **GRANTED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
July 22, 2014

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003982

George S Glassmeyer

City Of Columbia

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 23 July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Kirby Darr Shealy III

W. Allen Nickles III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

ATTACHMENT B

RECEIVED
OCT 15 2014
SC Court of Appeals

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003982

George S Glassmeyer

City Of Columbia

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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		\$
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Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 18 September 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Kirby Darr Shealy III

W. Allen Nickles III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

v.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-40-03982

ORDER

RICHLAND COUNTY
FILED
2014 SEP 18 PM 1:05
JEANETTE N. MORRIS
C.C.P. & G.S.

This matter comes before the Court on a Motion to Alter or Amend. A hearing on cross motions for Summary Judgment and Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees was held on February 10, 2014. Thereafter, an Order was filed on July 23, 2014 granting Plaintiff's Motion for Summary Judgment, denying Defendant's Motion for Summary Judgment, and granting Plaintiff's Motion to Strike Defendant's Request for Attorney Fees. Defendant filed a Motion to Alter or Amend ("Motion") on July 29, 2014, and a copy was received in this office on July 30, 2014.

Defendant contends that the Court should reconsider its July 23 Order because the analysis was flawed as to whether there is great public interest in the documents withheld. In the July 23 Order, the Court noted that the City of Columbia Police Department's ("Department") Internal Affairs policy ("policy") provides that anonymous complaints must be investigated.¹ Defendant argues in its Motion that the policy also notes, and the Court did not consider, that there is a specific procedure that must be followed when a citizen wishes to make a complaint. Defendant attached to its Motion a printout from the Internet explaining the procedure, a complaint form, and the citizen complaint process instructions. Defendant argues that because the withheld documents are complaints that did not follow this procedure for submission, the Department was under no obligation to investigate them, and therefore the Court's argument that there is a public interest in knowing why they were not investigated pursuant to the policy is flawed.

¹ This section was inadvertently identified as "Section 2, Chap. 6 of the Internal Affairs Policy" in the July 23 Order. It is actually Section 6, Chap. 2 of the policy.

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In its July 23 Order, this Court granted Plaintiff's Motion for Summary Judgment for two reasons. First, the Court held that the withheld documents were not considered to contain information of a personal nature such that public disclosure would constitute an unreasonable invasion of personal privacy as required for exemption in S.C. Code Ann. § 30-4-40(a)(2). Second, the Court held that even if the documents were considered "personal" or "private" to be exempt from disclosure, the South Carolina Supreme Court has instructed that where there is great public interest, disclosure should be made even if the information is of a personal nature. Defendant, in its Motion, did not challenge the Court's ruling that the documents were not exempt from disclosure but only challenged the alternative ruling that great public interest required the disclosure. This Court reaffirms that holding.

Defendant for the first time argues that because the requested documents refer to complaints that were not filed by the complainants in accordance with the Department's procedures, the Department had no corresponding obligation to investigate those complaints. As a result, Defendant claims there were no complaints filed that prompted the Department to act.

"A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). The purpose behind Rule 59(e) is to allow a party to correct misapplications of law or fact or to preserve legal issues for appeal. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). Where a party does not raise an issue to the trial court prior to the Court's order or judgment, the party has waived its right to make that argument. Defendant failed to argue previously that it is justified in failing to investigate complaints that do not conform to the procedures outlined in the policy.


Defendant claims it could not have foreseen the Court's analysis and therefore should be allowed to respond through its Motion. However, the arguments Plaintiff presented regarding the public's interest in the Department's failure to investigate complaints were contained in Plaintiff's Motion for Summary Judgment, filed October 18, 2013, and Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment, filed November 26, 2013. The Court did not decide these issues *sua sponte*. Plaintiff's memorandum clearly states that it "seeks only to determine why Defendant failed to take any responsive action to the complaints at issue." Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment at 7 (Nov. 26, 2013). Defendant knew that this was an issue raised by Plaintiff well before the

February 10, 2014 hearing. Defendant failed to bring to the Court's attention any improper filing of a complaint.

While Defendant argues that only properly submitted complaints will be investigated, the policy upon which Defendant relied clearly states its directive is that "all citizen complaints, including anonymous complaints" will be investigated. The policy allows a citizen to make a complaint or an inquiry about a member of the Department. A complaint or inquiry may be made by mail, telephone, in person, or online. Regardless of the method of making a complaint or inquiry, the policy provides that it should be referred to the appropriate personnel. "This action will permit the complainant to be interviewed and appropriate action taken or initiated." ¶4.1, Section 6, Chapter 2 of the Internal Affairs Policy. The policy also states that "upon receipt of information constituting a complaint or inquiry against an employee of the Department, the Citizen Complaint Form will be completed and distributed" to the appropriate personnel listed. ¶4.0, Section 6, Chapter 2 of the Internal Affairs Policy. If the Department received information oral or written that raises a complaint or inquiry regarding a member of the Department, further action is required by the Department. Plaintiff filed this lawsuit seeking documents that might raise questions about whether the Department followed its policies and procedures. The documents in the Department's possession relate to a complaint or inquiry about a member of the Department. These documents are not exempt from disclosure as previously discussed.

Accordingly, this Court hereby **DENIES** Defendant's Motion to Alter or Amend. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

September 17, 2014
Columbia, South Carolina


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