

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

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Appellate Case No.: 2013-001880

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SEP 29 2015

SC Court of Appeals

George S. Glassmeyer.....Respondent,

v.

City of Columbia.....Appellant.

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APPELLANT'S RETURN TO  
RESPONDENT'S PETITION FOR REHEARING

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Respondent ("Glassmeyer") filed a Petition for Rehearing on September 17, 2015, received by Appellant ("City") September 22, 2015. In this Petition, Glassmeyer asserts that the order issued September 2, 2015 finding that the South Carolina Freedom of Information Act ("FOIA") does not compel disclosure of home addresses, personal telephone numbers and personal email addresses for applicants to the position of City Manager was in error. For the following reasons, Glassmeyer has failed to identify any error or oversight by the Court in reaching this conclusion. Accordingly, Glassmeyer's petition should be denied.

## LEGAL ARGUMENT

**This Court properly held that FOIA does not compel disclosure of home addresses, personal telephone numbers and personal email addresses for applicants to the position of City Manager for the City of Columbia.**

In a well-reasoned analysis, this Court quoted the findings and purpose stated by the General Assembly in adopting FOIA. The Court also relied upon controlling precedent of our Supreme Court identifying that the “essential purpose of the FOIA is to protect the public interests from secret government activity.” (Order p. 2, *citing Perry v. Bullock*, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014))

Whether a record is exempt from disclosure under FOIA depends on the particular facts of the case. The question presented in this appeal is if the “privacy exemption” in Code Section 30-4-40(a)(2) authorized the City to withhold certain information to avoid unreasonable invasions of personal privacy. Because FOIA does not define the types of records, reports and other information that may be classified as personal or private, review of the City’s decision required the Court to balance any conflicting interests between privacy and the public’s need to know. (Order p. 3 *citing Burton v. York Cty. Sheriff’s Dep’t.*, 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004))

As part of its required balancing analysis, the Court examined treatment of similar applications in the State of Michigan and under the federal FOIA. (Order at pp. 4-5) Glassmeyer objects to these references, arguing that South Carolina has a broader interest in disclosing personal and private information than either Michigan or the federal government. This argument ignores the fact that our FOIA does not **mandate** the disclosure of personal and private information. Instead, Code Section 30-4-40(a)

explicitly provides that a public body “may . . . exempt from disclosure the following information.” Information that may be exempt includes “information of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of personal privacy.” § 30-4-40(a)(2) The term “may” anticipates a balancing of interests rather than compulsory disclosure on request asserted by Glassmeyer.

Having examined the redacted information sought by Glassmeyer, the Court engaged in the required balancing of privacy interests against the interest of the public’s need to know. (Order p. 7) Noting that the City only redacted the street name and number of the applicants’ home addresses, the Court found that the public could determine the city in which the applicant lived. Responding to Glassmeyer’s assertion that disclosure of home addresses, telephone numbers and emails would allow the public to determine if the applicants were “truthful in their applications,” the Court appropriately found that disclosed information included educational background, employment histories and other information sufficient to allow an inquiry into the applicants’ “veracity.” (Order p. 7)

In support of his petition, Glassmeyer relies upon dated, narrow applications of privacy interests.<sup>1</sup> In addition he seeks to broaden the “public interest” element of FOIA to encompass personal information unrelated to “government activity” whether secret or otherwise. This is necessary because Glassmeyer can point to no legitimate interest beyond his own private curiosity served by obtaining the limited applicant information withheld by the City.

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<sup>1</sup> Cases cited from other jurisdictions are from the 1970’s and 1990’s. None post-date Michigan Fed’n. of Teachers & Sch. Related Pers. v. Univ. of Mich., 753 N.W.2d 28 (Mich. 2008) cited by this Court.

Finally, several authorities offered by Glassmeyer have been superseded or modified.<sup>2</sup> These rejected applications correspond to Glassmeyer's refusal to recognize the evolution of privacy interests as technology advances have created hazards unanticipated by legislatures when enacting sunshine laws such as our FOIA. Adopting Glassmeyer's arguments would confound common sense, violate the plain language of FOIA and ignore more recent acts of our General Assembly recognizing privacy interests such as the South Carolina Family Privacy Protection Act in 2007. S.C. Code Ann. § 30-2-10 et seq.

### CONCLUSION

Glassmeyer seeks to broaden our FOIA to expose individuals who apply for government employment to personal harassment by making their home addresses, emails and telephone numbers available to the public on request. This construction does not serve the declared purpose of FOIA to protect the public from secret government activity. For these reasons, and those expressed in the opinion issued September 2, 2015, the present petition should be rejected.

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By: 

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September 29, 2015  
Columbia, South Carolina

*Attorneys for Appellant*

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<sup>2</sup> See for example, Webb v. Shreveport, 371 So.2d 316 (La. App. 1979) (Superseded by statute); Herald Co. v. City of Bay City, 614 N.W.2d 873 (Mich. 2000); Bradley v. Saranac Comm. Schools Bd. of Educ., 565 N.W.2d 650 (Mich. 1997); Mager v. State Dept. of State Police, 595 N.W.2d 142 (Mich. 1999) (all modified by Michigan Fed'n. of Teachers & Sch. Related Pers. v. Univ. of Mich., 753 N.W.2d 28 (Mich. 2008)).

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2013-001880

George S. Glassmeyer.....Respondent,

v.

City of Columbia.....Appellant.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that he has served the foregoing Appellant's Return to Respondent's Petition for Rehearing by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Kirby D. Shealy, III, Esquire  
Lyndey Zwing, Esquire  
Adams and Reese, LLP  
1501 Main Street, 5<sup>th</sup> Floor  
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This 29<sup>th</sup> day of September, 2015.

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September 29, 2014

**Via Hand Delivery**

The Honorable Jenny Abbott Kitchings  
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South Carolina Court of Appeals  
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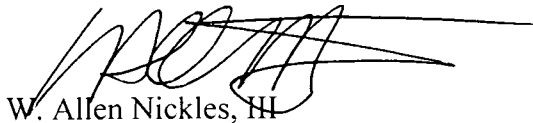
SC Court of Appeals

**Re: George Glassmeyer v. City of Columbia**  
**Appellate Case No.: 2013-001880**

Dear Ms. Kitchings:

Enclosed for filing, please find Appellant's Return to Respondent's Petition for Rehearing and Certificate of Service in the above matter. Please file the originals and required copies and return the extra, clocked-in copies with the bearer. Thank you for your cooperation and assistance in this matter.

Sincerely,



W. Allen Nickles, III

WAN/pfb  
Enclosures  
cc: Kirby D. Shealy, Esquire  
Lyndey Zwing, Esquire  
File #13-207