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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 2015-5347 (S.C. Ct. App. Filed Sept. 2, 2015)

George S. Glassmeyer,..Petitioner,

v.

City of Columbia,..Respondent.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on October 29, 2015.

QUESTION PRESENTED

I. Whether the Court of Appeals erred in reversing the lower court's decision holding FOIA compelled disclosure of physical addresses, personal telephone numbers and email addresses of the final five applicants for the position of City Manager?

STATEMENT OF THE CASE

This action was initiated by Petitioner George S. Glassmeyer ("Glassmeyer") on March 8, 2013. The action arises out of Respondent City of Columbia's ("City") refusal to produce certain public documents pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.* (Supp. 2013) ("FOIA"). Glassmeyer sought a declaration that he was entitled to unredacted documents from City, an injunction prohibiting City from withholding the redacted information, attorney's fees and costs. In City's Answer, filed April 1, 2013, it denied any FOIA violation.

Both parties filed motions for summary judgment. The Honorable G. Thomas Cooper, Jr. heard oral argument on both parties' motions on June 6, 2013. At that time, City provided the lower court with all unredacted materials for an *in camera* review. During a hearing on the parties' cross motions for summary judgment, Glassmeyer conceded that drivers' license numbers and restrictions were subject to redaction pursuant to the FOIA. On June 19, 2013, Judge Cooper granted summary judgment in Glassmeyer's favor, holding City was not entitled to withhold information under the personal privacy exemption of the FOIA, S.C. Code Ann. § 30-4-40(a)(2) (Rev. ed. 2007). The lower court left open the question of how much to award Glassmeyer under the FOIA for his requested attorney's fees and costs. On July 1, 2013, City filed a Motion for New Hearing and Reconsideration which was denied by the lower court on July 19, 2013.

On September 4, 2013, City filed a Notice of Appeal. Simultaneously, City produced partially unredacted documents to Glassmeyer. These supplemental documents revealed the applicants' reasons for leaving prior employment and salary information, but

left physical addresses, personal telephone numbers, and email addresses obscured from view.

The Court of Appeals heard oral argument on City's appeal on March 5, 2015. On September 2, 2015, the Court filed an opinion affirming in part, reversing in part, and remitting the case to the lower court. In its opinion, the Court of Appeals held City properly withheld home addresses, personal telephone numbers, and personal email addresses from disclosure, reversing the lower court's decision that City had an obligation to produce such information pursuant to the FOIA. The Court upheld the lower court's decision awarding Glassmeyer's attorney's fees.

On September 15, 2015, City filed a Motion for Rehearing, seeking to have the Court of Appeals reverse its decision affirming attorneys' fees awarded to Glassmeyer. On September 17, 2015, Glassmeyer filed a Motion for Rehearing, seeking to have the Court of Appeals reconsider its decision allowing City to withhold home addresses, personal telephone numbers, and personal email addresses. The Court of Appeals denied both parties' Motions for Rehearing on October 29, 2015.

STATEMENT OF THE FACTS

On January 14, 2013, Glassmeyer submitted a FOIA request for information to City. [R. pp. 67-68; 69.] In his request, Glassmeyer requested "[a]ll materials relating to not fewer than the final three applicants for the most recent vacancy announcement for the position of City Manager." [*Id.*] On or about January 24, City produced thirty-four pages of documents relating to the five finalists for the position of City Manager, including the applications submitted by S. Allison Baker, Teresa Wilson, Leonard F. Regan, William P. Pate, and Jonathan F. Simmons, Jr. [R. p. 67 at ¶ 4; R. pp. 70-101.]

City's response contained a list of the finalists' names, along with redacted copies of the finalists' applications and resumes. [*Id.*] The redactions obscured from view the following information: (1) some, but not all, home addresses; (2) some, but not all, telephone numbers of the applicants and those persons listed as references; (3) driver's license numbers and restrictions; (4) the reasons for leaving prior employment listed by all applicants; and (4) some, but not all, salary information for the applicants. [R. p. 67 at ¶ 4; R. p. 70-101.] City provided no explanation for the redactions. [*Id.*]

In response to City's production of redacted materials, Glassmeyer demanded that City provide unredacted documents. [R. p. 68 at ¶ 5; *see also* R. p. 102.] On January 28, 2013, Kenneth E. Gaines, Esquire, City Attorney, declined to disclose the previously redacted information. [*Id.* at ¶ 6; R. p. 103.] City cited the general rule regarding a public body's ability to redact records under FOIA, S.C. Code Ann. § 30-4-30, without reference to any particular FOIA exemption to justify the redactions. [*Id.*]

Glassmeyer filed a Summons and Complaint for Declaratory Judgment on March 8, 2013, seeking to compel production of the redacted information. [R. pp. 16-20.] After initiating the subject action, City offered to provide unredacted materials to Glassmeyer's counsel for an "in camera" review, stating "there is no 'smoking gun' in any of the redacted information." [R. p. 115.]

ARGUMENT AND CITATION OF AUTHORITY

I. GRANTING CERTIORARI IN THIS CASE IS SUPPORTED BY SPECIAL AND IMPORTANT REASONS UNDER RULE 242(b), SCACR.

A. Novel Questions of Law (Rule 242(b)(1), SCACR)

This Court should grant certiorari because this case involves novel questions of law relating to application of the FOIA's personal privacy exemption, S.C. Code Ann. § 30-4-40(a)(2) (Rev. ed. 2007), with regard to home addresses, personal telephone numbers, and email addresses of applicants to the position of City manager.

FOIA exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40(a)(2) (Rev. ed. 2007). This section "does not specifically list or define the types of records, reports, or other information that should be classified as personal or private information exempt from disclosure. [The Court] must, therefore, resort to general privacy principles . . . ." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 351, 594 S.E.2d 888, 895 (Ct. App. 2004).

Information of a "personal nature," standing alone, is not exempt. Rather, it must be such that a reasonable person would claim a privacy interest in the information in order to be protected. *See* S.C. Code Ann. § 30-4-40(a)(2) (exempting information "constitut[ing] an unreasonable invasion of personal privacy"). The analysis of any case involving the potential application of FOIA's personal privacy exemption involves balancing an individual's privacy interest against the public's need to know. *Burton v*, 358 S.C. at 352, 594 S.E. at 895 ("balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public's need to know on

the other"). For the exemption to be properly applied there must be a privacy interest at stake and that interest must outweigh the public's interest in the information sought. *Id.*

To date, this Court has analyzed only a handful of FOIA cases with an eye toward deciding whether the requested information is subject to privacy interests. *See Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) (holding death certificates were not exempt from disclosure by virtue of the personal privacy exemption); *City of Columbia v. American Civil Liberties Union of South Carolina, Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996) (rejecting proposition that "internal investigation reports of law enforcement agencies are *per se* exempt because they contain personal information"); *Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) (holding allegations concerning off-duty sexual practices and activities of deputy sheriffs constituted personal and private information).

None of this Court's previous decisions have considered whether information provided by applicants for a governmental position, including home addresses, personal telephone numbers, and email address, are entitled to a privacy interest. Similarly, this Court has never considered whether such a privacy interest, assuming one exists, should be weighted more heavily in favor of the individual over that of the public. Indeed, in concluding such information was subject to the personal privacy exemption, the Court of Appeals resorted to applying statutory schemes and case law from other jurisdictions, including the U.S. Freedom of Information Act, 5 U.S.C.A. §§ 552, *et seq.* ("US FOIA") and Michigan Freedom of Information Act, M.C.L.A. §§ 15.231, *et seq.* ("Michigan FOIA").

1. Applicants for the position of City manager do not have a reasonable privacy interest in home addresses and personal telephone numbers submitted in connection with their application.

The Court of Appeals erred in concluding home addresses and personal telephone numbers submitted by applicants for the position of City Manager constituted information "in which the applicants have a privacy interest" (Opinion page 7).

Legislative intention as to what information falls within South Carolina's personal privacy exemption can be gleaned from a review of the entire Act. For example, Section 30-4-50 of the FOIA regarding "matters declared public information" provides "home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to [the FOIA] may not be used for commercial solicitation purposes." *Id.* The General Assembly obviously intended that home addresses and telephone numbers would be disclosed in response to a FOIA request *absent evidence that the information would be used for commercial solicitation purposes. See also* S.C. Code Ann. § 30-4-40(a)(2) (deeming exempt "information relating to public records which include the name, address, and telephone number ... 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") (emphasis added).

The Court of Appeals' opinion ignores—and in fact nullifies—explicit provisions of the FOIA, despite a long line of cases mandating that disparate sections of a statutory scheme be interpreted so that they are all effective. *See Tillotson v. Keith Smith Builders*, 357 S.C. 554, 558, 593 S.E.2d 621, 624 (Ct. App. 2004) ("The language [of a statute] must be read to harmonize its subject matter with its general purpose [and] sections

which are part of the same general statutory law must be construed together...."); *Hodges v. Rainey*, 341 S.C. 79, 88-89, 533 S.E.2d 578, 583 (2000) ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative.").

Numerous other states have held home addresses, while constituting "information of a personal nature," are not so confidential and private as to be exempt from disclosure under state freedom of information acts. For example, in *Warden v. Bennett*, 340 So. 2d 977 (Fla. Dist. Ct. App. 1976), a District Court of Appeal of Florida held:

> While an employee may occasionally want his address kept confidential, it is seldom that the address of a governmental employee would not be ascertainable from other sources. Therefore, an employee's expectation that his address cannot be ascertained is minimal.

340 So. 2d at 979; *see also Webb v. Shreveport*, 371 So. 2d 316 (La. App. 1979) (holding "neither city nor its intervening employees had a reasonable expectation of privacy against disclosure of a public record containing names and addresses of city employees").

2. Applicants' email addresses do not invoke any privacy interests and are not protected by South Carolina's FOIA.

The Court of Appeals also erred in concluding personal email addresses were properly withheld by City pursuant to FOIA's personal privacy exemption. Section 30-4-40(a)(2) only enables a public body to withhold "[i]nformation of a personal nature." Although the FOIA provides no definition of "information of a personal nature," the Court can look to other statutes and laws for guidance.

In its opinion, the Court of Appeals referred to the South Carolina Family Privacy Protection Act, S.C. Code Ann. § 30-2-10, *et seq.* (2007) ("FPPA"), as forming part of the basis for its conclusion that the applicants have a privacy interest in their respective

home addresses, telephone numbers and personal email addresses.[1] However, the General Assembly specifically excluded electronic identification names, including electronic mail addresses, from the definition of "personal identifying information" as used in the FPPA. *See* S.C. Code Ann. § 30-2-310(A)(1)(e) (Supp. 2014).

While "personal identifying information" in the FPPA is not necessarily synonymous with "information of a personal nature" as used in the FOIA, this exclusion nonetheless conveys a clear legislative finding that email addresses are not imbued with such privacy concerns that they should be subject to special protection or handling by public bodies. The Court of Appeals' failure to acknowledge the Legislature's exclusion of email addresses from the definition of "personal identifying information" was error, particularly in light of its conclusion that such information is exempt from disclosure under FOIA's personal privacy exemption.

For the above-stated reasons, this case involves novel questions of law and certiorari should be granted pursuant to Rule 242(b)(1), SCACR.

B. Conflict with Supreme Court Decisions (Rule 242(b)(3), SCACR)

In addition to Rule 242(b)(1), SCACR ("novel questions of law), the third category enumerated in Rule 242(b), SCACR, further supports a decision to grant certiorari in this case as the Court of Appeals' decision is in conflict with previous decisions issued by this Court.

This Court has long held: "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." *Burton v. York County Sheriff's Dept.*, 358 S.C. at 352, 594 S.E.2d at

[1] Glassmeyer disagrees with the Court of Appeals' conclusion that the FPPA constitutes a legislative recognition of a privacy interest in any of these items.

895 (quoting *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 566, 324 S.E.2d 313, 315 (1984) (quoting *Meetze v. Associated Press*, 230 S.C. 330, 95 S.E.2d 606, 609 (1956))). The Court of Appeals' decision that the applicants' privacy interests outweigh the public's need to know was error as it failed to recognize the public's "legitimate . . . or general interest" in receiving the information.

The analysis of any case involving the potential application of FOIA's personal privacy exemption involves balancing an individual's privacy interest against the public's need to know. *Burton v*, 358 S.C. at 352, 594 S.E. at 895 ("balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public's need to know on the other"). The information listed by persons applying for official governmental positions, including home addresses, personal telephone numbers, and email addresses, goes to the heart of the government's conduct, decision-making and relationship with its citizens. The public has a substantial right to know the basis of a public body's decision to hire its chief executive officer, particularly with respect to the representations made to the public body by the favored candidates for the position. *See, e.g., Herald Co. v. City of Bay City*, 614 N.W.2d 873 (Mich. 2000).

It is this distinction that renders the Court's reliance on the FPPA, with respect to home addresses and telephone numbers, misguided. In the Act, the General Assembly recognized: "Although there are legitimate reasons for state and local government entities to *collect* social security numbers and other personal identifying information from individuals, government entities should *collect* the information only for legitimate purposes or when required by law." S.C. Code Ann. § 30-2-300(2) (Supp. 2014) (emphasis added). As the Court of Appeals itself recognized, the Act reveals a legislative

recognition of "the need for state agencies to develop privacy policies and procedures to limit and protect the *collection of personal information*" (Opinion page 7) (emphasis added).[2] The information requested by Glassmeyer was *voluntarily submitted* by the final five applicants for the position of City Manager, *not merely collected* from citizens by City as a part of its regular business operations.

The Court of Appeals' opinion in this case conflicts with this Court's decisions in *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 351, 594 S.E.2d 888, 895 (Ct. App. 2004); *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984); and *Meetze v. Associated Press*, 230 S.C. 330, 95 S.E.2d 606, 609 (1956), all of which held 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." In weighing the competing interests of the applicants against that of the public in this case, the Court of Appeals erred in concluding the applicants' interest outweighed that of the public with respect to home addresses, personal telephone numbers, and email addresses.

In addition, the Court of Appeals' decision is in conflict with South Carolina Supreme Court decisions which hold that "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.'" *Burton v. York County Sheriff's Dept.*, 358 S.C. at 352, 594 S.E.2d at 894 (quoting *Doe v. Berkeley*

[2] Glassmeyer would also note that the policy reasons that undergirded the General Assembly's enactment of the FPPA involved the finding that "[t]he social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to the individual," particularly when used in combination with other "identifying information," such as names and addresses. See S.C. Code Ann. § 30-2-300 (Supp. 2014). Glassmeyer would concede the validity of the General Assembly's concerns as to the danger of identity theft that accompanies the collection and release of social security numbers, but these concerns are not implicated here.

Publishers, 329 S.C. 412, 414, 496 S.E.2d 636, 637 (1998) (quoting *Meetze*, 230 S.C. at 337, 95 S.E.2d at 609)) (internal quotation omitted).

The FOIA request submitted by Glassmeyer sought information regarding only the final five applicants for the position of City Manager. The Court of Appeals' opinion failed to address the fact that applicants for City Manager were seeking a highly visible, top-level government position and therefore, the information submitted by them in connection with their application for a governmental position was not subject to a "reasonable privacy interest."

In decisions from other jurisdictions, courts have weighed the competing privacy interests in the address information of public employees and concluded the public's interest outweighs the individuals' interest: "[T]here are legitimate reasons why the public might wish to know the address of a public employee. On balance, we believe that the addresses of public employees do not fall within [the applicable exception]." *Warden*, 340 So. 2d at 979.

In *U.S. Dept. of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 114 S.Ct. 1006, 127 L.Ed.2d 325 (1994), the United States Supreme Court drew a significant distinction the Court of Appeals failed to apprehend in its analysis of the subject dispute. The Supreme Court stated,

> Official information that sheds light on an agency's performance of its statutory duties falls squarely within th[e] statutory purpose. That purpose, however, is not fostered by disclosure about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Id. at 496, 114 S.Ct. at 1013 (*citations omitted*).

Because the Court of Appeals' decision is in conflict with prior decisions of this Honorable Court, certiorari should be granted.

C. Constitutional Issues (Rule 242(b)(4), SCACR)

Related to the fourth enumerated criteria of Rule 242(b), SCACR, certiorari should be granted because this case involves important public interests which are related to substantial constitutional rights. As this Court has recognized: "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); *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001). Indeed, FOIA was enacted by the legislature to protect significant public interests. *See* S.C. Code Ann. § 30-4-15 (Rev. ed. 2007) ("[I]t 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 formation of public policy."). The protection of those interests is essential to a healthy republic as it ensures citizens can protect their constitutional rights.

The information at issue in this case, home addresses, personal telephone numbers, and email addresses, was improperly withheld by City in response to Glassmeyer's FOIA request. The public has a significant right to know what information was listed by persons applying for high-level governmental positions. Such information reveals the character for truthfulness of the applicants themselves and provides insight into the government's decision-making when making employment decisions. The presence, whether intentional or accidental, or absence of errors and omissions in such applications, even as to matters as mundane as addresses and telephone numbers,

provides valuable information to the public that it needs to evaluate its government's performance.

The Court of Appeals' opinion involves significant public interests which are directly related to substantial constitutional rights and accordingly, this Court should grant certiorari.

II. THE COURT OF APPEALS ERRED IN RELYING ON THE U.S. FOIA AND MICHIGAN FOIA IN REVERSING THE LOWER COURT'S DECISION GRANTING SUMMARY JUDGMENT IN GLASSMEYER'S FAVOR.

The Court of Appeals concluded home addresses, personal telephone numbers, and email addresses of the final five candidates for the position of City Manager constituted information "in which the applicants have a privacy interest" (Opinion page 7) based on the Court's application of the U.S. Freedom of Information Act, 5 U.S.C.A. §§ 552, *et seq.* ("US FOIA"), Michigan Freedom of Information Act, M.C.L.A. §§ 15.231, *et seq.* ("Michigan FOIA"), and judicial opinions interpreting both statutory schemes. This Court of Appeals' reliance on this authority was inappropriate.

This Court has clearly and unambiguously stated "federal case law interpreting the US FOIA is not binding in this state because the exemptions contained in the [US FOIA] are more expansive than those contained in South Carolina's FOIA." *Newberry Pub. Co., Inc. v. Newberry County Com'n on Alcohol & Drug Abuse*, 308 S.C. 352, 354 n.4, 417 S.E.2d 870, 872 n. 4 (1992). Because the exemptions under the US FOIA have been construed more broadly than the South Carolina FOIA personal privacy exemption, the US FOIA is not only not binding upon South Carolina courts, it should not be viewed as persuasive authority. *See Evening Post Pub. Co. v. City of North Charleston*, 363 S.C.

452, 457, 611 S.E.2d 496, 499 (2005) ("exemptions in section 30-4-40 are to be narrowly construed so as to fulfill the purpose of FOIA"). The Court of Appeals' application of *U.S. Dept. of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 114 S.Ct. 1006, 127 L.Ed.2d 325 (1994), which interpreted the personal privacy exemption under the US FOIA, was therefore improper.

The Court of Appeals also erred in relying upon Michigan's version of the Freedom of Information Act, M.C.L.A. §§ 15.231, *et seq.* ("Michigan FOIA"), without drawing any similarities between Michigan's FOIA and South Carolina's FOIA. Michigan's version of the personal privacy exemption, M.C.L.A. § 15.243(a), exempts from disclosure "information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." In *Michigan Federation of Teachers & School Related Persons v. University of Michigan*, 753 N.W. 2d 28, 43 (Mich. 2008), the Michigan Supreme Court clarified its interpretation of its privacy exemption by stating "information of a personal nature" as used in the statute should be more expansively interpreted to include "private or confidential information relating to a person, in addition to embarrassing or intimate details." *Id.* at 40 (citing *Bradley v. Saranac Comm. Schools Bd. of Educ.*, 565 N.W.2d 650 (Mich. 1997)).

"In analyzing the first prong [of the Michigan privacy exemption], consideration must be given not merely to the question whether the identifying information is of a personal nature. Rather, the inquiry must be broader, and must consider whether any information disclosed in association with identity is of a personal nature." *Detroit Free Press v. City of Warren*, 645 N.W.2d 71, 74 (Mich. Ct. App. 2002). "[T]he customs, mores, or ordinary views of the community must be taken into account" in the court's

determination that requested information is of a personal nature. *Herald Co., Inc. v. Ann Arbor Public Schools*, 568 N.W.2d 411, 414 (Mich. Ct. App. 1997) (quotation omitted).

South Carolina court decisions have never interpreted the South Carolina FOIA's personal privacy exemption or the definition of "information of a personal nature" used therein as broadly as the Michigan courts have interpreted the Michigan FOIA's privacy exemption. Rather, South Carolina courts, including this Honorable Court, have consistently circumscribed the exemption narrowly, on a case-by-case basis. *See Evening Post Pub. Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011) ("The determination of whether documents or portions thereof are exempt ... must be made on a case-by-case basis....") (quotation omitted).

The South Carolina FOIA does not explicitly define what constitutes "information of a personal nature" and judicial decisions interpreting the phrase have never announced a definition to be applied in all cases. This Court has indicated its reluctance to set forth a definition is intentional: "[T]he exemptions should be narrowly construed to *not provide a blanket prohibition of disclosure* in order to 'guarantee the public reasonable access to certain activities of the government.'" *Evening Post Pub. Co.*, 392 S.C. at 83, 708 S.E.2d at 748 (emphasis added).

Even if Michigan's FOIA were comparable to South Carolina's and the *Michigan Federation of Teachers* case on which the Court of Appeals relies was factually analogous, the Court failed to consider *Herald Co. v. City of Bay City*, 614 N.W.2d 873 (Mich. 2000), on which *Michigan Federation of Teachers* relies. The *Herald* case is more similar to the facts of the instant dispute and application of its holding would necessitate a ruling in Glassmeyer's favor.

In *Herald*, the Michigan Supreme Court unanimously held defendant Bay City violated the Michigan FOIA by failing to disclose public records concerning the final seven candidates for the position of Bay City Fire Chief, in particular the candidates' names, current job titles, cities of residence, and ages. *See id.* The court concluded "the fact of application for a public job, or the typical background information one may disclose with such an application, is simply not 'personal' within the contemplation of this exemption." 565 N.W.2d at 880.

The *Herald* court relied on its decision in *Bradley v. Saranac Comm. Schools Bd. of Educ.*, 565 N.W.2d 650 (Mich. 1997), in which the Michigan Supreme Court held personnel records of public school teachers and administrators were not of a "personal nature" subject to protection under the Michigan FOIA privacy exemption. The court recognized "none of the [personnel records] contain information of an embarrassing, intimate, private, or confidential nature, such as medical records or information relating to the plaintiffs' private lives." *Id.* at 655.

The *Herald* court also distinguished *Mager v. State, Dept. of State Police*, 595 N.W.2d 142 (Mich. 1999). In *Mager*, the plaintiff requested the State Police provide the names and addresses of persons who owned registered handguns. In determining the requested records were of a "private and personal nature," the court determined the fact of gun ownership was "information of a personal nature" and "[t]he ownership and use of firearms is a controversial subject." *Id.* at 146. Accordingly, "[a] citizen's decision to purchase and maintain firearms is a personal decision of considerable importance." *Id.* at 147. The court did not determine home address and telephone number information for

registered gun users was by itself personal and private and therefore subject to protection.

Instead, the court held:

> In contrast to the fact of gun ownership, which ... certainly may be viewed as an intimate and potentially embarrassing aspect of one's private life, ... the fact of application for a public job, or the typical background information one may disclose with such an application, is simply not "personal" within the contemplation of this exemption. Given the public nature of the position at issue, we think it difficult to conclude that the "customs," "mores," and "views" of the community contemplate that an application for such a position could be made without expectation of considerable public scrutiny.

Id. at 880.

The Court of Appeals in this case was guided by a misapprehension of applicable law and fact in holding the final five candidates for the position of City Manager had a privacy interest in their home addresses and telephone numbers. By applying case law interpreting the US FOIA and Michigan FOIA, the Court of Appeals erred in reversing the lower court's granting of summary judgment in Glassmeyer's favor.

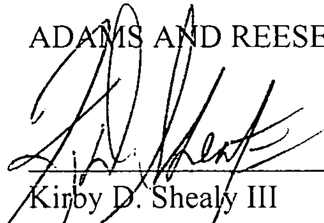
CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue an order granting the petition for writ of certiorari in this case.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

ADAMS AND REESE LLP



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November 23, 2015.

Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 2015-5347 (S.C. Ct. App. Filed Sept. 2, 2015)

George S. Glassmeyer,..Petitioner,

v.

City of Columbia,...Respondent.

PROOF OF SERVICE

I hereby certify I served the Petition for Writ of Certiorari and Appendix upon the City of Columbia, by depositing copies of the documents in the United States Mail, postage prepaid, on November 23, 2015, addressed to its attorney of record, W. Allen Nickles, III, Esquire, at 1122 Lady Street, Suite 610, Columbia, South Carolina 29201.

I hereby further certify I served the Petition for Writ of Certiorari upon the Clerk of the South Carolina Court of Appeals by placing a copy in the United States mail, postage prepaid, to The Honorable Jenny Abbott Kitchings, Clerk of the South Carolina Court of Appeals, P.O. Box 11629, Columbia, South Carolina 29211, on November 23, 2015.

Victoria Moody – Paralegal