

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

---

Appellate Case No.: 2015-002395

---

RECEIVED

DEC - 9 2015

S.C. Supreme Court

George S. Glassmeyer.....Petitioner,

v.

City of Columbia.....Respondent.

---

RESPONDENT'S RETURN TO  
PETITION FOR WRIT OF CERTIORARI

---

W. Allen Nickles, III  
Nickles Law Firm, LLC  
1122 Lady Street, Suite 610  
Columbia, South Carolina 29201  
803-779-8080  
[wanickles@nickleslaw.com](mailto:wニックles@nickleslaw.com)

*Attorney for Respondent*

**Other counsel of Record:**

Kirby D. Shealy, III, Esquire  
Lyndey Zwing, Esquire  
Adams and Reese, LLP  
1501 Main Street, 5<sup>th</sup> Floor  
Columbia, South Carolina 29201

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** ..... ii

**STATEMENT OF THE CASE**.....1

**ARGUMENT: Response to Question Presented**

**The Court of Appeals 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**.....1

**CONCLUSION** .....5

**TABLE OF AUTHORITIES**

**Cases**

Burton v. York Cty. Sheriff's Dep't., 358 S.C. 339, 352, 594 S.E.2d 888, 895  
(Ct. App. 2004) .....2, 3

Ellis v. Oliver, 335 S.C. 106, 111, 515 S.E.2d 268, 271 (Ct. App. 1999) .....2

Perry v. Bullock, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014) .....1

State v. Counts, 413 S.C. 153, 171, 776 S.E.2d 59, 69 (2015) .....2

State v. Harrison, 402 S.C. 288, 300, 741 S.E.2d 727, 733 (2013) .....2

Williams v. Morris, 320 S.C. 196, 200-201, 464 S.E.2d 97, 99-100 (1995) .....2

**Statutes**

S.C. Code Ann. § 16-13-510(D)(11), (12) and (13) .....4

S.C. Code Ann. § 30-2-30(1) .....4

S.C. Code Ann. § 30-2-300(3) .....4

## STATEMENT OF THE CASE

Petitioner (“Glassmeyer”) filed a Petition for Writ of Certiorari on November 23, 2015, received by Respondent (“City”) November 24, 2015. In this Petition, Glassmeyer asserts that the order issued by the Court of Appeals on September 2, 2015 finding that the 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 of Appeals in reaching this conclusion. Moreover, the analysis employed by the Court of Appeals is consistent with the legislative purpose of FOIA and conforms to the jurisprudence of this and other states. Accordingly, Glassmeyer’s petition should be denied.

## LEGAL ARGUMENT

**The Court of Appeals 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, the Court of Appeals quoted the findings and purpose stated by the General Assembly in adopting FOIA. The Court of Appeals also relied upon controlling precedent of this Court identifying that the “essential purpose of the FOIA is to protect the public interests from secret government activity.” (App p. A-5, *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 petition 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 of Appeals to balance any conflicting interests between privacy and the public's need to know. (App p. A-6, *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 of Appeals examined treatment of similar applications in the State of Michigan and under the federal FOIA. (App. pp. A-6-8) 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. As this Court has repeatedly held, review of issues presented in other jurisdictions is appropriate to provide guidance in responding to matters not explicitly addressed by the courts of this State. See, State v. Counts, 413 S.C. 153, 171, 776 S.E.2d 59, 69 (2015); State v. Harrison, 402 S.C. 288, 300, 741 S.E.2d 727, 733 (2013); Williams v. Morris, 320 S.C. 196, 200-201, 464 S.E.2d 97, 99-100 (1995); see also, Ellis v. Oliver, 335 S.C. 106, 111, 515 S.E.2d 268, 271 (Ct. App. 1999)

Having examined the redacted information sought by Glassmeyer, the Court of Appeals engaged in the required balancing of privacy interests against the public's need to know. (App. pp. A-8-9) Noting that the City only redacted the street name and number of the applicants' home addresses, the Court of Appeals 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 of Appeals appropriately found that disclosed information included educational background, employment histories and other information sufficient to allow an inquiry into the applicants' "veracity." (App. p. A-9)

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. For example, Glassmeyer argues that challenged opinion conflicts with the 2004 decision in Burton v. York County Sheriff's Dept., 358 S.C. 339, 594 S.E. 2d 888 (Ct. App. 2004). Instead, the opinion quotes from Burton extensively in addressing the responsibility under FOIA to balance privacy interests with the public's need to know. (App. p. A-6) Glassmeyer's misguided argument is necessary because he can point to no legitimate interest beyond his own private curiosity served by obtaining the limited applicant information withheld by the City.

---

<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 in the challenged opinion.

Finally, several authorities offered by Glassmeyer have been superseded or modified.<sup>2</sup> These references illustrate Glassmeyer's refusal to recognize the evolution in privacy protection necessary to combat hazards created by advances in technology unknown when sunshine laws such as our FOIA were originally adopted. For example, the South Carolina Family Privacy Protection Act enacted in 2007 expanded the definition of "personal information" to include home addresses and telephone numbers. S.C. Code Ann. § 30-2-30(1) In 2008, the General Assembly amended this Act to declare that state and local governments should "minimize instances that this [personal identifying] information is disseminated either internally within government or externally with the general public." S.C. Code Ann. § 30-2-300(3) The most comprehensive legislative definition of "personal identifying information" is contained in the Personal Financial Security Act. This definition "includes but is not limited to" current and former addresses when linked to individual names or other information issued by a government entity that "uniquely will identify an individual or an individual's financial resources." S.C. Code Ann. § 16-13-510(D)(11), (12) and (13) Adopting Glassmeyer's arguments would confound common sense, violate the plain language of FOIA and ignore more recent efforts of our General Assembly to protect privacy interests.

### **CONCLUSION**

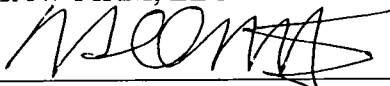
Glassmeyer seeks to broaden our FOIA to expose individuals who apply for government employment to personal harassment by making their home addresses, emails and telephone numbers available to the public on request. This construction does not

---

<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).

For these reasons, and those expressed in the opinion issued September 2, 2015, the present petition should be rejected.

NICKLES LAW FIRM, LLC

By:   
W. Allen Nickles, III, S.C. Bar #4226  
1122 Lady Street, Suite 610  
Columbia, South Carolina 29201  
(803) 779-8080  
[wanickles@nickleslaw.com](mailto:wanickles@nickleslaw.com)

*Attorneys for Respondent*

December 9, 2015  
Columbia, South Carolina

1950

1950

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

RECEIVED

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DEC - 9 2015

G. Thomas Cooper, Jr., Circuit Court Judge

S.C. Supreme Court

Appellate Case No.: 2015-002395

George S. Glassmeyer.....Petitioner,

v.

City of Columbia.....Respondent.

CERTIFICATE OF SERVICE

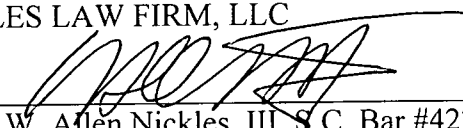
The undersigned hereby certifies that he has served the foregoing Respondent's Return to Petition for Writ of Certiorari by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Kirby D. Shealy, III, Esquire  
Lyndey Zwing, Esquire  
Adams and Reese, LLP  
1501 Main Street, 5<sup>th</sup> Floor  
Columbia, South Carolina 29201

This 9<sup>th</sup> day of December, 2015.

NICKLES LAW FIRM, LLC

By:

  
W. Allen Nickles, III, S.C. Bar #4226  
1122 Lady Street  
Columbia, South Carolina 29201  
(803) 779-8080  
[wanickles@nickleslaw.com](mailto:wanickles@nickleslaw.com)

Attorney for Respondent