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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

William Jeffrey Young, Circuit Court Judge

Appellate Case No. 2015-001760

South Carolina Public Interest Foundation and Edward D. Sloan, , individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and Robert J. St. Onge, Jr., Secretary of Transportation, ... Respondents.

APPELLANTS' FINAL BRIEF

January 13, 2016

Other Counsel of Record:
Beacham O. Brooker, Jr. S.C. Bar No. 909
Assistant Chief Counsel, SCDOT
P.O. Box 191
Columbia, SC 29202-0191
(803) 737-1347
Attorney for Respondents

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorneys for Appellants

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Appellants the South Carolina Public Interest Foundation and Edward D. Sloan, Jr. appeal the Circuit Court's Order denying them attorneys' fees under the South Carolina Freedom of Information Act (FOIA).

STATEMENT OF THE CASE

On July 15 and 16, 2015, the Honorable William Jeffrey Young entered an Order and Judgment denying the Appellants' Motion for Attorneys' Fees under FOIA (R. pp. 1-3). On July 24, 2015, Appellants received written notice of the entry of the Order and Judgment. On August 16, 2015, Appellants gave Notice of Appeal.

STATEMENT OF FACTS

Appellants served a FOIA request on the DOT Respondents (R. p. 24). The request asked for public records related to the rebuilding of a private driveway (owned by a DOT employee) using public funds, equipment, supplies, materials, and personnel, a violation of the South Carolina Constitution, Art. X, § 5 and 11. Respondents failed to produce many of the requested public records. In those they did produce, Respondents redacted information. Respondents asserted that the requested public records were exempt from production (R. p. 26).

Appellants had sought the same public records in Requests for Production of Documents in a related case, *South Carolina Public Interest Foundation, et al. v. South Carolina Department of Transportation and Jane Doe*, Civil Action No. 2013-CP-40-3677 ("the Driveway Case"). Respondents, citing the attorney client relationship, refused to produce the requested public records either in response to the Freedom of Information Act, or in response to discovery requests in the Driveway Case.

Respondents asserted that the requested public records were exempt from production under S.C. Code Ann. § 30-4-40(2) (sic) and § 30-4-40(7) (sic). Respondents probably meant § 30-4-40(a)(2) (personal information that would cause an unreasonable invasion of personal privacy) and § 30-4-40(a)(7) (records protected by the attorney-client and attorney work product privileges).

Appellants simultaneously filed a motion to enforce FOIA in this case and moved to compel production of the documents in response to the discovery requests in the Driveway Case. The Circuit Court granted the Motion to Compel Production of Documents in the Driveway Case but failed to rule on the FOIA enforcement motion (R. pp. 7-17).

STATEMENT OF ISSUES ON APPEAL

I. ARE APPELLANTS ENTITLED TO ATTORNEYS' FEES UNDER FOIA?

II. DID RESPONDENTS PRODUCTION OF PUBLIC RECORDS MOOT THE CLAIM FOR ATTORNEYS' FEES?

III. DID THE TRIAL COURT PROPERLY RULE THAT THE PUBLIC RECORDS WERE NOT EXEMPT FROM PRODUCTION?

IV. WERE APPELLANTS' ATTORNEYS' FEES AND COSTS REASONABLE?

ARGUMENT

Respondents violated S.C. Code Ann. § 30-4-30(c). The General Assembly delineated the rationale and purposes of FOIA:

> The General Assembly finds that it 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 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 (emphasis added).

In the case before the Court, the Respondents' refusals and delays contravened these purposes.

I. APPELLANTS ARE ENTITLED TO ATTORNEYS' FEES UNDER FOIA.

The purpose of FOIA is to protect the public from secret governmental activity. *Wiedman v. Town of Hilton Head Island*, 330 S.C. 532, 500 S.E.2d 783 (1998). *See also Seago v. Horry County* (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38.

The Circuit Court ruled that Respondents were not legally entitled to withhold the requested documents from production, even though they were generated or discovered in the course of an investigation (R. pp. 7-17). A public body may not insulate a matter from production simply by involving an attorney. The DOT Respondents had investigated the rebuilding of a private driveway (of a DOT employee) in the normal course of events, and the involvement of an in-house attorney was not necessary.

The Circuit Court ordered the production of the unredacted documents, and the Respondents produced them. Respondents' production of the documents (in the Driveway

Case) rendered moot Appellants' claim to require production under FOIA. However, because the Respondents produced the public records **after** Appellants had filed suit to enforce FOIA, Appellants are the prevailing parties under FOIA, and Appellants are entitled to an award of attorneys' fees.

Appellants petitioned the Circuit Court for costs and attorneys' fees pursuant to S.C. Code Ann. § 30-4-100(b), the FOIA attorneys' fees provision (R. pp. 72-79).

> (b) **If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation**. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

S.C. Code Ann. § 30-4-100(b) (emphasis added).

II. RESPONDENTS' PRODUCTION OF PUBLIC RECORDS DID NOT MOOT THE CLAIM FOR AN AWARD OF ATTORNEYS' FEES.

The Supreme Court of South Carolina addressed this issue in *Sloan v. South Carolina Department of Revenue*.

> "[T]he information Sloan sought has been disclosed, [and] there is no continuing violation of FOIA upon which the trial court could have issued a declaratory judgment." [*Sloan v. Friends of the Hunley, Inc.*] (*Friends I*), 369 S.C. [20,] 26, 630 S.E.2d [474,] 478 [(2006)]. This, however, does not end the case, for Sloan further sought to recover his attorney's fees and costs as provided in section 30–4–100(b).
>
> Sloan is the prevailing party. *See Sloan v. Friends of the Hunley, Inc. (Friends II)*, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011) ("When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, **the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed**." (citations omitted)). As the prevailing party under these circumstances, the trial court erred in not awarding Sloan his reasonable attorney's fees and costs. **Sloan is entitled to recover his reasonable attorney's fees and costs in this action**. *See Litchfield Plantation Co. v. Georgetown Cnty. Water & Sewer Dist.*, 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) ("**A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions.**")

> We reverse the trial court and remand to the trial court for an award of reasonable attorney's fees and costs to Sloan.

Id. 409 S.C. 551, 555-56, 762 S.E.2d 687, 689 (S.C. 2014) (footnotes omitted, emphasis added).

Accordingly, in this case, Sloan and the South Carolina Public Interest Foundation are prevailing parties, and are entitled to recover attorneys' fees and costs under S.C. Code Ann. § 30–4–100(b).

III. THE CIRCUIT COURT PROPERLY RULED THAT THE DOCUMENTS WERE NOT EXEMPT FROM PRODUCTION.

The statute granting the exemptions from production under FOIA states the following:

> (2) 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 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.**
>
> * * *
>
> (7) Correspondence or **work products of legal counsel** for a public body and any other material that would **violate attorney-client relationships**.

S.C. Code Ann. § 30-4-40(a)(2) and (7) (Emphasis added). Appellants contended that neither exemption protected the requested documents from disclosure under FOIA.

FOIA requires public bodies to produce public records about its alleged illegal conduct. *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). In *Burton*, a newspaper sought reports related to the Sheriff Department's

investigation into the off-duty sexually-related conduct of its officers. The Sheriff asserted that disclosure of the report would cause an unreasonable invasion of personal privacy. The Court of Appeals rejected the Sheriff's suggestion: "[T]he Sheriff's Department urge[d] this Court to add another category of protection to the privacy rights the Supreme Court has found under the Fourteenth Amendment: the right of **an individual's performance of his public duties to be free from public scrutiny**. We find this would be **ill-advised**." *Id.* 358 S.C. 339, 354, 594 S.E.2d 888, 896 (emphasis added).

Appellants have a right to require those in public service to account for their actions, at least to the point of producing public records. *Id.* In interpreting this exemption, the South Carolina Supreme Court ruled, "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**." *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 566, 566, 324 S.E.2d 313, 315 (1984), *citing Meetze v. Associated Press.* 230 S.C. 330, 95 S.E.2d 606, 609 (1956) (emphasis added). A constitutional violation by the Department of Transportation and its employees is a matter of "legitimate public or general interest." *Id.*

Similarly, the Supreme Court ruled that a detainee might be entitled to a copy of a police department's internal investigation report that cleared the actions of several police officers. *City of Columbia v. ACLU of South Carolina, Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996). The city asserted that the internal report contained information of a personal nature, and was therefore exempt under S.C. Code Ann. § 30-4-40(a)(2). The Circuit Court ruled that the report was exempt as a matter of law, and granted summary judgment to the city, but it was not clear that the Circuit Court had reviewed the report. The Supreme Court reversed the award of summary judgment and remanded the case for a determination by

the court, under the particular facts of the case, and for consideration of the exemptions as they applied to the particular report in question.

Respondents did not possess a right of privacy to spend **public** funds for a **private** purpose, without being called to account for it; nor did they have a right to be free from public scrutiny in spending public funds in any manner. Accordingly, the disclosure of the requested public documents related to allegedly unconstitutional expenditures did not "constitute **unreasonable invasion of personal privacy**." S.C. Code Ann. § 30-4-40(a)(2) (emphasis added).

A. The Attorney-Client Privilege Does Not Protect the Requested Public Records.

Respondents wrongfully withheld additional documents related to the incident, under the guise of the attorney-client privilege. The attorney-client privilege does not protect the documents in question from disclosure under FOIA. Respondents are not legally entitled to shield such documents from production, even though they may have been discovered in an investigation supervised by in-house counsel. A public body may not insulate a matter from the application of FOIA, simply by involving an attorney.

The Supreme Court explained the rationale for the attorney-client privilege:

> We agree that the privilege must be tailored to protect only confidences disclosed within the relationship. The essential elements giving rise to the privilege were stated by Wigmore to be:
>
> > "(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived." 8 Wigmore, Evidence § 2292 (McNaughton rev. 1961)

Not every communication within the attorney and client relationship is privileged. The public policy protecting confidential communications must

> be balanced against the public interest in the proper administration of justice. *N. L. R. B. v. Harvey*, 349 F.2d 900 (4th Cir. 1965); *Sepler v. State*, 191 So.2d 588 (Fla.App.1966). This is exemplified by the widely recognized rule that the privilege does not extend to communications in furtherance of criminal, tortious or fraudulent conduct. *United States v. United Shoe Machinery Corporation*, 89 F.Supp. 357 (D.Mass.1950); 125 A.L.R. 508; 16 A.L.R.2d 1029.
>
> We recently stated in *State v. Love, supra*, that:
>
> > Whether a communication is privileged is for the trial judge to decide in the light of a preliminary inquiry into all of the facts and circumstances; and this determination by the trial judge is conclusive in the absence of an abuse of discretion. 81 Am.Jur.2d Witnesses, Section 222.
>
> The court must determine the question of privilege without first requiring disclosure of the substance of the communication. *Steiner v. United States*, 134 F.2d 931 (5th Cir.), cert. denied, 319 U.S. 774, 63 S.Ct. 1439, 87 L.Ed. 1721 (1943); *Miller v. Anderson*, 30 Conn.Sup. 501, 294 A.2d 344 (1972); *Harrison v. State*, 276 Md. 122, 345 A.2d 830 (1975); 97 C.J.S., Witnesses § 305, at 848.

State v. Doster, 276 S.C. 647, 651-52, 284 S.E.2d 218, 219-220 (1981).

The South Carolina Court of Appeals has adopted the following criteria for the attorney-client privilege:

> The attorney-client privilege protects against disclosure of confidential communications by a client to his or her attorney. *State v. Owens,* 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992). "**The privilege is strictly construed to protect only confidences disclosed within the relationship**." *Id.* at 407, 424 S.E.2d at 477. To establish an attorney-client privilege, the person asserting the privilege must show that the relationship between the parties was that of attorney and client and that the communications were confidential in nature. *Marshall v. Marshall,* 282 S.C. 534, 538-39, 320 S.E.2d 44, 47 (Ct.App.1984). **In order to obtain the status of a client, the person must communicate in confidence with an attorney for the purpose of obtaining legal advice.** *Id.* at 539, 320 S.E.2d at 47. The advice or assistance must be sought **with a view to employing the attorney** professionally whether or not actual employment occurs. *Id.*

Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204, 207-08 (2003).

The Circuit Court properly ruled that the requested public records do not meet this criteria. The attorney-client privilege does not protect documents that are evidence of the

illegal conduct merely because they have been surrendered to an attorney. The witness statements were not made in confidence to an attorney to seek legal advice.

The investigation into the rebuilding of a private driveway was in the normal course of events for the Respondents, and the involvement of an attorney was not necessary to the process. The purpose of the investigation was for employee discipline or personnel issues. This information is not protected by the attorney-client privilege and was properly ordered disclosed under FOIA.

B. The Attorney Work Product Privilege Does Not Protect the Requested Public Records.

The attorney work-product privilege does not protect the business records and evidentiary documents, including witness statements from disclosure under FOIA. They reflect no attorney input, such as discussion of litigation strategies. The documents do not reveal the mental impressions and strategies of the Respondents' counsel, and are not protected by the attorney work product privilege. *Duplan Corporation v. Moulinage et Retorderie de Chavanoz*, 487 F.2d 480 (1973). Wright & Miller § 2024 on "Matters Protected by the Work-Product Rule," states:

> In order to come within the qualified immunity from discovery created by Rule 26(b)(3) three tests must be satisfied. The material must be: 1. 'documents and tangible things;' 2. '**prepared in anticipation of litigation or for trial;**' and 3. 'by or for another party or by or for that other party's representative' [....] Under Rule 26(b)(3), it is clear that all documents and tangible things prepared by or for the attorney of the party from whom discovery is sought are within the qualified immunity given to work product, so long as they were prepared in anticipation of litigation or preparation for trial. [...] The 1970 amendment also extended the work product protection to documents and things prepared for litigation or trial by or for the adverse party itself or its agent.

Id. at pp. 336, 359, and 364. In the case at bar, the report was not prepared in anticipation of the Department's litigation. It was prepared in order to allow the executive officers of

the department to make appropriate employee disciplinary decisions. The investigation was not directed toward litigation, and the Circuit Court properly ruled it was not exempt from disclosure under FOIA.

C. Any Applicable Exemption Would Protect Only Parts of Certain Documents.

Even if an exemption applied to certain documents, Respondents were not entitled to invoke an exemption to hide large volumes of unprivileged information. A South Carolina newspaper sought disclosure of a criminal investigative report prepared by the South Carolina Law Enforcement Division (SLED). *Newberry Publishing Company, Inc. v. Newberry County Commission on Alcohol and Drug Abuse*, 308 S.C. 352, 417 S.E.2d 870 (1992). SLED refused to produce any information from an investigative report in response to a FOIA request. The Supreme Court found that this policy violated FOIA. The Court narrowly construed the exemption that applied to law enforcement investigative information under S.C. Code Ann. § 30-4-40(b) and ordered production of a majority of the investigative report.

> We find that **SLED's policy** of denying all FOIA requests for criminal investigative reports, without determining whether portions of the report are subject to disclosure, **is in direct contravention of the clear language of the FOIA.**
>
> If the legislature had wanted to create a blanket exemption for all criminal investigative reports, regardless of content, it clearly could have done so. Instead, the legislature determined that such reports would be exempt from disclosure **only if the disclosure of the information would harm the agency in one of four enumerated ways**. Even then, the report may not be entirely exempt from disclosure; the statute goes on to state that a public record containing both nonexempt and exempt material must be segregated so that **the nonexempt material is made available to the public**. As a result, we reject SLED's contention that this, or any, criminal investigative report is *per se* exempt from disclosure.

Id. 308 S.C. at 354-55, 417 S.E.2d at 872 (footnotes omitted) (emphasis added).

The Supreme Court was clear. If any of the requested material qualifies for exemption under the Freedom of Information Act, that narrow portion of the requested documents may be exempted from production. However, the burden is on the public body to establish an exemption. Under the Freedom of Information Act, those concerns should be addressed through selective and judicious redactions, not by wholesale failure to produce public records. In *Newberry Observer*, the Court endorsed the process of submitting the allegedly exempt documents to the Court for an *in camera* review. *Id.*, 308 S.C. 352, 354-55, 417 S.E.2d 870, 872 (1992).

The courts of this state have ruled similarly in other cases.

> FOIA's basic premise is to give "any person has a right to inspect or copy any public record of a public body." *Id.* § 30–4–30(a). This right is not without some exceptions, enumerated under section 30–4–40, the following being the one at issue in this case: "Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships." *Id.* § 30–4–40(a)(7). The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis, **and the exempt and non-exempt material shall be separated and the nonexempt material disclosed**. *City of Columbia v. ACLU,* 323 S.C. 384, 387, 475 S.E.2d 747, 749 (1996); *see also Beattie v. Aiken County Dep't of Social Servs.*, 319 S.C. 449, 453, 462 S.E.2d 276, 279 (1995); *Newberry Publ'g Co., Inc. v. Newberry County Comm'n on Alcohol & Drug Abuse,* 308 S.C. 352, 354, 417 S.E.2d 870, 872 (1992). However, **the 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." *See Fowler v. Beasley,* 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996); *see also* S.C. Code Ann. § 30–4–15 (2007). The burden of proving that an exemption exists lies with the government. *Evening Post Publ'g Co. v. City of North Charleston,* 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005).

Evening Post Pub. Co. v. Berkeley County School Dist., 392 S.C. 76, 82-83, 708 S.E.2d 745, 748 (2011) (emphasis added).

> Under FOIA, "[a]ny person has a right to inspect or copy any public record of a public body," unless that record is exempt from disclosure. S.C. Code Ann. 30-4-30(a) (1991). Whether a record is exempt depends on the particular facts of the case. *City of Columbia v. ACLU,* 323 S.C. 384, 387,

> 475 S.E.2d 747, 749 (1996). Underlying each case, however, is the principle that **the exemptions in section 30-4-40 are to be narrowly construed so as to fulfill the purpose of FOIA** ... "to guarantee the public reasonable access to certain activities of the government." *Fowler v. Beasley,* 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996); S.C. Code Ann. 30-4-15 (1991); *Quality Towing, Inc. v. City of Myrtle Beach,* 345 S.C. 156, 161, 547 S.E.2d 862, 864-65 (2001). To further advance this purpose, the government has the burden of proving that an exemption applies.

Evening Post Publishing Co. v. City of North Charleston, 363 S.C. 452, 456-57, 611 S.E.2d 496, 499 (2005) (footnote omitted) (emphasis added).

> [A] trial court should not require the disclosure of attorney-client communications to other parties without first determining whether the communications are privileged by inquiring into all the facts and circumstances of the communication. [*State v. Doster,* 276 S.C. 647, 650-51, 284 S.E.2d 218, 219 (1981).] Further, if necessary to determine the application of the privilege, the trial judge may consider, *in camera,* the questions sought to be asked and the responses which are contended to be subject to the privilege.

Tucker v. Honda of South Carolina Mfg., Inc., 354 S.C. 574, 578, 582 S.E.2d 405, 407 (2003).

Respondents could have sought an *in camera* review of the public records to substantiate their alleged exemptions, but they failed to do so. The Freedom of Information Act requires a responding government body to segregate the exempt from not exempt, and to produce the documents that are not exempt. Respondents failed to separate documents from any legal memorandum prepared by their attorney, and produce the documents as public records. *Evening Post Pub. Co. v. Berkeley Co. Sch. Dist.*, 392 S.C. 76, 708 S.E.2d 745 (2011). Respondents violated FOIA by withholding non-exempt documents that were subject to a legitimate FOIA request and failing to segregate exempt from non-exempt materials for disclosure.

In a very similar case, the Supreme Court ruled that a defendant's production of the documents under FOIA, after suit was filed, did not moot the claim for an award of

attorneys' fees, and the defendant's production of the records did not prevent the plaintiff from being a prevailing party under FOIA. *Sloan v. South Carolina Department of Revenue,* 409 S.C. 551, 555-56, 762 S.E.2d 687, 689 (2014). Accordingly, in this case Appellants are prevailing parties and are entitled to recover attorneys' fees and costs under S.C. Code Ann. § 30–4–100(b).

Respondents argued that the Circuit Court should not make an award of attorneys' fees and costs in this case because Respondents made a good faith argument about the withholding of documents under Rule 37(a)(4) in the Driveway Case. The Circuit Court erred in ruling that the Appellants were not entitled to attorneys' fees under FOIA.

Respondents argued that because Appellants might win the Driveway Case and might be awarded attorneys' fees in the Driveway Case, this case was not ripe for review (R. pp. 97-100). The parties are waiting for a written ruling in the Driveway Case. However, the Order denying the attorneys' fees in this case was final (R. pp. 4-6). Therefore, Appellants properly gave notice of appeal of the final Order of the Circuit Court.

IV. APPELLANTS' ACTUAL ATTORNEYS' FEES AND COSTS ARE REASONABLE.

As to the amount, this case presented a financial risk for Appellants. The public benefited from this litigation. Appellants' counsel attached an affidavit and statements documenting attorneys' fees and costs (R. pp. 93-96). Through December 31, 2013, in the Circuit Court, Appellants incurred $6,137.50 in attorneys' fees and $200.00 in costs pursuing this matter, for a total of **$6,337.50**.

"There are six factors for the trial court to consider when determining an award of attorneys fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) *citing Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). "Upon request for attorneys fees that are authorized by contract or statute, the trial court should make specific findings of fact on the record for each of these factors." *Id. citing Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 and *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659 (1993).

First, as to the nature, extent and difficulty of the case, Appellants brought this action and spent significant time, effort and money compelling these Respondents to honor the Freedom of Information Act.

Second, as to the time necessarily devoted to the case, as shown by the affidavit of Appellants' counsel, Appellants spent significant time in compelling these Respondents to honor the Freedom of Information Act.

Third, Appellants' counsel are experienced attorneys of high professional standing and well known to the courts of this State. *See, inter alia, South Carolina Public Interest*

Foundation v. Harrell, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee,* 371 S.C. 495, 640 S.E.2d 457 (2007); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005), *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v. Greenville County,* 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000).

Fourth, counsel did not work on a contingency fee, but rather Appellants paid these fees as they accrued. They should be reimbursed for their fees and expenses.

Fifth, Appellants obtained beneficial results. Upholding the Freedom of Information Act was the Appellants' objective. Furthermore, Appellants' litigation benefits every citizen by requiring the Respondents to follow the Freedom of Information Act.

Sixth, as to the customary legal fees for similar services, Appellants have presented Counsel's affidavit supported by detailed time records showing that Plaintiff incurred attorneys' fees and costs. Appellants respectfully suggest that based upon counsel's affidavit and the Court's familiarity with attorney fees customarily charged in this legal community, the time spent and the hourly rates requested by Counsel are reasonable. In fact, Plaintiff's Counsel discounted their normal rates due to the public interest nature of this litigation. Accordingly, Appellants' actual attorneys' fees and costs were reasonable, and the Court should award Appellants their attorneys' fees and costs.

CONCLUSION

WHEREFORE, Appellants pray the Court an order granting summary judgment:

1. Affirming that Respondents violated FOIA;
2. Awarding the Appellants' attorneys' fees and costs of litigation pursuant to S.C. Code Ann. § 30-4-100(b); and
3. Granting Appellants such other and further relief as the Court deems just and proper.

Respectfully submitted,

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, P.C.
819 East North Street
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Appellants

CERTIFICATE OF COUNSEL

Pursuant to Appellate Rule 211(a), the undersigned hereby certifies that his Final Brief for Appellants complies with Rule 211(b).

THE CARPENTER LAW FIRM, P.C

James G. Carpenter, Esquire
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorneys for the Appellants

Greenville, South Carolina
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South Carolina Department of Transportation, and Robert J. St. Onge, Secretary of Transportation, ... Respondents.

Certificate of Service

The undersigned attorney hereby certifies that he has served a copy of the foregoing Appellants' Final Brief on counsel for Defendants by US Mail, postage prepaid on Wednesday, January 13, 2016 to the following persons:

Beacham O. Brooker, Jr.
Assistant Chief Counsel, SCDOT
P.O. Box 191
Columbia, SC 29202-0191

January 13, 2016

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, P.C.
819 E. North Street
Greenville, South Carolina 29601
Tel. (864) 235-1269

CARPENTER

ATTORNEYS AND COUNSELORS AT LAW

*JAMES G. CARPENTER
james.carpenter@carpenterlawfirm.net

JENNIFER J. MILLER
jennifer.miller@carpenterlawfirm.net

L. WARREN CLAYTON, III
warren.clayton@carpenterlawfirm.net

*LICENSED IN S.C. & N.C.

January 13, 2016

The Honorable Jenny Abbott Kitchings
Clerk of SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Appellate Case No. 2015-001760

Dear Ms. Kitchings:

I enclose an original and fifteen copies of the Appellants' Final Brief, and proof of service in this matter.

If you need anything else, please telephone me.

Sincerely yours,
THE CARPENTER LAW FIRM, PC

James G. Carpenter

Enclosures
CC w/enclosures: Beacham O. Brooker, Jr.