

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

RECEIVED

MAY 25 2016

South Carolina Lottery Commission, )

Civil Action No. 2014-CP-40-02926

30 Court of Appeals

Plaintiff, )

vs. )

ORDER GRANTING DECLARATORY  
AND INJUNCTIVE RELIEF

George S. Glassmeyer, )

Defendant. )

2016 NOV 17 PM 12:53  
CLERK OF COURT  
COURT OF APPEALS  
COLUMBIA, SC

Plaintiff South Carolina Lottery Commission ("the SCLC") filed this action seeking declaratory and injunctive relief with respect to the release of personal information regarding claimants of lottery winnings in response to a South Carolina Freedom of Information Act (FOIA) request. A hearing was held in this matter on December 5, 2014. The Court grants the requested declaratory relief and enters a permanent injunction for the reasons set forth below.

#### INTRODUCTION

1. The SCLC receives numerous requests each year pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-40-10 *et seq.*, seeking personal identifying information about its claimants.

2. On or about March 31, 2014, Defendant submitted his first in a long line of FOIA requests to the SCLC, seeking certain personal information relating to "all bona fide claims" for any SCLC prize equal to or exceeding One Million Dollars (\$1,000,000) in gross proceeds from March 1, 2013 to March 20, 2014.

3. Specifically, for all such claims Defendant requested the claimant's full name, address, and telephone number; the date and gross amount of the claim; and a copy of any and all forms of identification obtained from the claimants.

4. On or about April 16, 2014 the SCLC provided a written response to Defendant's request, wherein the Defendant was provided with the following information: (1) gross dollar amounts of all such claims; (2) the dates of all such claims; (3) the home town and state of residence for all such claimants; and (4) the game associated with the prize won.

5. In addition, in its April 16, 2014 response the SCLC notified Defendant that the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all such claimants are specifically exempted from disclosure by S.C. Code Ann. § 30-2-310(A)(1)(e), which in turn made this information exempt from disclosure under S.C. Code Ann. § 30-4-40(a)(4). Moreover, the SCLC notified Defendant that it had determined that all such information is also exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40(a)(2) because it is of a personal nature and its public disclosure would constitute an unreasonable invasion of personal privacy.

6. On or about April 17, 2014, Defendant notified the SCLC that he believed the response of April 16, 2014 did not satisfy his March 31, 2014 FOIA request, thus making this matter ripe for adjudication.

7. In the Complaint, the SCLC sought declaratory relief that the release of the names, addresses, telephone numbers, and forms of identification of lottery winners in South Carolina would constitute an unreasonable invasion of their personal privacy in accordance with S.C. Code Ann. § 30-4-40(a)(2) and thus may be withheld from disclosure by the SCLC in

response to a FOIA request. The SCLC further sought an injunction against the release of that information.

#### LEGAL BACKGROUND

8. A party may apply to a court to declare their rights under the statutory law of this state. S.C. Code Ann. § 15-53-20.

9. The standards for a permanent injunction are substantially the same as those for issuing a preliminary injunction, except that the plaintiff must show actual success on the merits. *Amoco Prod. Co. v. Vill. Of Gambell*, 480 U.S. 531, 546 n. 12 (1987).

10. Therefore, to obtain a permanent injunction, the applicant must show the following:

- (1) he has succeeded on the merits;
- (2) he will suffer immediate, irreparable harm without the injunction; and
- (3) he has no adequate remedy at law.

*Compton v. S. Carolina Dep't of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

11. The Court also is required to balance the equities in the case. *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427, 429 (1995); *see also Shaw v. Coleman*, 373 S.C. 485, 645 W.E.2d 252 (Ct. App. 2007) (affirming grant of permanent injunction based on balancing of equities).

#### ANALYSIS

12. 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).

13. The South Carolina Constitution expressly recognizes the right to privacy and protects citizens against invasions of privacy resulting from state action. S.C. Const. art. I § 10.

14. In his FOIA request, Defendant specifically requested the claimant's full name, address, and telephone number; the date and gross amount of the claim; and a copy of any and all forms of identification obtained from the claimants.

15. The disclosure of a lottery winner's name or other information that could be used to identify him ("personal identifying information"), including, but not limited to, mailing address, phone number, SSN, or DOB would constitute an unreasonable invasion of the claimant's personal privacy.

#### DECLARATORY JUDGMENT

16. The right to privacy is the right to be left alone, or "the right to live without one's name, picture or statue, or that of a relative, made public against his will." *Holloman v. Life Ins. Co. of Virginia*, 192 S.C. 454, 458, 7 S.E.2d 169, 171 (1940).

17. The South Carolina Constitution expressly recognizes the right to privacy. S.C. Const. art. I § 10. At a minimum, the state constitution therefore protects a claimant against invasions of privacy resulting from state action, including the release of personal information that would result in an unreasonable invasion of a claimant's personal privacy.

18. A prominent example of the concern regarding the improper public release of personal information is the public concern and outcry that arose following the breach of the South Carolina Department of Revenue's computer system and network, resulting in the suspected compromise of millions of taxpayers' personal identifying information and a civil lawsuit regarding the breach. See *Morgan v. S.C. Dept. of Revenue*, 2012-CP-40-07331.

19. Recognizing the potential for harmful use of this personal information that was wrongfully accessed, the State of South Carolina has contracted for credit monitoring for affected taxpayers for two years.

20. The Courts also have taken steps to address this concern. Just recently, the South Carolina Supreme Court issued an order requiring the redaction of personal identifying information from documents filed with an appellate court, including but not limited to social security numbers, taxpayer identification numbers, driver's license numbers, passport numbers, or other personal identifying numbers; names of minor children; financial account numbers; home address of minors, sexual assault and abuse and neglect victims; non-parties; and date of birth. *In re Revised Order Concerning Pers. Identifying Info. & Other Sensitive Info. in Appellate Court Filings*, 2013-002681, 2014 WL 1464413 (S.C. Apr. 15, 2014).

21. The federal courts likewise recognize a similar need for privacy in court filings, generally requiring the redaction of personal identifying information. Fed.R.Civ.P. 5.2.

22. The release of a claimant's personal identifying information will result in an unreasonable invasion of a claimant's personal privacy. The release of such personal identifying information is not required by and would not further the purpose of the FOIA.

23. The purpose of the FOIA is not to expose individuals to unwarranted invasions of privacy, but to "prevent the government from acting in secret." *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001). An individual's personal identifying information has nothing to do with the government operating in secret. The fact that the SCLC pays lottery winnings – the only part that involves government action – already is a matter of public knowledge. A lottery claimant's identity as the recipient of those winnings does not pertain to government activity in secret and involves personal privacy and personal identifying information. Enjoining the release of a lottery claimant's personal identifying information therefore is consistent with the purposes and provisions of the FOIA.

24. Disclosure of claimants' personal identifying information would invade the privacy of the claimants and their families, subject claimants and their families to unreasonable publicity, expose claimants and their families to threats against their safety, and otherwise be an unreasonable intrusion into the life and daily affairs of claimants.

25. The invasion of privacy that would result from the release of claimants' personal identifying information also would be unreasonable.

26. The SCLC's allegations are further supported by recognized instances of harm or the threat of harm befalling lottery winners.

27. Such threats of harm against the safety and personal security of lottery winners and their families, as well as actual harm to them, are well documented in case law. *See, e.g., People v. Bennett*, 2013 WL 967583 (Mich.App. March 7, 2013) (unpublished) (defendant robbed a home, murdered one person, shot and severely injured another person, and physically assaulted a ten year old child in an attempt to steal a lottery ticket worth \$2,700.00); *State v. Bradford*, 2003 WL 21372743 (Iowa App. June 13, 2003) (unpublished) (person who purchased and cashed several winning lottery tickets was choked until she passed out and suffered injuries requiring hospitalization when she was robbed for cash received from the winning tickets).

28. Media reports also exist regarding threats of and actual harm to lottery winners. Rebecca Nelson, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Jan. 9, 2013 (<http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lotterys-unluckiest-winners/>) (lottery winner's death from cyanide the day after his lump sum check was issued treated as homicide); JuJu Kim, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Nov. 27, 2012 <http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lotterys-unluckiest-winners/> (lottery winner murdered in

robbery plot; Andy Campbell, *Killer of Lottery Winner Abraham Shakespeare Can't Keep his Home*. *Judge Rules*, HUFFINGTON POST CRIME, Oct. 4, 2013 ([http://www.huffingtonpost.com/2013/10/04/abraham-shakespeare-murdered-lottery-winner\\_n\\_4042811.html](http://www.huffingtonpost.com/2013/10/04/abraham-shakespeare-murdered-lottery-winner_n_4042811.html)) (woman who befriended lottery winner to take control of his wealth convicted of first-degree murder in this death); Ron Dicker, *Virginia Lottery Winner Who Uses Wheelchair Robbed After Cashing Ticket*, HUFFINGTON POST CRIME, Feb. 7, 2013 ([http://www.huffingtonpost.com/2013/02/07/virginia-lottery-winner-wheelchair-robbed-ticket\\_n\\_2638978.html](http://www.huffingtonpost.com/2013/02/07/virginia-lottery-winner-wheelchair-robbed-ticket_n_2638978.html)) (wheelchair-bound lottery winner robbed while leaving store after cashing ticket).

29. Therefore, the release of personal identifying information by the SCLC will subject claimants and their families to unreasonable publicity, exposing claimants and their families to threats against their safety, and unreasonably intruding into and invading their lives and daily affairs.

30. If claimants' personal identifying information is released at any time, claimants and claimants' families will be subject to unreasonable publicity, exposing claimants and claimants' families to threats against their safety, and unreasonably intruding into and invading their lives and daily affairs.

31. The SCLC is therefore entitled to declaratory judgment that the release of all or any part of claimants' personal identifying information, such as claimants' names, would result in an unreasonable invasion of claimants' personal privacy in accordance with § 30-4-40(a)(2).

#### IMMEDIATE, IRREPARABLE HARM

32. The SCLC has demonstrated that its claimants will suffer immediate, irreparable harm to their personal privacy and safety without the entry of a permanent injunction.

33. As noted above, the South Carolina Constitution expressly protects claimants against invasions of privacy resulting from state action.

34. By granting an applicable exemption from releasing information under the FOIA, § 30-4-40(a)(2) recognizes that there are situations in which the release of certain information will result in an unreasonable invasion of that person's privacy, and accordingly exempts that information from disclosure.

35. On behalf of claimants, the SCLC may therefore assert such exemption in response to a FOIA request because claimants have constitutional and statutory protections against any unreasonable invasion of their personal privacy and against any release of their personal identifying information.

36. The disclosure by the SCLC of claimants' personal identifying information would invade the privacy of claimants and claimants' families, subject claimants and claimants' families to unreasonable publicity, expose claimant and claimants' families to threats against their safety, and otherwise be an unreasonable intrusion into claimants' lives and daily affairs.

37. The recognized instances of harm or the threat of harm befalling lottery winners discussed above with respect to the unreasonableness of the invasion of claimants' privacy also demonstrates the irreparable harm that would ensue from the release of claimants' personal identifying information.

38. The release of claimants' personal identifying information would subject claimants and claimants' families to unreasonable publicity, exposing claimant and claimants' families to threats against their safety, and unreasonably intruding into and invading claimants' lives and daily affairs.

39. Moreover, the direct harm to the SCLC from the release of its claimants' personal identifying information would be the likely erosion of public confidence in the lottery and the SCLC and the reduction in the number of players, thereby harming the SCLC and its ability to effectively carry out its mission.

40. Finally, the release of its claimants' personal identifying information would also likely create legal exposure for the SCLC, thereby further harming the agency.

#### NO ADEQUATE REMEDY AT LAW

41. In addition, the SCLC has no adequate remedy at law. An adequate remedy at law is defined as a legal remedy that is "as certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity." *Santee Cooper Resort, Inc. v. South Carolina Public Svc. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

42. Moreover, given the privacy-related nature of the claims, claimants could not be made whole if claimants' privacy is impaired at this or any stage by the release of personal identifying information by the SCLC. It also would be difficult if not impossible for claimants to be fully compensated through damages if claimants' privacy or safety is impaired. Privacy is not a physical asset that can be restored if it is damaged or rebuilt if it is destroyed. Rather, once impaired, claimants' privacy cannot be recovered. Because of its nature, it would be difficult if not impossible to calculate the damages to claimants for any impairment of claimants' privacy. This renders it possible that claimants could not be fully compensated in an action at law because he might be able to recover only nominal damages. *See Bethel A.M.E. Church v. City of Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947). Further, the release of its claimants' personal identifying information could also create unlimited legal exposure for the SCLC and

diminish the number of lottery players in South Carolina, for which there is no adequate remedy at law.

43. In sum, there is no legal remedy that will provide the SCLC, and by extension claimants, with the same relief as the granting of an injunction.

#### BALANCING OF THE EQUITIES

44. As more fully explained and described above, the potential harm to the SCLC and its claimants if a permanent injunction is not granted is great through the unreasonable invasion of claimants' personal privacy, the threat of physical harm to the claimants and their families, the potential legal exposure of the SCLC, and the potential diminution of lottery players.

45. In contrast, the potential harm to the Defendant is minimal, if at all, because he is able to confirm the legitimacy of lottery winnings and payouts and to ensure that the SCLC is not acting in secret. And even though there were bald allegations and oblique, unsubstantiated references to public corruption made by Defendant at the hearing on this matter, there is absolutely no evidence or any other credible information to suggest that the SCLC has engaged in any corrupt activity, nor were there any allegations of any sort of corruption or improper conduct regarding the payment of claims raised by the Defendant in his counterclaim. The South Carolina General Assembly has established a detailed system of auditing and reporting for the SCLC to ensure its financial integrity. S.C. Code Ann. § 59-150-320. The Defendant is certainly entitled to request information from the SCLC regarding its budget, audits, financial reports, and security procedures to confirm the SCLC's financial integrity and that it is not acting in secret.

46. Moreover, it is clear that the Defendant's and the public's interests are served by the production of information the SCLC has already made, and no further disclosure of personal information is warranted. In addition, granting the injunction will serve the interests of judicial economy while assisting the SCLC in its operations by authorizing it to refuse to disclose personal information about persons who win the lottery without their consent, thereby protecting those persons' right to privacy and protecting their safety, and further encouraging persons to play the lottery without a fear that personal information will be released without their consent.

47. As discussed above, granting the permanent injunction is not inconsistent with the purposes of the FOIA to prevent the government from acting in secret – the existence of the lottery and payouts are known – and in fact furthers the purpose of the express exemption from disclosing matters that may lead to an unreasonable invasion of personal privacy.

48. Therefore, the balancing of the equities weighs in favor of granting a permanent injunction.

#### CONCLUSION

49. The exemptions in FOIA allow a public agency the discretion to withhold exempted materials from public disclosure. *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). Based on the record and related information discussed herein, I find that the SCLC exercised its discretion appropriately in this matter and is entitled to a declaratory judgment that the release of claimants' personal identifying information would constitute an unreasonable invasion of personal privacy within the meaning of § 30-4-40(a)(2).

50. The SCLC is also entitled to a permanent injunction because it (1) is entitled to a declaratory judgment and, thus, has prevailed on the merits of its claims; (2) the SCLC has

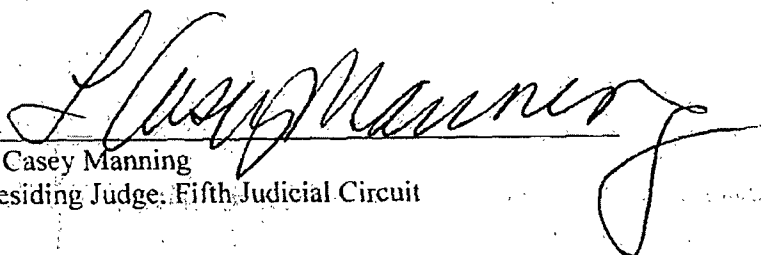
established immediate and irreparable harm on behalf of both itself and its claimants; and (3) the SCLC and its claimants have no adequate remedy at law.


51. Therefore, IT IS ORDERED that Defendant is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants.

52. This Order concludes the above-captioned lawsuit and judgment is entered for Plaintiff SCLC as set forth above.

*SIGNATURE PAGE ATTACHED*

IT IS SO ORDERED.

  
L. Casey Manning  
Presiding Judge, Fifth Judicial Circuit

  
October 17, 2015  
Columbia, South Carolina