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THE STATE OF SOUTH CAROLINA
In the Supreme Court

SC SUPREME COURT

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No.: 2016-001507
Unpublished Opinion No. 2016-UP-151 (S.C. Ct. App. Filed March 30, 2016)

Randy Horton.....Appellant *Petitioner*

-vs-

Jasper County School District.....Respondent

APPENDIX

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

APPEAL FROM JASPER COUNTY

Court of Common Pleas

APR 01 2015

SC Court of Appeals

The Honorable Carmen T. Mullen, Fourteenth Judicial Circuit

Case No.: 2013-CP-27-327

Appellate Case No.: 2014-002612

Randy Horton..... Appellant

-VS-

Jasper County School District Respondent

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP 07-0327
2013CP2700827

RANDY HORTON

JASPER COUNTY SCHOOL DISTRICT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CARMEN MULLEN

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Reconsider Pursuant to Rules 52 and 59, SCRPC, is hereby respectfully denied without a hearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC

2142

Judge Code

Date

SCRPC Form 4C (10/2011)

BY: *[Signature]*
DATE: 11/3/14

Scanned
11/3/14

Page 1 of 2

393 S.C. 152
Supreme Court of South Carolina.

Edward D. SLOAN, Jr., individually and as a
citizen, resident, taxpayer and registered elector
of the State of South Carolina, and on behalf
of all others similarly situated, Respondent,

v.

FRIENDS OF the HUNLEY, INC.,
and Warren F. Lasch, its Chairman,
Of Whom Friends of the Hunley, Inc., is, Appellant.

No. 26986. | Heard April 6,
2011. | Decided June 13, 2011.

Synopsis

Background: Citizen filed complaint against nonprofit corporation formed to recover and conserve Confederate submarine, alleging failure to comply with Freedom of Information Act (FOIA) request. The Circuit Court, Richland County, John C. Hayes, III, J., granted corporation's motion for summary judgment. Citizen appealed. The Supreme Court, 369 S.C. 20, 630 S.E.2d 474, affirmed in part and reversed in part. Thereafter, citizen filed motion for attorney fees under FOIA. The Circuit Court, Richland County, Joseph M. Strickland, Special Circuit Judge, granted motion. Corporation appealed.

Holdings: The Supreme Court, Kittredge, J., held that:

[1] citizen was a "prevailing party" for purposes of FOIA's attorney fee provision, and

[2] law of the case on prior appeal limited time period for which citizen was entitled to attorney fees to time period up to the time corporation produced the requested documents.

Affirmed in part and reversed in part.

Citizen who filed suit against non-profit corporation alleging failure to comply with his Freedom of Information Act (FOIA) request was a "prevailing party" for purposes of FOIA's attorney fee provision, though corporation voluntarily produced requested documents after citizen filed his complaint, thus mooted the case, as corporation, in mooted the case, provided citizen with the very relief he sought to procure through litigation, and, thus, he prevailed in substance, albeit without court intervention, and corporation, by frustrating citizen's FOIA request to extent that he had to seek relief in court and incur litigation costs, should not be able to preclude prevailing party status to citizen by producing documents after litigation was filed. Code 1976, § 30-4-100(b).

3 Cases that cite this headnote

[2] Records

Costs and fees

Declarations of mootness and non-justiciability by Supreme Court in citizen's prior appeal of summary judgment to non-profit corporation in citizen's suit against corporation alleging failure to comply with his Freedom of Information Act (FOIA), based on corporation's voluntary production of requested documents after citizen filed suit, were law of the case and, thus, limited time period for which citizen, as prevailing party, was entitled to attorney fees to time period up to the time corporation produced the requested documents. Code 1976, § 30-4-100(b).

2 Cases that cite this headnote

[3] Appeal and Error

Attorney fees

The decision to award or deny attorney fees under a statute will not be disturbed on appeal, absent an abuse of discretion.

2 Cases that cite this headnote

West Headnotes (4)

[1] Records

Costs and fees

[4] Appeal and Error

Abuse of discretion

An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.

Cases that cite this headnote

Attorneys and Law Firms

****896** Thornwell F. Sowell, Roland M. Franklin, Jr., and Bess J. DuRant, all of Sowell Gray Stepp & Laffitte, of Columbia, for Appellant.

James G. Carpenter, Jennifer J. Miller, and L. Warren Clayton, III, all of Carpenter Law Firm, of Greenville, for Respondent.

Opinion

Justice KITTREDGE.

***154** This is an appeal from an award of attorney's fees pursuant to the Freedom of Information Act. We conclude that Respondent Edward D. Sloan, Jr., was a "prevailing party" and the trial court properly awarded Sloan attorney's fees. However, in view of the law of this case in *Sloan v. Friends of the Hunley, Inc. (Sloan I)*, 369 S.C. 20, 630 S.E.2d 474 (2006), we find the trial court erred in awarding fees beyond the time that Appellant Friends of the Hunley, Inc., provided the requested information to Sloan. We affirm in part and reverse in part.

I.

Friends of the Hunley, Inc., (Friends) is a non-profit corporation dedicated to the recovery and conservation of the *H.L. Hunley* Confederate submarine. Sloan is a citizen of Greenville County, South Carolina. In June 2001, Sloan submitted a Freedom of Information Act (FOIA) request to Friends seeking ***155** a list of documents¹ pertaining to Friends' corporate structure and legal relationship with the Hunley Commission, a state agency. S.C.Code Ann. §§ 30-4-10 to -165 (2007 & Supp. 2010) (FOIA). Friends denied that it was subject to FOIA and declined to produce the documents for Sloan.

Sloan filed a complaint on July 18, 2001, seeking production of the documents based on Friends' status either as a public body under FOIA or as an alter ego of the Hunley Commission. On August 16, 2001, approximately one month later, Friends fully complied with Sloan's document request, but stated that it was not tendering the documents "due to any concession that [Friends] is subject to the Freedom of Information Act," but "in the spirit of cooperation." Following a series of cross-motions, the trial court granted Friends' motion for summary judgment, finding Sloan lacked standing to maintain the action and that no justiciable controversy existed since Friends had produced the very documents sought in the complaint.

Sloan appealed that order, which was heard by this Court. Prior to oral argument, Friends conceded it was a public body for purposes of this action. In *Sloan I*, we affirmed the trial court's grant of summary judgment on the basis that the action was moot and non-justiciable in light of Friends' production of the documents.² 369 S.C. at 25-28, 630 S.E.2d at 477-478.

Following our decision, Sloan moved in the trial court for an award of attorney's fees under FOIA. In 2009, the trial court granted Sloan's motion and awarded attorney's fees to include those incurred from the beginning of the litigation up to the granting of the motion. Friends appealed, which we certified pursuant to Rule 204, SCACR.

II.

[1] [2] Friends challenges the FOIA-based attorney's fee award to Sloan. Specifically, Friends argues Sloan was not a ***156** prevailing party and, in any event, was not entitled to relief beyond the date the requested documents were produced.

****897** [3] [4] "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville County*, 382 S.C. 9, 20, 675 S.E.2d 439, 445 (2009) (citing *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.*, 675 S.E.2d at 445 (quoting *Layman*, 376 S.C. at 444, 658 S.E.2d at 325). The issue before the Court presents a series of legal questions³ in terms of determining (1) whether Sloan may be considered⁴

a prevailing party under the FOIA statute; (2) if Sloan is a prevailing party, whether his entitlement to fees may extend beyond the production of the requested documents; and (3) whether the law of the case from *Sloan I* affects the time period for the attorney fee award.

Section 30-4-100(b) of our FOIA statute provides for an award of attorney's fees in a FOIA dispute:

If a person or entity seeking such [declaratory or injunctive] 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.

The initial question turns on whether Sloan was a prevailing party under the statute. While the statute does not define prevailing party, this Court has previously stated that a prevailing party is "one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. County of Aiken*, 302 S.C. 178, 182-83, 394 S.E.2d 789, 711 (1990) (alteration in original) (quoting *Bura v. Columbia Lumber Co.*, 395 P.2d 511, 514 (Alaska 1964)).

Friends argue that Sloan was not a prevailing party under this definition "because Sloan did not receive any of the relief he requested in his complaint..." We reject Friends' position *157 and agree with the trial court that Sloan was a prevailing party for purposes of the FOIA attorney's fees provision. We find persuasive the decision of the Montana Supreme Court in *Havre Daily News, LLC v. City of Havre*, 333 Mont. 331, 142 P.3d 864 (2006). The *Havre* court addressed whether the post-complaint voluntary production of disputed documents precludes prevailing party status to a plaintiff:

Although Havre correctly observes that the Newspaper did not technically prevail in its action in the District Court, the court granted summary judgment in favor of Havre precisely because Havre mooted the case by providing the Newspaper with

unredacted copies of the Reports. Absent Havre's conduct, the case would not have become moot. In mounting the case, Havre provided the Newspaper with the very relief it sought to procure through litigation; thus, the Newspaper has prevailed in substance, albeit without court intervention. Given these circumstances, we will consider the Newspaper to be the prevailing party with respect to its request for unredacted copies of the Reports. Otherwise, a similarly situated party could, after extensive litigation, at the eleventh hour, and facing imminent defeat, simply moot a case in order to dodge this fee-shifting statute.

Id. at 878 (emphasis added). Similarly, under the facts of this case, we find that Sloan is the prevailing party under section 30-4-100(b). 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. See *Litchfield Plantation Co. v. Georgetown County 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."); see also *Wildlands CPR v. U.S. Forest Serv.*, 558 F.Supp.2d 1096, 1098 (D.Mont.2008) (finding that if a complainant receives relief "via ... unilateral change in **898 position by the agency," he is entitled to fees under the federal FOIA statute); *Spokane Research & Def. Fund v. City of Spokane*, 155 Wash.2d 89, 117 P.3d 1117, 1125 (2005) (en banc) ("[P]ermitting an agency to avoid attorney *158 fees by disclosing the documents after the plaintiff has been forced to file a lawsuit ... would undercut the policy behind the act." (alteration in original)) (quoting *Coal. on Gov't Spying v. King County Dep't of Pub. Safety*, 59 Wash.App. 856, 801 P.2d 1009, 1013 (1990))).

We believe this approach is in harmony with legislative intent, as expressed in the preamble to our FOIA statute:

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). Honoring legislative intent as expressed in FOIA by awarding attorney's fees in these circumstances may serve as an impetus for public bodies to comply with a FOIA request and thus avoid the imposition of an attorney's fee award. See *Soc'y of Prof'l Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) (finding attorney's fees may be awarded to encourage agencies to comply with FOIA requests).

Here, Sloan's complaint prompted Friends to do what a series of FOIA letter-requests could not accomplish—produce the requested documents. Accordingly, Sloan prevailed and is entitled to an award of attorney's fees. However, we are constrained to reverse the award of fees beyond the time Friends produced the requested documents. In *Sloan I*,

we affirmed the trial court's grant of summary judgment because the production of the requested documents rendered the complaint moot and non-justiciable. 369 S.C. at 26, 630 S.E.2d at 477 (“[O]nce the requested documents are produced, a justiciable controversy no longer exists.”). These declarations of mootness and non-justiciability are the law of this case. The parties and this Court are bound by *Sloan I*, which clearly limits the time period for which Sloan would be entitled to an award of attorney's fees. Rather than delay the matter *159 further by remand, we have reviewed the appropriate billing records and modify Sloan's award to \$6,467.50.³

We affirm the trial court's finding that Sloan is a prevailing party under FOIA and is thus entitled to an award of his attorney's fees. We reverse the award of fees beyond the time Friends produced the requested documents and modify Sloan's attorney's fees award to \$6,467.50.

AFFIRMED IN PART, REVERSED IN PART.

TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.

Parallel Citations

711 S.E.2d 895

Footnotes

- 1 Sloan sought Friends' bylaws, minutes from board meetings, tax information, financial statements, retail sales information, and a list of Friends-owned real estate.
- 2 We further found that the trial court erred in denying Sloan standing to bring the action, but that finding has no bearing on this appeal. 369 S.C. at 28-29, 630 S.E.2d at 479, 39.
- 3 Prior to oral argument, we requested the billing records and the attorney's affidavit from Sloan's counsel. Friends does not challenge the reasonableness of Sloan's attorney's fees. That concession allows this Court to end the matter.

End of Document

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TWENGE + TWOMBLEY LAW FIRM .

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does she
have to
explain why?
if in
discretion - along

ASHLEY TWOMBLEY
KARL O. TWENGE
JENNIFER CAMPBELL

LICENSED IN SC & GA
OF COUNSEL

- atty's fees are discretionary -
statute says may award "reas."
att'y fees OR APPROPRIATE
PORTION thereof "

September 16, 2014

Via U.S. Mail

The Honorable Margaret Bostick
Jasper County Clerk of Court
P.O. Box 248
Ridgeland, SC 29936

- standard in appeal is abuse of
discretion.

RE: Randy Horton v. Jasper County School District
Civil Action No.: 2013-CP-27-327

- atty's fees awarded on basis of
reasonableness - NOT requiring
reasonableness as to hourly wage
awarded, but only as to
decision to award at all.
(Rule 52d 431)

Dear Ms. Bostick:

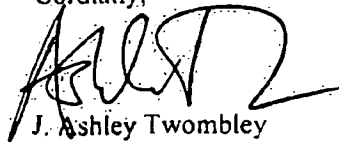
Please find enclosed the original and one (1) copy of Plaintiff's Notice of Motion and Motion Pursuant to Rules 52 and 59, SCRPC in the referenced matter. I would appreciate it if you would file the original and return a clocked copy to me in the enclosed self-addressed envelope. Enclosed is my firm's check in the amount of \$25.00, which represents the required filing fee.

By copy of this letter, I am serving a copy of the same upon The Honorable Carmen T. Mullen and Defendant's counsel, Dwayne T. Mayzck, Esquire.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kind regards, I remain,

Cordially,


J. Ashley Twombley

cc: The Honorable Carmen T. Mullen
Mr. Randy Horton
Dwayne T. Mayzck, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	CIVIL ACTION NO: 2013-CP-27-327
	)	
RANDY HORTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S NOTICE OF MOTION
	)	AND MOTION PURSUANT TO RULES
JASPER COUNTY SCHOOL DISTRICT,	)	52 AND 59, SCRCP
	)	
Defendant.	)	
	)	
	)	

Plaintiff hereby moves the Honorable Carmen T. Mullen, pursuant to Rules 52 and 59, SCRCP, respectfully requesting that she reconsider, alter, and/or amend her Order dated September 5, 2014, as stated herein. Counsel for Plaintiffs received written notice of the entry of the Order on September 8, 2014.

Plaintiff respectfully requests that the Court alter or amend its Order dated September 5, 2014 to change the hourly used in awarding attorney's fees.

In the Order dated September 5, 2014, the Court found that Plaintiff's counsel was entitled to an award of attorney fees. The Court also found that the Plaintiff's counsel obtained beneficial results, that Plaintiff's counsel expended commensurate time and effort for the nature, extent, and difficulty of the case, and considered Plaintiff's counsel's professional standing and experience to be favorable.

Plaintiffs' counsel requested an attorney fee award of \$37,861.26, which was calculated using the hourly rates Plaintiffs' counsel charges to virtually all of its clients that pay by the hour. Defendants never objected to Plaintiff's fee affidavit and fee petition, never took issue

with the hourly rates charged by Plaintiff's Counsel, and never took issue with the amount of time spent by Plaintiff's counsel on the file.

Notwithstanding the above, the Court *sua sponte* reduced counsels' hourly rate from their customary rates, down to \$100 per hour, across the board. The Court did not explain why it reduced the hourly rates, and Plaintiffs' Counsel is otherwise unaware why the Court may have felt that the hourly rates needed to be reduced.

In her Affidavit, Jennifer I. Campbell testified that the hourly rates are \$295.00 for Partner J. Ashley Twombly, \$250.00 for Counsel Jennifer Campbell, \$150.00 for Paralegal time, and \$75.00 for Legal Assistant time. She also averred that these are the rates she and the other lawyers in her firm customarily charge, and further, that these are reasonable rates in the 14th Circuit for lawyers of the relative skill and experience as Plaintiffs' counsel.

In Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984), a FOIA case, the appellant urged the Court to reverse an attorney's fee award on grounds that the state agency acted in good faith reliance on a regulation. The South Carolina Supreme Court declined to do so, holding the "trial judge did not abuse his discretion in awarding fees to encourage agencies to comply with FOIA requests." *Id.* at 568, 324 S.E.2d at 316. See also Sloan v. Friends of the Hunley, 393 S.C. 452, 711 S.E.2d 895 (2011) (honoring legislative intent of FOIA by awarding attorney fees serves as an impetus to comply with FOIA). Plaintiff would respectfully submit that awarding statutory attorney fees at a rate of \$100.00 per hour, which is a steep reduction from the customary hourly rates of \$250.00-\$295.00, will likely discourage litigants whose rights under FOIA have been violated and who are deemed to be correct on the law from bringing litigation under FOIA. In fact, if the Court's Order here stands, Plaintiff could be left with a debt of over \$24,331.26 for the attorney's fees incurred. Moreover, the Court's

ruling could discourage attorneys from representing clients in cases similar to Plaintiff's case, even when they know the agency has acted improperly, and will not have the coercive effect of encouraging compliance with FOIA as intended by the South Carolina legislature.

Accordingly, Plaintiff asks the Court to alter or amend the Order dated September 5, 2014 to award attorney's fees at Plaintiff's Counsel's customary rates as set forth in the Affidavit of Jennifer I. Campbell. In the alternative, Plaintiff respectfully requests that the Court amend the Order to explain why an hourly rate of \$100.00 was used so that Plaintiff (and potentially an appellant Court) can understand the rationale behind this Honorable Court's decision.

CONCLUSION

For the reasons contained herein, as may be raised in any Supporting Memoranda, and as may be raised in the hearing on this Motion, the Plaintiffs' Motion to Alter or Amend the Order dated September 5, 2014, should be granted.

TWENGE + TWOMBLEY LAW FIRM

BY:



J. ASHLEY TWOMBLEY

311 Carteret Street

Beaufort, SC 29902

Telephone: (843) 982-0100

Facsimile: (843) 982-0103

www.twlawfirm.com

Attorney for Plaintiffs

~~Beaufort, South Carolina~~

September 16, 2014

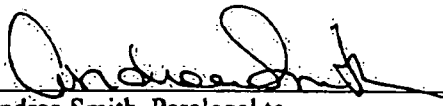
CERTIFICATE OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is the Paralegal to TWENGE + TWOMBLEY LAW FIRM, Attorneys for Plaintiff, and that on the 16th day of September 2014 a true and accurate copy of the attached and Notice of Motion and Motion for Summary Judgment was placed in an envelope with first class postage thereon prepaid through the United States Postal Service, and mailed to the following:

The Honorable Carmen Tevis Mullen
Presiding Administrative Judge for the
Fourteenth Judicial Circuit
102 Ribaut Road
P.O. Drawer 1128
Beaufort SC 29901-1128
Telephone: (843) 255-5070
Facsimile: (843) 522-8362
cmullen@sccourts.org

Dwayne T. Mayzck, Esquire
Childs & Halligan, P.A.
1301 Gervais Street, Suite 900
Columbia, SC 29201
Telephone: (803) 254-4035
Facsimile: (803) 771-4422
dmazyck@childs-halligan.net
Attorney for Defendant

BY:


Andrea Smith, Paralegal to
TWENGE + TWOMBLEY LAW FIRM

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2013-CP-27-327

☒ RANDY HORTON,
Plaintiff,

vs.

☐ JASPER COUNTY SCHOOL DISTRICT,
Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

check box above indicating submitting party

name, S.C. Bar no. and address of Plaintiffs' attorney

J. Ashley Twombly, S.C. Bar No. 72916
311 Carteret Street, Beaufort, SC 29902
telephone: (843) 982-0100 fax: (843) 982-0103
email: twombly@twlawfirm.com other:

name, S.C. Bar no. and address of Defendant's attorney

Dwayne T. Mayzck
1301 Gervais Street, Columbia, SC 29201
telephone: (803) 254-4035 fax: (803) 771-4422
email: dmazyck@childs-halligan.net

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion Pursuant to Rules 52 and 59, SCRPC

Estimate Time Needed: 10 minutes

Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion Type

- ☐ Written motion attached
☐ Form Motion/Order -

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed Order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

- ☐ Motion fee to be paid upon filing attached order.
☐ Other

JUDGE

CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____
(print name)

DATE FILED

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

TWENGE & TWOMBLEY, LLC
OPERATING ACCOUNT
311 CARTERET STREET
BEAUFORT, SC 29902

FIRST CITIZENS BANK
BEAUFORT, SC 29902-5567

4954
67-604/539

Sep 15, 2014

PAY TO THE ORDER OF Jasper County Clerk of Court

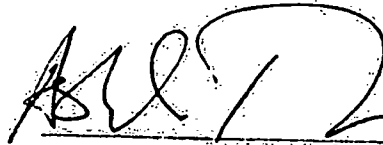
\$ \$25.00

*** Twenty Five ***** 00/100

Jasper County Clerk of Court
P.O. Box 248
Ridgeland, SC 29936

DOLLARS

MEMO Filing of Motion to Reconsider / #1854 / als



AUTHORIZED SIGNATURE

⑈004954⑈ ⑆05390604⑆ ⑆290004⑆ ⑆1260⑆⑈

4954

DATE	September 15, 2014
CHE #	4954
AMOUNT	\$25.00
ACCOUNT	1
PAID TO	Jasper County Clerk of Court P.O. Box 248 Ridgeland, SC 29936

EXPLANATION : Filing of Motion to Reconsider / #1854 / als

CLIENT	Horton, Randy
MATTER	1854

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

RANDY HORTON,
Plaintiff,

v.

JASPER COUNTY SCHOOL
DISTRICT,
Defendant.

) FOURTEENTH JUDICIAL CIRCUIT
) IN THE COURT OF COMMON PLEAS
) C/A No.: 2013-CP-27-0327

**ORDER GRANTING
SUMMARY JUDGMENT
AND AWARD OF COSTS
AND ATTORNEYS FEES**

NOW COMES BEFORE THE COURT Plaintiff's Motion for Summary Judgment in this Declaratory Judgment action. A full hearing was conducted on March 31, 2014. Present at that hearing on behalf of the Plaintiff were J. Ashley Twombly and Jennifer Campbell of Twenge & Twombly Law Firm, LLC. Present on behalf of Defendant Jasper County School District were Kenneth Childs and Dwayne Mazyck of Childs & Halligan, P.A.

The instant issue derives from a Declaratory Judgment action alleging that Plaintiff, a member of the Board of Trustees for Defendant Jasper County School District, is entitled to review of documents relating to his responsibility as a Board member and that the Defendant violated the South Carolina Freedom of Information Act (FOIA) by failing to respond to Plaintiff's FOIA request first made on June 7, 2012. The documents requested include credit card statements for School Board issued credit cards for specific School Board members and a list of bonus checks given to non-certified staff by Jasper County School District employee Vashti K. Washington.

Defendant Jasper County School District is a public body subject to Plaintiff's FOIA request 1977 S.C. Op. Atty. Gen. 173; 1983 S.C. Op. Atty. Gen. 23; 1996 WL 452818

(S.C.A.G.). As such, Defendant Jasper County School District is required to give the requesting

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: 9/15/14

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party a written notification of the determination as to the availability of the request public records within 15 business days. S.C. Code Ann. § 30-4-30(c). Plaintiff did not receive any documents or explanation of the availability of the requested documents and filed the instant suit on June 20, 2013, 13 months after the initial FOIA request. Defendant requested a time extension and did not answer until August 22, 2013. In its answer, Defendant denied Plaintiff's entitlement to any of the requested documents.

The instant motion was filed on October 11, 2013, and heard in part on January 31, 2013, at which time the undersigned requested additional briefs and scheduled this matter for a full hearing. Between the filing of the instant motion and its initial hearing date, Defendant provided Plaintiff with some, but not all, of the requested documents.

During the March 31, 2014, hearing before me, the Court ordered Defendant to produce the entirety of requested documents to the Plaintiff's satisfaction. These documents continued to be produced until July 8, 2014, at which time Plaintiff's counsel notified this Court via email correspondence that all documents had been received. Plaintiff submits an affidavit of costs and attorney's fees which is the subject of this Order. Upon review and consideration of submissions to this Court and oral argument, the Court finds that the Plaintiff is entitled to costs and attorney's fees.

The six factors to be considered when determining an award of attorney's fees are (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 Department*, 359 S.C. 339, 358, 594 S.E.2d 888, 398 (Ct. App. 2004). Jennifer I. Campbell's affidavit regarding legal fees and costs submitted July 9, 2014, portrays commensurate time,

nature, extent and difficulty expended by both Jennifer I. Campbell and J. Ashley Twombly in procuring the FOIA requested documents and litigation related thereto. Legal fees claimed relate to counsel's preparation of pleadings, briefing the court regarding jurisdiction over this issue, standing and the merits of the case. Document review was conducted over the course of several months. Once production was complete, individual documents totaled over two thousand pages over the course of seven different submissions. Counsel has a combined twenty-five years of experience in litigation. Ultimately, my ruling produces beneficial results for their client.

CONCLUSION

For the reasons stated herein, this Court finds that Plaintiff is entitled to summary judgment in this declaratory judgment action. Because the Defendant's response to this June 7, 2012, FOIA request was not complete to Plaintiff's satisfaction until July 2014, and because Plaintiff requested documents to which he was entitled under FOIA in furtherance of his responsibilities as a board member, I find that an award of costs and attorney's fees is appropriate under the circumstances and hereby award attorneys' fees at a rate of \$100 an hour for a total of 135.3 hours documented by J. Ashley Twombly, Esq. and Jennifer Campbell, Esq. for their work in compelling the document production at issue. I also find that Plaintiff's \$1096.56 in costs incurred pursuing the production of this FOIA request is an appropriate award.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment is hereby **GRANTED**, and that Plaintiff be awarded \$13,530 in attorney's fees and \$1096.56 in costs, for a total of \$14, 626.56.

AND IT IS SO ORDERED.

C. Mullen

Carmen T. Mullen
Fourteenth Judicial Circuit

September 5, 2014

Ridgeland, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

RANDY HORTON,
Plaintiff,

v.

JASPER COUNTY SCHOOL
DISTRICT,
Defendant.

) FOURTEENTH JUDICIAL CIRCUIT
) IN THE COURT OF COMMON PLEAS
) C/A No.: 2013-CP-27-0327

**ORDER GRANTING
SUMMARY JUDGMENT
AND AWARD OF COSTS
AND ATTORNEYS FEES**

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(S. TIME COPY) As such, Defendant Jasper County School District is required to give the requesting
MARGARET BOSTICK

CLERK OF COURT

JASPER COUNTY, SC

BY: M. Bostick
DATE: 9/15/14

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AND IT IS SO ORDERED.

C. Mullen

Carmen T. Mullen
Fourteenth Judicial Circuit

September 5, 2014

Ridgeland, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Fourteenth Judicial Circuit Court Judge

Case No.: 2013-CP-27-00327

RANDY HORTON Appellant

-vs-

JASPER COUNTY SCHOOL DISTRICT Respondent

NOTICE OF APPEAL

Randy Horton hereby appeals the following Orders of The Honorable Carmen T.

Mullen:

- 1) Order Granting Summary Judgment and Award of Costs and Attorneys Fees, dated September 5, 2014; and
- 2) Order denying Plaintiff's Motion and Motion Pursuant to Rules 52 and 59, SCRCF, dated September 25, 2014.

A copy of the referenced Orders are attached hereto. Appellant received written notice of the entry of the Order denying his motion for reconsideration on November 6, 2014.

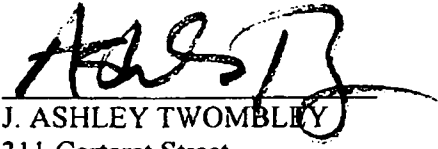
RECEIVED

DEC 08 2014

SC Court of Appeals

TWENGE + TWOMBLEY LAW FIRM

BY:



J. ASHLEY TWOMBLEY
311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
www.twlawfirm.com
Attorneys for Appellant

Beaufort, South Carolina

December 4, 2014

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

RANDY HORTON,
Plaintiff,

v.

JASPER COUNTY SCHOOL
DISTRICT,
Defendant.

) FOURTEENTH JUDICIAL CIRCUIT
) IN THE COURT OF COMMON PLEAS
) C/A No.: 2013-CP-27-0327

RECEIVED

DEC 08 2014

SC Court of Appeals

**ORDER GRANTING
SUMMARY JUDGMENT
AND AWARD OF COSTS
AND ATTORNEYS FEES**

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(S.C.A.G.). As such, Defendant Jasper County School District is required to give the requesting

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: 9/5/14

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THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment is hereby **GRANTED**, and that Plaintiff be awarded \$13,530 in attorney's fees and \$1096.56 in costs, for a total of \$14, 626.56.

AND IT IS SO ORDERED.

Cornell

Carmen T. Mullen
Fourteenth Judicial Circuit

September 5, 2014

Ridgeland, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP 07 0327
2013 CP 2100827

RANDY HORTON

JASPER COUNTY SCHOOL DISTRICT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CARMEN MULLEN

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Reconsider Pursuant to Rules 52 and 59, SCRCP, is hereby respectfully denied without a hearing.

ORDER INFORMATION

This order ☒ ends; ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2142

Judge Code

Date

SCRCP Form 4C (10/2011)

MARCO T. BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: 11/3/14

Scanned
11/3/14

Page 1 of 2

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

RANDY HORTON.

Plaintiff(s)

CIVIL ACTION COVERSHEET

2013 -CP - 27 - 327

vs.

JASPER COUNTY SCHOOL DISTRICT,

Defendant(s)

Submitted By: J. Ashley Twombly

Address: 311 Carteret Street
Beaufort, SC 29902

SC Bar #: 72916

Telephone #: (843) 982-0100

Fax #: (843) 982-0103

Other:

E-mail: twombly@twlawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|---|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☒ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstatement License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date:

6-19-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to S.C. Code Ann. § 15-36-10 et. seq. and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER) CIVIL ACTION NO: 2013-CP-27-327

RANDY HORTON.

Plaintiff.

vs.

SUMMONS

JASPER COUNTY SCHOOL DISTRICT

Defendant.

TO: DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff by and through his attorney(s), J. Ashley Twombly of TWENGE + TWOMBLY LAW FIRM, 311 Carteret Street, Beaufort, SC 29902, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint. Any Answer that you serve on the parties in this action must be filed with the Clerk of Court within a reasonable period of time after service.

TWENGE + TWOMBLY LAW FIRM

BY:

J. ASHLEY TWOMBLY

311 Carteret Street

Beaufort, SC 29902

Telephone: (843) 982-0100

Facsimile: (843) 982-0103

www.twlawfirm.com

Attorney for Plaintiff

Beaufort, South Carolina
June 19, 2013

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2013-CP-27-327

RANDY HORTON.

Plaintiff,

vs.

JASPER COUNTY SCHOOL DISTRICT

Defendant.

COMPLAINT

TO: DEFENDANT ABOVE NAMED:

Randy Horton, hereinafter "Plaintiff," complaining of Defendant above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of Jasper County, State of South Carolina.
2. Defendant Jasper County School District is a South Carolina public body as defined by S.C. Code Ann. § 30-4-20(a) and a county school district organized and operating pursuant to South Carolina Code Ann. § 59-17-10 *et. seq.* that is located in Jasper County, State of South Carolina.
3. Plaintiff is now and was all times material hereto an elected member of the Board of Trustees for Defendant, representing Jasper District 4.
4. The events which form the basis for this Complaint occurred in Jasper County, State of South Carolina.

5. The parties hereto and the subject matters herein are within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

6. Plaintiff re-alleges all of the preceding paragraphs above and incorporates the same herein by reference as if repeated verbatim.

7. As a public body as defined by S.C. Code Ann. § 30-4-20(a), Defendant is bound by the Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10 *et. seq.*

8. In his capacity as an elected member of Defendant's Board of Trustees, Plaintiff requested copies of documents, including:

(a) itemized credit card statements for Kathleen Snooks, Alina Hamilton-Clark, Bertie Riley, Cathy Gardner, and Priscilla Fraser, members of the Board of Trustees for Defendant who were provided credit cards by Defendant;

(b) itemized credit card statements for James Gardner, an employee of Defendant who was provided a credit card by Defendant;

(c) itemized credit card statements for Vashti K. Washington, an employee of Defendant who was provided a credit card by Defendant; and

(e) a list of all bonus checks given to non certified staff by Vashti K. Washington and the funding source(s) for checks.

9. Defendant refused to provide Plaintiff with documents he requested in his capacity as a member of the Board of Trustees for Defendant and therefore Plaintiff made written requests pursuant to FOIA requesting the following information from Defendant:

(a) itemized credit card statements for Kathleen Snooks, Alina Hamilton-Clark, Bertie Riley, Cathy Gardner, and Priscilla Fraser, members of the Board of Trustees for

Defendant who were provided credit cards by Defendant, from January 2005 or the start of their terms, dated November 22, 2011;

(b) itemized credit card statements for James Gardner, an employee of Defendant who was provided a credit card by Defendant for the five years prior to May 29, 2012, dated May 29, 2012;

(c) itemized credit card statements for Vashti K. Washington, an employee of Defendant who was provided a credit card by Defendant and the funding source(s) and account number(s) for the card, dated May 29, 2012;

(d) a listing of all persons who made FOIA requests who were required by Defendant to pay a deposit by certified check, dated May 29, 2012;

(e) a list of all bonus checks given to non certified staff by Vashti K. Washington and the funding source(s) for checks, which was undated; and

(f) itemized credit card statements for Kathleen Snooks, Alina Hamilton-Clark, Berty Riley, Cathy Gardner, and Priscilla Fraser, members of the Board of Trustees for Defendant who were provided credit cards by Defendant, which was undated. Copies of these requests are attached hereto as Exhibit A.

10. By letter dated June 11, 2012, Vashti K. Washington, Superintendent of Defendant, informed Plaintiff that Defendant received his three written FOIA requests dated May 29, 2012, as listed in Paragraph 9, stated they were received by Defendant at Defendant's District Office on June 7, 2012, and stated that Shellie Murdaugh, the Public Information Officer for Defendant, would promptly respond to these requests. A copy of this letter is attached hereto as Exhibit B.

11. By letter dated June 25, 2012, Shellie Murdaugh, the Public Information Officer for Defendant,

(a) confirmed receipt of the two undated written FOIA requests and listed in Paragraph 7 at Defendant's District Office on June 13, 2012;

(b) addressed Plaintiff's November 22, 2011, FOIA request, stating that "I am reviewing the status of this matter and will respond to you as may be appropriate as promptly as circumstances allow.";

(c) asked Plaintiff to confirm in writing that the six written FOIA requests as listed in Paragraph 8 constituted a complete list of his FOIA requests made to date; and

(d) stated that "[i]n the meantime, please know that I am looking into the above requests and will respond to you in accordance with § 30-4-30(c)." A copy of this letter is attached as Exhibit C.

12. To date, Plaintiff has not received any documents in response to his request made as an elected member of the Board of Trustees of Defendant or in response to his FOIA requests, and he has not received any correspondence from Defendant denying his FOIA requests.

FOR A FIRST CAUSE OF ACTION
(Violation of the S.C. FOIA)

13. Plaintiff realleges the allegations contained in all of the above paragraphs as if fully repeated verbatim herein.

14. South Carolina Code Ann. § 30-4-30(a) gives any person the right to inspect or copy public records of a public body, including those of Defendant.

15. South Carolina Code Ann. § 30-4-30(c) requires that, upon receiving a written request for records under FOIA, a public body such as Defendant must give the requesting party

a written notification of the determination as to the availability of the requested public records within fifteen days, excepting Saturdays, Sundays, and legal holidays.

16. South Carolina Code Ann. § 30-4-30(c) further states that if a public body such as the Defendant fails to give written notification of the determination as to the availability of the requested public records within the fifteen day period, the FOIA request must be considered approved.

17. Defendant has violated the FOIA, S.C. Code Ann. § 30-4-10 *et. seq.*, in one or more of the following particulars, to wit:

(a) In failing to allow Plaintiff to inspect or copy Defendant's public records, as listed in Plaintiff's written FOIA requests;

(b) In failing to provide Plaintiff with a written notification as to the determination as to the availability of the requested public records within the time limit set forth by the FOIA;

(c) In failing to provide Plaintiff with the requested public records once Plaintiff's FOIA were deemed or considered approved after the fifteen day time period had expired; and

(d) In other such particulars as will be proven at trial.

18. Violation of the FOIA is an irreparable injury for which no adequate remedy at law exists.

19. Plaintiff, pursuant to S.C. Code Ann. § 30-4-100(a), hereby applies to and asks the Court for a declaratory judgment ordering that Plaintiff is entitled to immediately receive all of the public records listed in his FOIA requests as stated in Paragraph 9 at no cost to Plaintiff and for any additional equitable relief as the Court considers appropriate.

20. Plaintiff, pursuant to S.C. Code Ann. § 30-4-100(b) hereby asks and applies for the Court to award him his attorney fees and all other costs associated with this litigation. Plaintiff also asks for attorney fees pursuant to S.C. Code Ann. § 15-77-300.

REQUEST FOR DECLARATORY JUDGMENT
(Provision of Documents to Elected Members of the Board of Trustees for Defendant)

21. Plaintiff realleges the allegations contained in all of the above paragraphs as if fully repeated verbatim herein.

22. As an elected member of the Board of Trustees for Defendant, Plaintiff is entitled to review all documents of Defendant in order to fulfill his responsibilities to his constituents, and Defendant must provide Plaintiff with the documents he requests as an elected member of the Board of Trustees.

23. Accordingly, Plaintiff seeks a declaration of rights and obligations of the parties declaring that that elected Members of the Board of Trustees of Defendant are entitled to review all documents of Defendant in order to fulfill their responsibilities to their constituents and that Defendant must provide elected Members of the Board of Trustees will all documents requested in their official capacity.

24. Plaintiff also seeks an award of attorney fees pursuant to S.C. Code Ann. § 15-77-300.

PRAYER

Plaintiff prays for judgment against Defendant as follows:

a. declaring that Defendant must immediately provide Plaintiff with all of the documents he requested in his capacity as a member of the Board of Trustees of Defendant:

b. declaring that in the future, Defendant must immediately provide members of the Board of Trustees of Defendant with all documents members may request in their capacity as members of the Board of Trustees of Defendant;

c. declaring that Defendant, by its actions as described herein, violated the provisions of the FOIA;

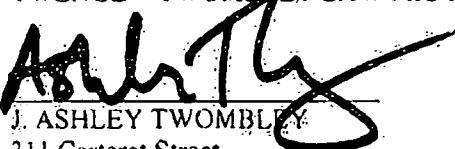
d. declaring that Defendant must immediately provide Plaintiff with all of the public records requested in his FOIA requests as stated in Paragraph 9 at no cost to Plaintiff;

e. awarding all attorney fees and other costs associated with this litigation pursuant to S.C. Code Ann. § 30-4-100(b), S.C. Code Ann. § 15-77-300 and other statutes; and

f. for any further relief as this Court may deem just and proper.

TWENGE + TWOMBLEY LAW FIRM

BY:


J. ASHLEY TWOMBLEY

311 Carteret Street

Beaufort, SC 29902

Telephone: (843) 982-0100

Facsimile: (843) 982-0103

www.twlawfirm.com

Attorney for Plaintiff

Beaufort, South Carolina

June 19, 2013

EXHIBIT A

Nov 22, 2011

Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton am requesting under The Freedom of Information Act a copy of the credit card itemized statements from January 2005 or the start of their term of Kathleen Snooks, Alina Hamilton-Clark, Berty Riley, Cathy Gardner and Priscilla Fraser I need this information to determine if there is a legal matter that needs to be addressed.

Thanks and God Bless

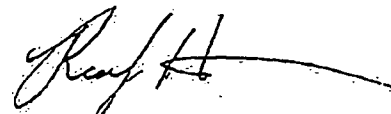
Randy Horton

06-07-12A11:11 RCVD

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the ITEMIZED Credit Card and/or Credit Cards Statements of Mr. James Gardner for the past five (5) years. This is the 4th Freedom of Information request for Mr. Gardner 1st Aug 16th, 2nd Aug 18th, 3rd Oct 10th and May 29, 2012. Mrs. Gardner wrote to the Jasper County Sun and Wrote that Mr. Gardner had over spent by Six Hundred dollars (MISUSE OF PUBLIC FUNDS) Under FOIA, if information is to be used for the Good of the public there should not be a charge for the information!

Thanks and God Bless



Randy Horton

06-07-12A 11:12 RCVB

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the ITEMIZED Credit Card and/or Credit Cards Statements OF Vashli K. Washington and the funding source or sources with account numbers of said accounts.

Thanks and God Bless

A handwritten signature in black ink, appearing to read 'Randy Horton', with a stylized flourish extending to the right.

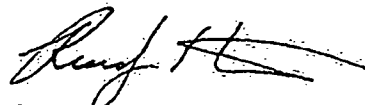
Randy Horton

06-07-12 11:12 RCVD

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of everyone who was required to paid a deposit by CERTIFIED CHECK for Freedom of Information requests.

Thanks and God Bless



Randy Horton

Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the bonus checks that were giving to the Non-Certified staff by Dr. Washington and the funding source or sources with account numbers of said checks. I believe that this act is an act of misappropriation of public funds. I need this information to determine if there is a legal matter that needs to be addressed by the BOE.

Thanks and God Bless

Randy Horton

Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the credit cards itemized statements of Kathleen Snooks, Alina Hamilton-Clark, Berty Riley, Cathy Gardner and Priscilla Fraser I need this information to determine if there is a legal matter that needs to be addressed by the BOE.

Thanks and God Bless

Randy Horton

EXHIBIT B

Jasper County School District

A NEW DAY... A NEW WAY...

OFFICE OF THE SUPERINTENDENT

VASHTI K. WASHINGTON, ED.D.

Post Office Box 848 * 10942 N. Jacob Smart Blvd. * Ridgeland, SC 29936
(843) 717-1101 Telephone (843) 717-1199 Fax

*"Envisioning, Creating, and Educating the Future by Transforming Lives:
One Child At A Time!"*

June 11, 2012

Mr. Randy Horton
Post Office Box 1224
Ridgeland, SC 29936

Re: FOIA Request Dated May 29, 2012; Received in the District Office June 7, 2012

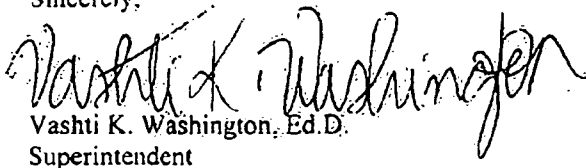
Dear Mr. Horton:

I write to acknowledge receipt of the attached FOIA requests, which are dated May 29, 2012. It is my understanding that these requests were actually received in the District Office on Thursday, June 7, 2012.

By copy of this letter, I am directing Shellie Murdaugh, Public Information Officer, to see that your requests are promptly responded to pursuant to South Carolina law and District policy. I am also, by copy of this letter, directing the Board attorneys to review the status of your request of November 22, 2011, which I responded to by Certified Mail on December 13, 2011, and ensure that the District has followed state law and District policy with respect to this matter.

Please direct any further requests or inquiries on this matter, or related matters, in writing to my attention.

Sincerely,


Vashti K. Washington, Ed.D.
Superintendent

/ch

C: Mrs. Kathleen Snooks, Board Chairperson
Mrs. Shellie Murdaugh, Public Information Officer
Childs & Halligan EQUAL OPPORTUNITY EMPLOYER

Hensley, Cheryl

06-07-12A 11:12 RCVD

From: Kenneth L. Childs [kchilds@childs-halligan.net]
Sent: Thursday, June 07, 2012 9:54 AM
To: Washington, Vashti
Cc: Hensley, Cheryl
Subject: Horton FOIA Request
Attachments: 20120607095414737.pdf

Dr. Washington,

At the Board meeting on Wednesday, June 6, 2012, Randy Horton handed me a packet of letters, which included these FOIA requests dated May 29, 2012. I don't think they have been previously provided to our office. Have they been received by the Jasper District Office? We need to discuss by telephone this week.

Thank you.

Ken

Kenneth L. Childs
Childs & Halligan, P.A.
PO Box 11367
Columbia, SC 29211
(803) 254-4035

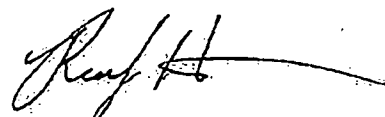
NOTICE: This e-mail may contain information that is PERSONAL AND CONFIDENTIAL, NON-DISCLOSABLE AND PROTECTED BY ATTORNEY/CLIENT PRIVILEGE. If you have received this e-mail in error, this does not constitute permission to examine, copy or distribute the accompanying material. If you receive this message in error, please notify us by telephone as listed above immediately.

06-07-12A 11:11 RCVD

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the ITEMIZED Credit Card and/or Credit Cards Statements of Mr. James Gardner for the past five (5) years. This is the 4th Freedom of Information request for Mr. Gardner 1st Aug 16th, 2nd Aug 18th, 3rd Oct 10th and May 29, 2012. Mrs. Gardner wrote to the Jasper County Sun and Wrote that Mr. Gardner had over spent by Six Hundred dollars (MISUSE OF PUBLIC FUNDS) Under FOIA, if information is to be used for the Good of the public there should not be a charge for the information!

Thanks and God Bless



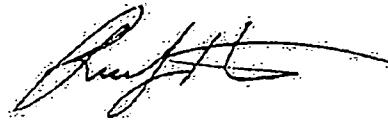
Randy Horton

06-07-12A 11:12 RCVD

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the ITEMIZED Credit Card and/or Credit Cards Statements OF Vashti K. Washington and the funding source or sources with account numbers of said accounts.

Thanks and God Bless

A handwritten signature in black ink, appearing to read 'Randy Horton', with a long horizontal flourish extending to the right.

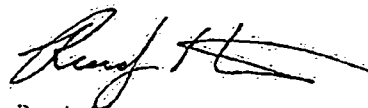
Randy Horton

06-07-12A 11:12 RCVD

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of everyone who was required to paid a deposit by CERTIFIED CHECK for Freedom of Information requests.

Thanks and God Bless

A handwritten signature in black ink, appearing to read 'Randy Horton', with a stylized flourish at the end.

Randy Horton

EXHIBIT C

Jasper County School District
A NEW DAY... A NEW WAY...
OFFICE OF PUBLIC INFORMATION

Post Office Box 848 10942 N. Jacob Smart Blvd. Ridgeland, SC 29936
(843) 717-1106 (843) 717-1191 Fax

YASHTI K. WASHINGTON, ED.D.
SUPERINTENDENT

SHELLIE MURDAUGH
PUBLIC INFORMATION OFFICER

June 25, 2012

Mr. Randy Horton
P.O. Box 1224
Ridgeland, SC 29936

Re: Jasper County School District
FOIA Request

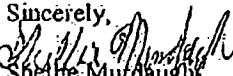
Dear Mr. Horton:

As you know, I now have responsibility for handling all Freedom of Information Act (FOIA) requests directed to the Jasper County School District (District). The purpose of this correspondence is to ensure that my records are complete and accurate.

1. I have a copy of Superintendent Vashti Washington's letter to you of December 13, 2011. I am reviewing the status of this matter and will respond to you as may be appropriate as promptly as circumstances allow.
2. I have two undated requests (copies attached), which were apparently given to Attorney Kenneth Childs of Childs & Halligan, P.A., on June 6, 2012, without explanation, which he forwarded to Dr. Washington by e-mail on June 13, 2012.
3. I have three FOIA requests, all dated May 29, 2012, and apparently given to Mr. Childs, again without explanation, on June 6, 2012, which he forwarded to Dr. Washington by e-mail on June 7, 2012.

I would like for you to confirm in writing that the above is a complete list of your FOIA requests to the District. In the meantime, please know that I am looking into the above requests and will respond to you in accordance with §30-4-30(c).

Sincerely,


Shellie Murdaugh

Enclosures

IN THE COURT OF COMMON PLEAS

C.A. No. 2013-CP-27-327

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

1. Admitted upon information and belief.
2. Defendant admits only that it is a political subdivision of the State of Georgia, that it is located in Jasper County, South Carolina, and that it is subject to the jurisdiction of this court.
3. Admitted upon information and belief.
4. Admitted upon information and belief.
5. Admitted.

6. This paragraph does not require an admission or denial, to the extent that this paragraph calls for an admission or denial, it is hereby denied.

7. Defendant admits that it is subject to the Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 *et. seq.*, however Defendant is also subject to exemptions pursuant to FOIA, as well as, other State and federal laws.

8. (a.) Admitted upon information and belief.

(b.) Admitted upon information and belief.

(c.) Admitted upon information and belief.

(d.) Denied in part. Defendant admits that Plaintiff requested a copy of the funding source or sources with account numbers of said bonus checks that were given to non-certified staff. Defendant never requested the list of the actual checks.

9. Denied to the extent that Defendant refused to provide Plaintiff with documents he requested in his capacity as a member of the Board of Trustees. See Dr. Vashti Washington's letters dated August 16, 2011 and August 19, 2011, attached as Exhibit 1.

(a.) Admitted in part. Defendant denies any reference to the refusal to provide Plaintiff with documents requested at subpart A.

(b.) Admitted in part. Defendant objects to any reference that Plaintiff was refused any documents requested in this subsection.

(c.) Admitted in part. Defendant objects to any reference that Plaintiff was refused any documents requested in this subsection.

(d.) Admitted in part. Defendant objects to any reference that Plaintiff was refused any documents requested in this subsection.

(e.) Admitted in part. Defendant objects to any reference that Plaintiff was refused any documents requested in this subsection.

(f.) Admitted in part. Defendant objects to any reference that Plaintiff was refused any documents requested in this subsection.

10. Admitted. Additionally, Shellie Murdaugh, Public Information Officer for Jasper County School District, responded to Plaintiff in writing requesting that Plaintiff confirm, due to the number of FOIA requests received, that the FOIA requests referred to in the letter were all the requests submitted by the Plaintiff so that the District could accurately respond to the request. Plaintiff never responded to Ms. Murdaugh's letter. See Shellie Murdaugh's letter to Plaintiff dated June 25, 2012, attached as Exhibit 2.

11. (a.) Admitted.

(b.) Denied. Defendant did not refer to any FOIA requests submitted on November 22, 2011. Defendant did make reference to Dr. Washington's, (Superintendent of Jasper County School District) letter to Plaintiff dated December 13, 2011.

(c.) Admitted. Plaintiff never responded to Shellie Murdaugh's request.

(d.) Admitted.

12. Admitted. Defendant sent Plaintiff a letter asking for him to confirm requests received by Plaintiff. Plaintiff failed to respond.

13. This allegation does not require an admission or denial, to the extent that this paragraph calls for an admission or denial, it is hereby denied.

14. Admitted in part. South Carolina Code Ann. § 30-4-30(a) is subject to exemptions according to State and federal laws.

15. Admitted in part. South Carolina Code Ann. § 30-4-30(a) is subject to exemptions according to State and federal laws.

16. Admitted. However, Plaintiff was notified in writing by Shellie Murdaugh, Public Information Officer for Jasper County School District, confirming the receipt of numerous FOIA requests submitted by Plaintiff and asked Plaintiff to confirm that the District

had all the requests submitted by Plaintiff. Plaintiff never responded to Ms. Murdaugh's request. (See Shellie Murdaugh's letter dated June 25, 2012, attached as Exhibit 2.)

17. Denied.

(a.) Denied.

(b.) Denied.

(c.) Denied. (See Dr. Vashti Washington's letters dated October 25, 2011 and December 13, 2011, attached as Exhibit 3.)

(d.) Denied.

18. This paragraph discusses a matter of law, which does not necessitate an admission or denial, to the extent an admission or denial is necessary, the Defendant denies this paragraph.

19. Defendant denies that Plaintiff is entitled to declaratory judgment in this matter. Defendant denies that the FOIA request discussed in paragraph 9 should be submitted at no cost to Plaintiff. Additionally, Defendant denies that any additional equitable relief is warranted or appropriate in this matter.

20. Defendant denies that awarding Plaintiff's attorney fees is appropriate or warranted in this matter.

21. This paragraph does not require an admission or denial, to the extent that this paragraph calls for an admission or denial, it is hereby denied

22. Admitted in part. Plaintiff is an elected Board of Trustees member for Jasper County School District; however, as a member of the Board of Trustees, Plaintiff has the ability to make a motion to the Board to review the documents he requested without the need of a FOIA request. However, the Board has a right by majority to deny the request. If the Plaintiff is requesting documents as a private citizen, FOIA exemptions may apply.

23. Defendant denies that a declaration of rights and obligations of the parties declaring that elected Board members are entitled to review all documents is appropriate or warranted in this matter. Defendant is aware of the rights of a Board member.

24. Defendant denies that Plaintiff's attorney's fees are appropriate or warranted in this matter. Prayer is denied. Defendant denies that Plaintiff is entitled to the requested relief as the Defendant has attempted to confirm with Plaintiff regarding his numerous requests submitted to the District. Defendant denies that Plaintiff is entitled to attorney's fees and any other costs of this action.

Defendant reserves the right to supplement its answers in the future if any additional information is obtained or becomes available.

FIRST AFFIRMATIVE DEFENSE
(Unclean Hands)

25. Plaintiff has made the request for records of Defendant in order to harass and harm Defendant and its members, as well as in furtherance of an unlawful conspiracy and to impede Defendant's ability to carry out its lawful activities, and Plaintiff has not requested records of Defendant in good faith.

26. Under principles of equity and because Plaintiff now seeks equitable remedies in order to carry out his scheme to disrupt, impede, harass, and harm Defendant's activities including its members' exercise of First Amendment rights concerning issues with which Plaintiff disagrees, Plaintiff is barred from seeking equitable remedies from the Court concerning the disclosure of the requested records.

SECOND AFFIRMATIVE DEFENSE
(FOIA Exemptions)

27. To the extent Plaintiff seeks documents exempt from disclosure under S.C. Code Ann. § 30-4-40, his claim must be denied.

THIRD AFFIRMATIVE DEFENSE
(First Amendment to United States Constitution)

28. Application of the FOIA to grant Plaintiff's relief abridges rights of Defendant, its members, and individuals associated with Defendant and its members, to speak, associate and assemble, contrary to the First Amendment to the United States Constitution, as applied to South Carolina through incorporation.

FOURTH AFFIRMATIVE DEFENSE
(South Carolina Constitution art. I, § 2)

29. Application of the South Carolina Freedom of Information Act ("FOIA") to grant Plaintiff's relief abridges, as prohibited by South Carolina Constitution, art. I, sec. 2, constitutionally protected rights of Defendant, its members, and individuals associated with Defendant and its members, to speak, associate, and assemble.

FIFTH AFFIRMATIVE DEFENSE

30. At all times, Defendant acted reasonably and in good faith toward Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

31. Plaintiff's claims are barred by the doctrines of waiver and estoppel.

SEVENTH AFFIRMATIVE DEFENSE

32. The public interest prohibits Plaintiff from recovering on the claims alleged in the complaint.

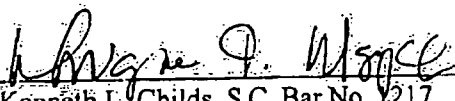
EIGHTH AFFIRMATIVE DEFENSE

33. Plaintiff's claims are barred by the doctrine of laches.

WHEREFORE, having fully answered Plaintiff's complaint, Defendant respectfully prays that the court dismiss this action in its entirety.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 
Kenneth L. Childs, S.C. Bar No. 1217
kchilds@childs-halligan.net

Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@childs-halligan.net

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendant

August 22, 2013

Columbia, South Carolina

EXHIBIT 1

Jasper County School District
A NEW DAY... A NEW WAY...
OFFICE OF THE SUPERINTENDENT
Vashti K. Washington, Ed.D., Superintendent
10942 N. Jacob Smart Blvd. Post Office Box 848 Ridgeland, SC 29936
(843) 717-1101-Office (843) 717-1199-Fax

August 16, 2011

Mr. Randy Horton
Post Office Box 1224
Ridgeland, SC 29936

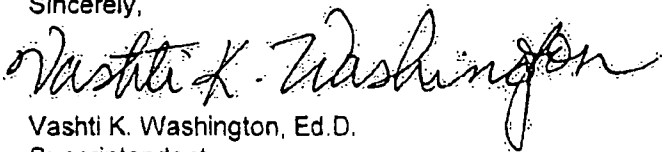
Dear Mr. Horton:

I am in receipt of two Freedom Of Information Act (FOIA) requests from you that were delivered to my office today. If you are requesting this as a member of the Jasper County Board of Trustees, you will need to bring this before the Board and, if approved by the majority of the Board, this information will be provided to the entire Board. If you are requesting this as a public citizen, you will be responsible for paying the cost to locate, research and copy the information being requested.

In response to your first request regarding Itemized credit card statements and Sam's receipts for Samuel Gregory for the past five years, Mr. Gregory has never been issued a credit card or Sam's card by the Jasper County School District. Therefore, no charges have been incurred by him as an employee of the District.

I need to clarify what you are asking for in your second request related to itemized credit card statements for James Gardner for the past five years. Please be more specific as to whether you are asking for charges while Mr. Gardner served as a member of the Jasper County Board of Trustees for a four-year term and/or any charges in his role as Athletic Director. Mr. Gardner does not have a credit card in his current position as Athletic Director.

Sincerely,



Vashti K. Washington, Ed.D.
Superintendent

/ch

Equal Opportunity Employer

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. Article Addressed to: Mr. Randy Horton P. O. Box 1224 Ridgeland, SC 29936		A. Signature ☒ Agent ☐ Address <i>x Charlotte Horton</i> B. Received by (Printed Name) C. Date of Delivery <i>Charlotte Horton 8-18-11</i> D. Is delivery address different from Item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No	
7010 1870 0001 9867 5701			
Form 3811, February 2004 Domestic Return Receipt 10255-02-M-154			

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$.44
Certified Fee	2.85
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.59
Sent to: Mr. Randy Horton Street, Apt. No., or P.O. Box No.: P. O. Box 1224 City, State, ZIP+4: Ridgeland, SC 29936	
PS Form 3800, August 2005 See Reverse for Instructions	

Jasper County School District
A NEW DAY... A NEW WAY...
OFFICE OF THE SUPERINTENDENT
Vashti K. Washington, Ed.D., Superintendent
10942 N. Jacob Smart Blvd. Post Office Box 848 Ridgeland, SC 29936
(843) 717-1101-Office (843) 717-1199-Fax

CERTIFIED MAIL, RETURN RECEIPT

August 19, 2011

Mr. Randy Horton
Post Office Box 1224
Ridgeland, SC 29936

Dear Mr. Horton:

To make sure that we are clear on your Freedom of Information Act (FOIA) Requests, I just want to recap the correspondence that I have received from you this week:

- On Tuesday, August 16, 2011, I received two separate letters that were hand delivered to my office requesting information under FOIA. The first letter requested information on itemized credit card statements and Sam's receipts for the past five years for Samuel Gregory and the second letter requested itemized credit card statements for the past five years for James Gardner.
- After I responded to you via Certified Mail stating that Samuel Gregory has never been issued a district credit card or Sam's card and I requested clarification regarding the information being requested for James Gardner, I received a third letter from you on Thursday, August 18, 2011, stating that a former superintendent told you that Mr. Gregory had purchased items for the school district from Sam's. You also stated that you were willing and able to pay the costs associated with these requests for information and would try to get a refund from the Board of Education.
- On Friday, August 19, 2011, I received a fourth letter that was hand delivered to my office stating that you were withdrawing your request for information on Samuel Gregory.

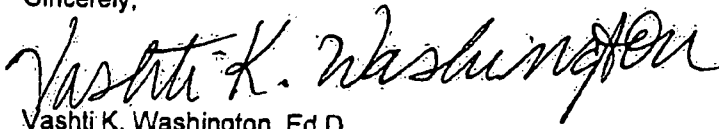
As Superintendent of the Jasper County School District, I have tried to keep the lines of communication open between the Board and myself as well as the public. I am concerned as to the reason why you are requesting this information, since you are a member of the Jasper County Board of Trustees and James Gardner is employed by the Jasper County School District as the Athletic Director. Mr. Gardner does not have a district credit card as the Athletic Director and has not had any credit card charges in this position.

Equal Opportunity Employer

Randy Horton
August 19, 2011
Page Two

My question is still are you requesting this information as a public citizen or as a board member. If you are requesting this as a public citizen, the Board would not be required to reimburse you. If you are requesting this information as a board member, then this request should come through the Board. It is imperative that I know which so we can move forward with this request.

Sincerely,

A handwritten signature in cursive script that reads "Vashli K. Washington". The signature is written in dark ink and is positioned above the printed name and title.

Vashli K. Washington, Ed.D.
Superintendent

/ch

Jasper County School Distr
 A NEW DAY... A NEW WAY
OFFICE OF THE SUPERINTENDENT
 Post Office Box 848 10942 N. Jacob Smart Blvd. Ridgeland,
 EQUAL OPPORTUNITY EMPLOYER



7010 1870 0001 9867 5718



*Returned
 9/21/11*

Mr. Randy Horton
 Post Office Box 1224
 Ridgeland, SC 29936

*5-25
 P-25*

RETURN TO SENDER
 UNDELIVERABLE AS ADDRESSED
 UNABLE TO FORWARD

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	
Certified Fee		2.85
Return Receipt Fee (Enhancement Required)		2.50
Restricted Delivery Fee (Enhancement Required)		
Total Postage & Fees	\$	5.35

Sent to Mr. Randy Horton
 Serial, Add'l No.

310 1870 0001 9867 5718

EXHIBIT 2

Jasper County School District
A NEW DAY... A NEW WAY...
OFFICE OF PUBLIC INFORMATION

Post Office Box 595 12042 N. Jacob Smart Blvd., Ridgeland, SC 29935
(803) 717-1105 (803) 717-1191 Fax

VASHAI K. WASHINGTON, Ed.D.
SUPERINTENDENT

SHELLIE MURDAUGH
PUBLIC INFORMATION OFFICER

June 25, 2012

Mr. Randy Horton
P.O. Box 1224
Ridgeland, SC 29936

Re: Jasper County School District
FOIA Request

Dear Mr. Horton:

As you know, I now have responsibility for handling all Freedom of Information Act (FOIA) requests directed to the Jasper County School District (District). The purpose of this correspondence is to ensure that my records are complete and accurate.

1. I have a copy of Superintendent Vashai Washington's letter to you of December 13, 2011. I am reviewing the status of this matter and will respond to you as may be appropriate as promptly as circumstances allow.
2. I have two undated requests (copies attached), which were apparently given to Attorney Kenneth Childs of Childs & Hailigan, P.A., on June 6, 2012, without explanation, which he forwarded to Dr. Washington by e-mail on June 13, 2012.
3. I have three FOIA requests, all dated May 29, 2012, and apparently given to Mr. Childs, again without explanation, on June 6, 2012, which he forwarded to Dr. Washington by e-mail on June 7, 2012.

I would like for you to confirm in writing that the above is a complete list of your FOIA requests to the District. In the meantime, please know that I am looking into the above requests and will respond to you in accordance with §30-4-30(c).

Sincerely,

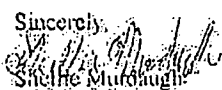

Shellie Murdaugh
Enclosures

EXHIBIT 3

Jasper County School District
A NEW DAY... A NEW WAY...

OFFICE OF THE SUPERINTENDENT

VASHTI K. WASHINGTON, ED.D.

Post Office Box 848 * 10942 N. Jacob Smart Blvd. * Ridgeland, SC 29936
(843) 717-1101 Telephone (843) 717-1199 Fax

*"Envisioning, Creating, and Educating the Future by Transforming Lives:
One Child At A Time!"*

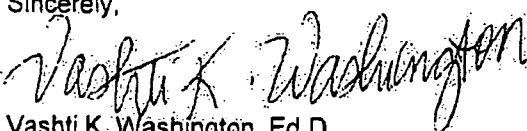
October 25, 2011

Mr. Randy Horton
Post Office Box 1224
Ridgeland, SC 29936

Dear Mr. Horton:

On Monday night, October 24, 2011, the Jasper County Board of Trustees denied your request under the Freedom of Information Act asking for a copy of the bonus checks that were given to the non-certified staff and the funding sources.

Sincerely,



Vashti K. Washington, Ed.D.
Superintendent

/ch

C: Jasper County Board of Trustees Members

EQUAL OPPORTUNITY EMPLOYER

Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the bonus checks that were giving to the Non-Certified staff by Dr. Washington and the funding source or sources with account numbers of said checks. I believe that this act is an act of misappropriation of public funds. I need this information to determine if there is a legal matter that needs to be addressed by the BOE.

Thanks and God Bless

A handwritten signature in black ink, appearing to read 'Randy Horton', with a long horizontal line extending to the right.

Randy Horton

Jasper County School District

A NEW DAY... A NEW WAY...

OFFICE OF THE SUPERINTENDENT

VASHTI K. WASHINGTON, ED.D.

Post Office Box 848 • 10942 N. Jacob Smart Blvd. • Ridgeland, SC 29936
(843) 717-1101 Telephone (843) 717-1199 Fax

*"Envisioning, Creating, and Educating the Future by Transforming Lives:
One Child At A Time!"*

VIA CERTIFIED MAIL, RETURN RECEIPT & REGULAR U. S. MAIL

December 13, 2011

Mr. Randy Horton
Post Office Box 1224
Ridgeland, South Carolina 29936

Dear Mr. Horton:

This is written in response to your letters of November 22, 2011, which were received on that date by Jasper County School District (District). In the correspondence, you mentioned the South Carolina Freedom of Information Act (FOIA) and requested the following: (1) copies of "itemized credit card statements from January 2005 or the start of their term of Kathleen Snooks, Alina Hamilton-Clark, Bertie Riley, Cathy Gardner and Priscilla Fraser"; (2) "a copy of the Sled or background check that was done on Dr. Arthur Lee Holmes"; and (3) "a copy of the bonus checks that were giving [sic] to the Non-Certified staff by Dr. Washington." The District's responses follow. First, you have requested itemized credit card statements dating as far back as January 2005 for up to five members of the Board of Trustees. As you may be aware, a public entity may charge a reasonable fee for searching for, and making copies of, information requested under the FOIA. Whenever a request requires staff members to search current and archived records, it is the practice of the District to require a reasonable advance deposit. I estimate that this may take up to four hours of search time plus .25 per copy. The charge for the search time will be set at an hourly rate based on the salary of whoever will be researching the matter. The District will maintain a log of hours put into this project and the number of copies being made. When the staff has completed its work for your FOIA response, the District will refund any remaining balance from your deposit or invoice you for any remaining balance. Accordingly, based on an estimate of the time required and the number of pages, I anticipate the cost of your request to be \$232.88. Should you wish for the District to proceed with compiling the information described above, please submit a deposit of \$116.44 through a certified check made payable to Jasper County School District to Executive Secretary Cheryl Hensley.

EQUAL OPPORTUNITY EMPLOYER

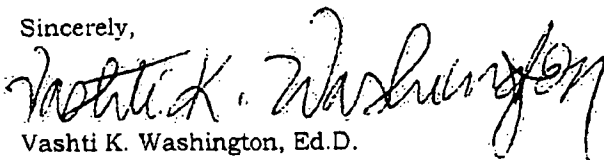
FOIA Requests
December 13, 2011
Page Two

Second, your request for a copy of Dr. Holmes' South Carolina Law Enforcement Division (SLED) *Criminal Records Check* is denied pursuant to Section 30-4-40(a)(2) of the FOIA. Such writing may only be obtained from SLED by using an individual's date of birth and/or social security number. Both of these pieces of data, as well as the material provided by SLED through its *Criminal Records Check*, are information of a personal nature where the public disclosure would constitute an unreasonable invasion of an employee's privacy.

Third, you have requested particular compensation information pertaining to District classified staff. Your request for copies of any "bonus checks" is denied per Sections 30-4-40(a)(6)(B) and (C) of the FOIA. Instead, as noted in those provisions, the District is providing you with ranges of bonuses as issued. These are: (a) for District Office classified employees earning between twenty-six thousand dollars and fifty thousand dollars (\$26,000.00 - \$50,000.00) annually, the bonuses provided was \$1,000.00; (b) for School Secretaries/Bookkeepers earning between twenty-eight thousand dollars and thirty-one thousand dollars (\$28,000.00 - \$31,000.00) annually, the bonuses provided was \$600.00; (c) for Bus Drivers earning between nine thousand six hundred dollars and twenty thousand dollars (\$9,600.00 - \$20,000.00) annually, the bonuses provided was \$1,175.00; (d) for Instructional Aides earning between fifteen thousand dollars and nineteen thousand dollars (\$15,000.00 - \$19,000.00) annually, the bonuses provided was \$5,500.00; and (e) for Cafeteria Staff earning between three thousand dollars and twenty-four thousand dollars (\$3,000.00 - \$24,000.00), the bonuses provided was \$3,100.00. The total amount of bonuses given to classified staff in 2011-12 was \$11,375.00.

I trust this correspondence is responsive to your recent FOIA requests. I look forward to hearing from you on how you would like for the District to proceed as to your request for copies of itemized credit card statements of the above Board members.

Sincerely,



Vashti K. Washington, Ed.D.
Superintendent

/ch

C: Members of the Jasper County Board of Trustees

CERTIFIED MAIL RECEIPT	
(Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$.44
Certified Fee	2.85
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (If Endorsement Required)	
Total Postage & Fees	\$ 5.59
Send to: Mr. Randy Horton P. O. Box 1224 Ridgeland, SC 29936	

NO. 1. COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. Article Addressed to: Mr. Randy Horton Post Office Box 1224 Ridgeland, SC 29936.	A. Signature ☐ Agent ☒ Addressee B. Received by (Printed Name) C. Date of Delivery Charlotte Horton 12-18-11 D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below: 3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
7010 1870 0001 9868 2735	

S Form 3811, February 2004, U.S. Domestic Return Receipt

102595-02-44-1540

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	CIVIL ACTION NO: 2013-CP-27-327
	)	
RANDY HORTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S NOTICE OF MOTION
	)	AND MOTION PURSUANT TO RULES
JASPER COUNTY SCHOOL DISTRICT,	)	52 AND 59, SCRPC
	)	
Defendant.	)	
	)	
	)	

Plaintiff hereby moves the Honorable Carmen T. Mullen, pursuant to Rules 52 and 59, SCRPC, respectfully requesting that she reconsider, alter, and/or amend her Order dated September 5, 2014, as stated herein. Counsel for Plaintiffs received written notice of the entry of the Order on September 8, 2014.

Plaintiff respectfully requests that the Court alter or amend its Order dated September 5, 2014 to change the hourly used in awarding attorney's fees.

In the Order dated September 5, 2014, the Court found that Plaintiff's counsel was entitled to an award of attorney fees. The Court also found that the Plaintiff's counsel obtained beneficial results, that Plaintiff's counsel expended commensurate time and effort for the nature, extent, and difficulty of the case, and considered Plaintiff's counsel's professional standing and experience to be favorable.

Plaintiffs' counsel requested an attorney fee award of \$37,861.26, which was calculated using the hourly rates Plaintiffs' counsel charges to virtually all of its clients that pay by the hour. Defendants never objected to Plaintiff's fee affidavit and fee petition, never took issue

with the hourly rates charged by Plaintiff's Counsel, and never took issue with the amount of time spent by Plaintiff's counsel on the file.

Notwithstanding the above, the Court *sua sponte* reduced counsels' hourly rate from their customary rates, down to \$100 per hour, across the board. The Court did not explain why it reduced the hourly rates, and Plaintiffs' Counsel is otherwise unaware why the Court may have felt that the hourly rates needed to be reduced.

In her Affidavit, Jennifer I. Campbell testified that the hourly rates are \$295.00 for Partner J. Ashley Twombly, \$250.00 for Counsel Jennifer Campbell, \$150.00 for Paralegal time, and \$75.00 for Legal Assistant time. She also averred that these are the rates she and the other lawyers in her firm customarily charge, and further, that these are reasonable rates in the 14th Circuit for lawyers of the relative skill and experience as Plaintiffs' counsel.

In Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984), a FOIA case, the appellant urged the Court to reverse an attorney's fee award on grounds that the state agency acted in good faith reliance on a regulation. The South Carolina Supreme Court declined to do so, holding the "trial judge did not abuse his discretion in awarding fees to encourage agencies to comply with FOIA requests." *Id.* at 568, 324 S.E.2d at 316. See also Sloan v. Friends of the Hunley, 393 S.C. 452, 711 S.E.2d 895 (2011) (honoring legislative intent of FOIA by awarding attorney fees serves as an impetus to comply with FOIA). Plaintiff would respectfully submit that awarding statutory attorney fees at a rate of \$100.00 per hour, which is a steep reduction from the customary hourly rates of \$250.00-\$295.00, will likely discourage litigants whose rights under FOIA have been violated and who are deemed to be correct on the law from bringing litigation under FOIA. In fact, if the Court's Order here stands, Plaintiff could be left with a debt of over \$24,331.26 for the attorney's fees incurred. Moreover, the Court's

ruling could discourage attorneys from representing clients in cases similar to Plaintiff's case, even when they know the agency has acted improperly, and will not have the coercive effect of encouraging compliance with FOIA as intended by the South Carolina legislature.

Accordingly, Plaintiff asks the Court to alter or amend the Order dated September 5, 2014 to award attorney's fees at Plaintiff's Counsel's customary rates as set forth in the Affidavit of Jennifer I. Campbell. In the alternative, Plaintiff respectfully requests that the Court amend the Order to explain why an hourly rate of \$100.00 was used so that Plaintiff (and potentially an appellant Court) can understand the rationale behind this Honorable Court's decision.

CONCLUSION

For the reasons contained herein, as may be raised in any Supporting Memoranda, and as may be raised in the hearing on this Motion, the Plaintiffs' Motion to Alter or Amend the Order dated September 5, 2014, should be granted.

TWENGE + TWOMBLEY LAW FIRM

BY:



J. ASHLEY TWOMBLEY
311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
www.twlawfirm.com
Attorney for Plaintiffs

Beaufort, South Carolina

September 16, 2014

CERTIFICATE OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is the Paralegal to TWENGE + TWOMBLEY LAW FIRM, Attorneys for Plaintiff, and that on the 16th day of September 2014 a true and accurate copy of the attached and Notice of Motion and Motion for Summary Judgment was placed in an envelope with first class postage thereon prepaid through the United States Postal Service, and mailed to the following:

The Honorable Carmen Tevis Mullen
Presiding Administrative Judge for the
Fourteenth Judicial Circuit
102 Ribaut Road
P.O. Drawer 1128
Beaufort SC 29901-1128
Telephone: (843) 255-5070
Facsimile: (843) 522-8362
cmullen@sccourts.org

Dwayne T. Mayzck, Esquire
Childs & Halligan, P.A.
1301 Gervais Street, Suite 900
Columbia, SC 29201
Telephone: (803) 254-4035
Facsimile: (803) 771-4422
dmazyck@childs-halligan.net
Attorney for Defendant

BY:



Andrea Smith, Paralegal to
TWENGE + TWOMBLEY LAW FIRM

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

RANDY HORTON,
Plaintiff,

v.

JASPER COUNTY SCHOOL
DISTRICT,
Defendant.

) FOURTEENTH JUDICIAL CIRCUIT
) IN THE COURT OF COMMON PLEAS
) C/A No.: 2013-CP-27-0327

**ORDER GRANTING
SUMMARY JUDGMENT
AND AWARD OF COSTS
AND ATTORNEYS FEES**

NOW COMES BEFORE THE COURT Plaintiff's Motion for Summary Judgment in this Declaratory Judgment action. A full hearing was conducted on March 31, 2014. Present at that hearing on behalf of the Plaintiff were J. Ashley Twombly and Jennifer Campbell of Twenge & Twombly Law Firm, LLC. Present on behalf of Defendant Jasper County School District were Kenneth Childs and Dwayne Mazyck of Childs & Halligan, P.A.

The instant issue derives from a Declaratory Judgment action alleging that Plaintiff, a member of the Board of Trustees for Defendant Jasper County School District, is entitled to review of documents relating to his responsibility as a Board member and that the Defendant violated the South Carolina Freedom of Information Act (FOIA) by failing to respond to Plaintiff's FOIA request first made on June 7, 2012. The documents requested include credit card statements for School Board issued credit cards for specific School Board members and a list of bonus checks given to non-certified staff by Jasper County School District employee Vashti K. Washington.

Defendant Jasper County School District is a public body subject to Plaintiff's FOIA request 1977 S.C. Op. Atty. Gen. 173; 1983 S.C. Op. Atty. Gen. 23; 1996 WL 452818

(STRUE COPY) such, Defendant Jasper County School District is required to give the requesting
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: [Signature]
DATE: 9/15/14

party a written notification of the determination as to the availability of the request public records within 15 business days. S.C. Code Ann. § 30-4-30(c). Plaintiff did not receive any documents or explanation of the availability of the requested documents and filed the instant suit on June 20, 2013, 13 months after the initial FOIA request. Defendant requested a time extension and did not answer until August 22, 2013. In its answer, Defendant denied Plaintiff's entitlement to any of the requested documents.

The instant motion was filed on October 11, 2013, and heard in part on January 31, 2013, at which time the undersigned requested additional briefs and scheduled this matter for a full hearing. Between the filing of the instant motion and its initial hearing date, Defendant provided Plaintiff with some, but not all, of the requested documents.

During the March 31, 2014, hearing before me, the Court ordered Defendant to produce the entirety of requested documents to the Plaintiff's satisfaction. These documents continued to be produced until July 8, 2014, at which time Plaintiff's counsel notified this Court via email correspondence that all documents had been received. Plaintiff submits an affidavit of costs and attorney's fees which is the subject of this Order. Upon review and consideration of submissions to this Court and oral argument, the Court finds that the Plaintiff is entitled to costs and attorney's fees.

The six factors to be considered when determining an award of attorney's fees are (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 Department*, 358 S.C. 329, 358, 594 S.E.2d 888, 898 (Ct. App. 2004). Jennifer I. Campbell's affidavit regarding legal fees and costs submitted July 9, 2014, portrays commensurate time,

nature, extent and difficulty expended by both Jennifer I. Campbell and J. Ashley Twombly in procuring the FOIA requested documents and litigation related thereto. Legal fees claimed relate to counsel's preparation of pleadings, briefing the court regarding jurisdiction over this issue, standing and the merits of the case. Document review was conducted over the course of several months. Once production was complete, individual documents totaled over two thousand pages over the course of seven different submissions. Counsel has a combined twenty-five years of experience in litigation. Ultimately, my ruling produces beneficial results for their client.

CONCLUSION

For the reasons stated herein, this Court finds that Plaintiff is entitled to summary judgment in this declaratory judgment action. Because the Defendant's response to this June 7, 2012, FOIA request was not complete to Plaintiff's satisfaction until July 2014, and because Plaintiff requested documents to which he was entitled under FOIA in furtherance of his responsibilities as a board member, I find that an award of costs and attorney's fees is appropriate under the circumstances and hereby award attorneys' fees at a rate of \$100 an hour for a total of 135.3 hours documented by J. Ashley Twombly, Esq. and Jennifer Campbell, Esq. for their work in compelling the document production at issue. I also find that Plaintiff's \$1096.56 in costs incurred pursuing the production of this FOIA request is an appropriate award.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment is hereby **GRANTED**, and that Plaintiff be awarded \$13,530 in attorney's fees and \$1096.56 in costs, for a total of \$14,626.56.

AND IT IS SO ORDERED.

C. Mullen

Carmen T. Mullen
Fourteenth Judicial Circuit

September 5, 2014

Ridgeland, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2013-CP-27-327

☒ RANDY HORTON,
Plaintiff,

vs.

☐ JASPER COUNTY SCHOOL DISTRICT,
Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

check box above indicating submitting party

name, S.C. Bar no. and address of Plaintiffs' attorney

J. Ashley Twombly, S.C. Bar No. 72916

311 Carteret Street, Beaufort, SC 29902

telephone: (843) 982-0100 fax: (843) 982-0103

email: twombly@twlawfirm.com other:

name, S.C. Bar no. and address of Defendant's attorney

Dwayne T. Mayzck

1301 Gervais Street, Columbia, SC 29201

telephone: (803) 254-4035 fax: (803) 771-4422

email: dmazyck@childs-halligan.net

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion Pursuant to Rules 52 and 59, SCRPC

Estimate Time Needed: 10 minutes

Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion Type

☐ Written motion attached

☐ Form Motion/Order -

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed Order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other:

JUDGE'S SECTION

☐ Motion fee to be paid upon filing attached order.

☐ Other

JUDGE

CODE

Date:

CLERK'S VERIFICATION

Collected by: _____
(print name)

DATE FILED

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	CIVIL ACTION NO: 2013-CP-27-327
	)	
RANDY HORTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S NOTICE OF MOTION
	)	AND MOTION FOR SUMMARY
JASPER COUNTY SCHOOL DISTRICT,	)	JUDGMENT
	)	
Defendant.	)	
	)	
	)	

TO: DWAYNE T. MAZYCK, ESQUIRE, ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that Plaintiff Randy Horton, by and through his undersigned attorney, hereby moves for summary judgment against Defendant Jasper County School District as follows:

I. Declaratory Judgment

Plaintiff is entitled to a judgment as a matter of law declaring that he, as a member of the Board of Trustees for Defendant, is entitled to review all documents of Defendant in order to fulfill his responsibilities to his constituents, and Defendant must provide Plaintiff with the documents he requests as an elected member of the Board of Trustees at no charge.

Plaintiff, in his official capacity, asked to review the following documents:

- (a) itemized credit card statements for Kathleen Snooks, Alina Hamilton-Clark, Berty Riley, Cathy Gardner, and Priscilla Fraser, members of the Board of Trustees for Defendant who were provided credit cards by Defendant;

(b) itemized credit card statements for James Gardner, who was provided a credit card by Defendant;

(c) itemized credit card statements for Vashti K. Washington, an employee of Defendant who was provided a credit card by Defendant; and

(d) a list of all bonus checks given to non certified staff by Vashti K. Washington and the funding source(s) for checks.

Defendant refused to provide these documents to Plaintiff. See Affidavit of Plaintiff Randy Horton (dated 9/17/13) (Attached as Exhibit A).

It is undisputed that Plaintiff is a member of the Board of Trustees for Defendant. See Affidavit of Plaintiff Randy Horton (dated 9/17/13) (Attached as Exhibit A). As a member of the Board of Trustees, Plaintiff has responsibilities, including but not limited to, controlling school property. S.C. Code Ann. § 59-19-90. In order to fulfill these responsibilities, he must be allowed to review all the records of the public body he governs. See 1968 WL 12499 (S.C.A.G.) (opining that members of the General Assembly have full and free access to all information relating to the conduct of the affairs of State agencies and Departments including salary information). In addition, the Defendant adopted a policy entitled BA School Board Operational Goals that states a goal of the Board is to evaluate data for its management functions of "planning, evaluating, organizing, and implementing the goals and objectives of the district."

Accordingly, Plaintiff is entitled to summary judgment on his declaratory judgment cause of action and an order declaring that he, as a member of the Defendant's Board of Trustees, is entitled to review the documents listed above and any other documents generated by Defendant at no charge.

II. Violation of the South Carolina Freedom of Information Act (FOIA)

Plaintiff is also entitled to summary judgment on his FOIA cause of action. South Carolina Code Ann. § 30-4-30(c) requires that, upon receiving a written request for records under FOIA, a public body such as Defendant Jasper County School District must give the requesting party a written notification of the determination as to the availability of the requested public records within fifteen days, excepting Saturdays, Sundays, and legal holidays. Id. Thus, Defendant and other public bodies **must inform a requesting party in writing** whether the documents requested under FOIA are available within this fifteen-day time period. South Carolina Code Ann. § 30-4-30(c) further states that if a public body fails to give written notification of the determination as to the availability of the requested public records within the fifteen day period, the FOIA request must be considered approved. Id.

Plaintiff Randy Horton has made six written requests pursuant to FOIA requesting the following information from Defendant:

(a) itemized credit card statements for Kathleen Snooks, Alina Hamilton-Clark, Berty Riley, Cathy Gardner, and Priscilla Fraser, members of the Board of Trustees for Defendant who were provided credit cards by Defendant, from January 2005 or the start of their terms;

(b) itemized credit card statements for James Gardner, an employee of Defendant who was provided a credit card by Defendant for the five years prior to May 29, 2012;

(c) itemized credit card statements for Vashti K. Washington, an employee of Defendant who was provided a credit card by Defendant and the funding source(s) and account number(s) for the card;

(d) a listing of all persons who made FOIA requests who were required by Defendant to pay a deposit by certified check; and

(e) a list of all bonus checks given to non certified staff by Vashti K. Washington and the funding source(s) for checks.

See Affidavit of Plaintiff Randy Horton (dated 9/17/13) (Attached as Exhibit A); FOIA Request (dated 11/22/11), FOIA Request re Gardner (dated 5/29/12), FOIA Request re Washington (dated 5/29/12) FOIA Request re Certified Checks (dated 5/29/12), FOIA Request re Funding Source (undated), FOIA Request re Credit Cards (undated) (Attached as Exhibit B).

By letter dated June 25, 2012, Shellie Murdaugh, the Public Information Officer for Defendant, listed the FOIA requests made by Plaintiff, asked Plaintiff to confirm in writing that the six written FOIA requests she had received constituted a complete list of his FOIA requests made to date and stated that "[i]n the meantime, please know that I am looking into the above requests and will respond to you in accordance with § 30-4-30(c)." See Murdaugh Letter to Horton (dated 6/25/12) (Attached as Exhibit C). Importantly, the June 25, 2012, letter from Defendant does not inform Plaintiff whether the documents he requested under FOIA are available as required by S.C. Code Ann. § 30-4-30(c). Moreover, Defendant and other public bodies cannot ignore or toll the fifteen-day deadline of S.C. Code Ann. § 30-4-30(c) by asking Plaintiff to perform some other act not authorized by FOIA such as confirming the number of his written FOIA requests in writing. Plaintiff did not receive a timely written notification as to the availability of his requested documents, and, to date, Plaintiff has not received any documents in response to his FOIA requests. See Affidavit of Plaintiff Randy Horton (dated 9/17/13) (Attached as Exhibit A).

As established by Defendant's own correspondence, Defendant has failed to provide Plaintiff with a written notification of the determination as to the availability of the requested public records within the time limits required by S.C. Code Ann. § 30-4-30(c). Accordingly, the

FOIA request must be considered approved pursuant to S.C. Code Ann. § 30-4-30(c), and Plaintiff is entitled to summary judgment on this ground.

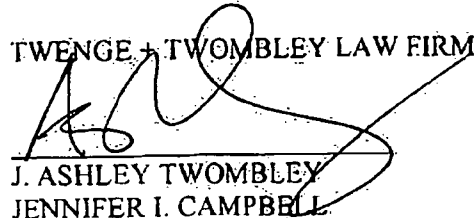
The Court should also find that the documents should be provided to Plaintiff at no cost since Plaintiff is a member of the Defendant's Board of Trustees and is entitled to receive the requested documents in order to fulfill his constituent obligations and his responsibilities as a trustee.

Finally, the Court should also award attorney fees and litigation costs under S.C. Code Ann. § 30-4-100(b), which states that "[i]f a person or entity seeking such relief [under the FOIA] prevails, he or it may be awarded reasonable attorney fees and other costs of litigation." Id.

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, the common law of South Carolina and applicable sections of the South Carolina Code of Laws. The motion shall be supported and/or supplemented with deposition testimony or other sworn testimony, the pleadings on file, supporting memoranda, and such further evidence as may be presented and upon such other law as is applicable.

TWENGE + TWOMBLEY LAW FIRM

BY:


J. ASHLEY TWOMBLEY
JENNIFER I. CAMPBELL

311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
www.twlawfirm.com
Attorney for Plaintiff

Beaufort, South Carolina
October 9, 2013

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	CIVIL ACTION NO: 2013-CP-27-327
RANDY HORTON,	)	
Plaintiff,	)	
vs.	)	AFFIDAVIT OF PLAINTIFF RANDY HORTON
JASPER COUNTY SCHOOL DISTRICT	)	
Defendant.	)	

PERSONALLY appeared before me the undersigned who, being duly sworn, under oath says:

1. My name is Randy Horton, I am above the age of 18, and I am capable of making this affidavit.

2. I am the Plaintiff in the above-referenced matter.

3. I am now and was at all times material to the events discussed in my Complaint a member of the Jasper County School District Board of Trustees.

4. In my official capacity, I requested copies of documents including:

(a) itemized credit card statements for Kathleen Snooks, Alina Hamilton-Clark, Berty Riley, Cathy Gardner, and Priscilla Fraser, members of the Board of Trustees for Defendant who were provided credit cards by Defendant;

(b) itemized credit card statements for James Gardner, who was provided a credit card by Defendant;

(c) itemized credit card statements for Vashti K. Washington, an employee of

R.H.

Defendant who was provided a credit card by Defendant; and

(d) a list of all bonus checks given to non certified staff by Vashti K.

Washington and the funding source(s) for checks.

5. I needed these documents to fulfill my duties as a member of the Defendant's Board of Trustees and my responsibilities to my constituents.

6. Defendant refused to provide the documents to me.

7. Pursuant to the South Carolina Freedom of Information Act (FOIA), I then requested the documents listed in Paragraph 4 and a listing of all persons who made FOIA requests who were required by Defendant to pay a deposit by certified check.

8. Defendant never gave me a written notification of the determination as to the availability of the requested public records within fifteen days, excepting Saturdays, Sundays, and legal holidays.

9. To date, Defendant has not provided me with the records I requested in my capacity as a member of the Board of Trustees and by FOIA request.

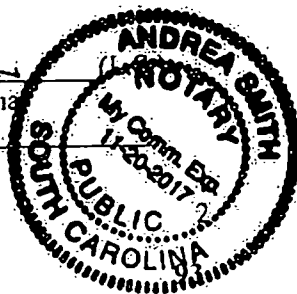
10. I have read and understand each paragraph of my Affidavit and each paragraph is true and correct based on my knowledge and belief.

11. I have freely and voluntarily signed this Affidavit.

FURTHER YOUR AFFIANT SAYETH NAUGHT!

SWORN to before me this
17th day of September 2013.


Notary Public for South Carolina
My Commission Expires: _____




Randy Horton

EXHIBIT B

Nov 22, 2011

Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton am requesting under The Freedom of Information Act a copy of the credit card itemized statements from January 2005 or the start of their term of Kathleen Snooks, Alina Hamilton-Clark, Bert Riley, Cathy Gardner and Priscilla Fraser. I need this information to determine if there is a legal matter that needs to be addressed.

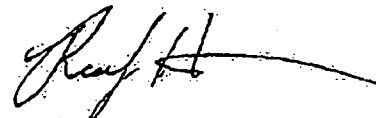
Thanks and God Bless

Randy Horton

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the ITEMIZED Credit Card and/or Credit Cards Statements of Mr. James Gardner for the past five (5) years. This is the 4th Freedom of Information request for Mr. Gardner 1st Aug 16th, 2nd Aug 18th, 3rd Oct 10th and May 29, 2012. Mrs. Gardner wrote to the Jasper County Sun and Wrote that Mr. Gardner had over spent by Six Hundred dollars (MISUSE OF PUBLIC FUNDS) Under FOIA, if information is to be used for the Good of the public there should not be a charge for the information!

Thanks and God Bless

A handwritten signature in black ink, appearing to read 'Randy H', with a long horizontal flourish extending to the right.

Randy Horton

06-07-12A 11:12 RCVB

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the ITEMIZED Credit Card and/or Credit Cards Statements OF Vashti K. Washington and the funding source or sources with account numbers of said accounts.

Thanks and God Bless

A handwritten signature in black ink, appearing to read 'Randy Horton', with a stylized flourish extending to the right.

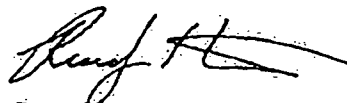
Randy Horton

06-07-12A 11:12 RCVD

May 29, 2012
Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of everyone who was required to paid a deposit by CERTIFIED CHECK for Freedom of Information requests.

Thanks and God Bless



Randy Horton

Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the bonus checks that were giving to the Non-Certified staff by Dr. Washington and the funding source or sources with account numbers of said checks. I believe that this act is an act of misappropriation of public funds. I need this information to determine if there is a legal matter that needs to be addressed by the BOE.

Thanks and God Bless

Randy Horton

Randy Horton
P.O. Box 1224
Ridgeland SC 29936

I, Randy Horton a member of the Jasper County Board of Education am requesting under The Freedom of Information Act a copy of the credit cards itemized statements of Kathleen Snooks, Alina Hamilton-Clark, Berty Riley, Cathy Gardner and Priscilla Fraser I need this information to determine if there is a legal matter that needs to be addressed by the BOE.

Thanks and God Bless

Randy Horton

EXHIBIT C

Jasper County School District

A NEW DAY... A NEW WAY...

OFFICE OF PUBLIC INFORMATION

Post Office Box 848 10942 N. Jacob Smart Blvd. Ridgeland, SC 29936
(843) 717-1106 (843) 717-1191 Fax

YASHTI K. WASHINGTON, Ed.D.
SUPERINTENDENT

SHELLIE MURDAUGH
PUBLIC INFORMATION OFFICER

June 25, 2012

Mr. Randy Horton
P.O. Box 1224
Ridgeland, SC 29936

Re: Jasper County School District
FOIA Request

Dear Mr. Horton:

As you know, I now have responsibility for handling all Freedom of Information Act (FOIA) requests directed to the Jasper County School District (District). The purpose of this correspondence is to ensure that my records are complete and accurate.

1. I have a copy of Superintendent Vashti Washington's letter to you of December 13, 2011. I am reviewing the status of this matter and will respond to you as may be appropriate as promptly as circumstances allow.
2. I have two undated requests (copies attached), which were apparently given to Attorney Kenneth Childs of Childs & Halligan, P.A., on June 6, 2012, without explanation, which he forwarded to Dr. Washington by e-mail on June 13, 2012.
3. I have three FOIA requests, all dated May 29, 2012, and apparently given to Mr. Childs, again without explanation, on June 6, 2012, which he forwarded to Dr. Washington by e-mail on June 7, 2012.

I would like for you to confirm in writing that the above is a complete list of your FOIA requests to the District. In the meantime, please know that I am looking into the above requests and will respond to you in accordance with §30-4-30(c).

Sincerely,


Shellie Murdaugh
Enclosures

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	CIVIL ACTION NO: 2013-CP-27-0327
RANDY HORTON,	)	
Plaintiffs,	)	
vs.	)	AFFIDAVIT OF
JASPER COUNTY SCHOOL DISTRICT,	)	JENNIFER I. CAMPBELL, ESQ.,
Defendants.	)	REGARDING LEGAL FEES AND
	)	COSTS

PERSONALLY appeared before me the undersigned who, being duly sworn, on oath says:

1. My name is Jennifer I. Campbell, I am above the age of 18, and I am capable of making this affidavit.
2. My firm and I represent Plaintiff in the above matter.
3. Plaintiff filed the instant action seeking relief under the Freedom of Information Act, and S.C. Code Ann. § 30-4-100(b) provides that "[i]f a person or entity seeking such relief [under the FOIA] prevails, he or it may be awarded reasonable attorney fees and other costs of litigation."
4. Plaintiff is a prevailing party under the FOIA and now seeks an award of his reasonable attorney fees and his costs of litigation.
5. As of the date of this Affidavit, I have spent 95.60 hours working on the case; J. Ashley Twombly, Esq., has spent 39.7 hours; Andrea Smith (Paralegal) has spent 13.30 hours; and Lisa Essary (Legal Assistant) has spent 3.4 hours working on the case; for a total of 152 total

hours at the following hourly rates: \$295 for Partner, \$250 for Attorney, \$150 for Paralegal, and \$75 for Legal Assistant. Our attorney fees to date equal \$37,861.26.

6. The hourly rates and time spent on this case are appropriate under the factors listed in Burton v. York County Sheriff's Department, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004):

- a. Nature, extent, and difficulty of the case: This is a declaratory judgment action addressing alleged FOIA violations. As part of this case, my firm and I have prepared pleadings, a motion for summary judgment, affidavits, and an extensive brief relating to the summary judgment motion, researched legal issues, attended motions hearings, and reviewed documents provided by Defendant.
- b. Time necessarily devoted to the case: As of June 26, 2014, I and the firm have spent over 152 hours performing legal services related to this case as itemized in the firm's time sheets, which are attached to the affidavit as Exhibit A and are being submitted to the Court *in camera*. These legal services include ensuring that the document production of over 2,461 pages that Defendant provided to Plaintiff's counsel in seven different mailings between October 2013 through June 2014 complied with the FOIA requests made. In addition, American Express documents responsive to the FOIA requests were provided in at least three different formats – some in consolidated monthly bills, some by individual cardholder statements, and some by monthly computer printouts per cardholder. Defendant also provided individual statements and monthly computer printouts for persons not included in Plaintiff's FOIA requests. For example, Defendant provided individual October 2009 bills for twelve cardholders not included in the

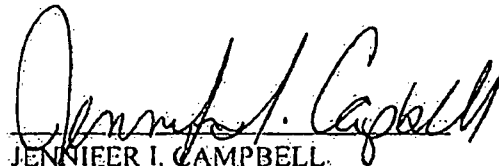
FOIA requests. Therefore, the determination of whether all of the documents Plaintiff requested through FOIA required detailed individual review of each of the almost 2,500 documents provided. Another time consuming aspect of this case was the research, drafting, and preparation of the brief relating to the summary judgment motion. The Court requested an extensive brief that addressed subject matter jurisdiction, jurisdiction of the court, standing of the Plaintiff as well as the merits of the case.

- c. Professional standing of counsel: I am an experienced litigator and of counsel in a law firm located in Beaufort, South Carolina. Ashley Twombly is also an experienced litigator and is a partner in a law firm located in Beaufort, South Carolina. Ashley Twombly has received several professional accolades including a Martindale Hubble AV Preeminent Rating. Together, we have combined twenty-five years of experience.
- d. Contingency of compensation: The firm undertook representation on this matter on a contingency basis. The firm took this case on a contingency fee basis because we believed that Mr. Horton was entitled to the information he was requesting under South Carolina law.
- e. Beneficial results obtained: Beneficial results have been obtained in this case. As a result of this litigation, Plaintiff has received the information he requested through FOIA. Further, since the Court required Defendant to provide the requested documents and the remaining documents were provided, the firm has obtained additional beneficial results in this case.
- f. Customary legal fee for similar services: The hourly rates listed in this Affidavit

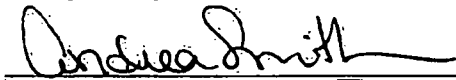
are customary legal fees for litigation cases in the Fourteenth Judicial Circuit.

7. The firm has incurred \$1,096.56 in in case expenses, as itemized in Exhibit A to this Affidavit. These case expenses were reasonable and necessary to the investigation, preparation, litigation, and research relating to the matters at issue in this case. Moreover, the items for which were included as case expenses are the type of expenses that are traditionally incurred by a contingency fee law firm.

8. Each paragraph of this Affidavit is true and correct based on my knowledge and belief.


JENNIEER I. CAMPBELL

SWORN to before me this
9th day of July 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires:



EXHIBIT A

LIVINGSTON LAW FIRM, LLC
3110 Central Street
Huntersville, North Carolina 28007
Phone: 704.241.1100
Fax: 704.241.1101

J. Ashley Twombly
Karl D. Twenge
Jennifer L. Campbell

Twombly, Twenge & Campbell, LLC
attorneys at law

June 23, 2014

Randy Horton

File #: 1854

Invoice #:2471

Beaufort SC

RERandy Horton v. Jasper County School District
Civil Action No.: 2013-CP-27-327

LEGAL FEES

Date	Description	Hours	Amount
Jun-12-13		4.50	JC
Jun-13-13		4.50	JC
Jun-19-13		1.20	JC
Jun-20-13		8.90	JAT
Jun-20-13		2.20	AS
Jul-02-13		2.10	JAT
Jul-08-13		0.90	AS

Jul-15-13	0.20	JAT
Jul-15-13	0.20	JAT
Jul-25-13	0.20	LE
Jul-26-13	0.60	JC
Jul-26-13	0.70	AS
Jul-29-13	0.60	AS
Jul-29-13	0.20	LE
Jul-30-13	0.20	LE
Jul-31-13	0.20	LE
Aug-07-13	0.40	JC
Aug-26-13	0.20	LE
Aug-27-13	0.20	JAT
Sep-04-13	2.00	JC
Sep-04-13	0.40	AS
Sep-05-13	0.80	JC

Sep-11-13	0.20	JC
Sep-12-13	0.90	JAT
Sep-12-13	0.50	JAT
Sep-13-13	0.30	JC
Sep-17-13	2.90	JAT
Sep-17-13	3.60	JC
Sep-18-13	0.10	JC
Sep-25-13	0.20	LE
Sep-27-13	0.20	AS
Sep-30-13	0.20	JAT
Oct-08-13	0.20	JC
Oct-09-13	0.30	JC
Oct-09-13	1.80	AS
Oct-10-13	0.20	JC
Oct-10-13	1.10	AS
Oct-11-13	0.40	LE
Oct-16-13	0.20	LE

Oct-18-13	0.20	JAT
Oct-21-13	0.20	AS
Oct-24-13	0.90	JC
Oct-24-13	0.30	AS
Oct-25-13	4.60	JC
Oct-28-13	0.60	JAT
Oct-28-13	1.40	JC
Nov-07-13	1.50	JAT
Nov-07-13	0.50	JC
Nov-11-13	0.20	JC
Nov-19-13	0.20	JAT
Nov-22-13	0.40	AS
Dec-12-13	0.20	JAT
Jan-13-14	0.90	JC
Jan-16-14	0.90	JC
Jan-20-14	1.70	JC
Jan-27-14	0.40	JC
Jan-30-14	2.90	JC

Jan-30-14	1.00	JC
Jan-30-14	0.70	AS
Jan-31-14	3.90	JAT
Jan-31-14	4.80	JC
Feb-03-14	3.50	JC
Feb-04-14	5.20	JC
Feb-05-14	3.00	JC
Feb-06-14	4.80	JC
Feb-07-14	2.90	JAT
Feb-07-14	2.80	JC
Feb-10-14	1.20	JC
Feb-10-14	0.90	AS
Feb-12-14	0.20	LE
Feb-19-14	0.20	JAT
Feb-25-14	0.30	JAT
Feb-25-14	0.20	JC
Feb-27-14	0.20	LE
Mar-03-14	0.20	LE

Mar-04-14	0.30	JAT
Mar-04-14	0.30	JC
Mar-04-14	0.70	AS
Mar-06-14	0.40	JC
Mar-17-14	0.30	AS
Mar-19-14	0.30	AS
Mar-19-14	0.20	LE
Mar-25-14	3.50	JAT
Mar-25-14	4.60	JC
Mar-26-14	2.00	JC
Mar-27-14	5.70	JC
Mar-28-14	1.70	JC
Mar-28-14	1.50	JC
Mar-31-14	4.60	JAT

Mar-31-14		6.00	JC
Apr-01-14		0.20	JC
Apr-03-14		1.90	JAT
Apr-04-14		0.20	LE
Apr-07-14		0.80	JC
Apr-09-14		0.20	JC
Apr-14-14		0.20	LE
Apr-17-14		0.20	JAT
Apr-17-14		0.70	JC
Apr-22-14		0.40	AS
Apr-29-14		0.20	AS
Apr-30-14		0.90	JAT
Apr-30-14		1.30	JC
Apr-30-14		0.50	AS
May-05-14		0.20	LE
May-06-14		4.10	JC

May-07-14	0.40	JC
May-16-14	0.70	JC
May-20-14	0.60	JC
May-21-14	1.80	JC
May-21-14	0.20	AS
May-22-14	0.90	JAT
May-22-14	0.20	JAT
May-30-14	0.20	LE
Jun-05-14	0.30	JAT
Jun-09-14	1.80	JC
Jun-11-14	0.20	JAT
Jun-23-14	0.60	JAT
Jun-23-14	1.00	JC
Jun-23-14	0.30	AS
	152.00	~~\$37,861.26~~

CASE COSTS/EXPENSES

Jun-19-13	Filing of S&C / #1854 / als	150.00
Jun-30-13	Copies/Scans/Faxes Expense	79.80
Jun-30-13	Legal Research Expense	18.61
Jul-05-13	Matter 1854 - Overnight Postage - LBH	24.24
Jul-26-13	Overnight Package - LBH	18.31
Jul-31-13	Copies/Scans/Faxes Expense	17.85

Invoice #: 2471

Page 9

June 23, 2014

Aug-30-13	Copies/Scans/Faxes Expense	3.90
Aug-30-13	Legal Research Expense	38.42
Sep-30-13	Copies/Scans/Faxes Expense	16.50
Sep-30-13	Legal Research Expense	26.76
Oct-09-13	Filing of Motion for SJ / #1854 / als	25.00
Oct-30-13	Copies/Scans/Faxes Expense	41.40
Nov-27-13	Copies/Scans/Faxes Expense	2.55
Dec-30-13	Copies/Scans/Faxes Expense	1.95
Jan-31-14	Legal Research Expense	128.73
Feb-04-14	Matter 1854 - Trip to Ridgeland for Hearing - LBH	46.64
Feb-28-14	Copies/Scans/Faxes Expense	80.25
Feb-28-14	Legal Research Expense	228.75
Mar-28-14	Copies/Scans/Faxes Expense	47.55
Mar-31-14	Copies/Scans/Faxes Expense	20.10
Apr-08-14	Matter 1854 - Travel to Ridgeland (roundtrip) LBH	50.00
Apr-30-14	Copies/Scans/Faxes Expense	16.95
May-31-14	Copies/Scans/Faxes Expense	12.30

Totals	\$1,096.56
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Total Fees & Disbursements/Expenses	\$38,957.82
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BALANCE NOW DUE	\$38,957.82
-----------------	-------------

TAX ID Number 83-0448012

TWENGE + TWOMBLEY LAW FIRM, LLC
311 Carteret Street
Beaufort, South Carolina 29902
Ph: 843.982.0100 Fax: 843.982.0103
Web: Twlawfirm.com

J. Ashley Twombley*
Karl D. Twenge
Jennifer I. Campbell+

*Licensed in SC + GA
+Of Counsel

April 30, 2014

Via Electronic and U.S. Mail

Dwayne T. Mazyck, Esquire
Childs & Halligan
P.O. Box 11367
Columbia, SC 29211-1367

**RE: Randy Horton v. Jasper County School District
Civil Action No.: 2013-CP-27-327**

Dear Dwayne:

Thank you for taking time to chat with me and Jennifer today. Because you and I are both so busy, I wanted to take a moment to memorialize our discussion, for my benefit and yours.

Regarding the Labor History Report previously produced in a redacted form, you have agreed to produce the same un-redacted. I agreed to ask Mr. Horton to keep the names on the Labor History as confidential as possible.

Regarding the additional documents that we are due pursuant to Judge Mullen's directive, you indicated that you are still in the process of collecting these records and hope to produce them to us shortly.

If I have misstated anything, please let me know. Thank you again for your help.

With kind regards, I remain,

Cordially,


J. Ashley Twombley

TWENGE + TWOMBLEY LAW FIRM, LLC
311 Carteret Street
Beaufort, South Carolina 29902
Ph: 843.982.0100 Fax: 843.982.0103
Web: Twlawfirm.com

J. Ashley Twombly*
Karl D. Twenge
Jennifer L. Campbell+

*Licensed in SC + GA
+Of Counsel

July 9, 2014

Via Electronic Mail

The Honorable Carmen T. Mullen
Judge of the Fourteenth Judicial Circuit
P.O. Drawer 1128
Beaufort, SC 29901
CMullenLC@sccourts.org

**RE: Randy Horton v. Jasper County School District
Civil Action No.: 2013-CP-27-327**

Dear Judge Mullen:

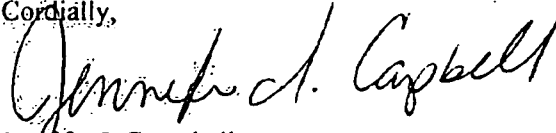
As you may recall, this matter is before you on Plaintiff Randy Horton's Motion for Summary Judgment on issues relating to his Freedom of Information Act (FOIA) requests made to Defendant and relating to a school board member's entitlement to review school district documents. As part of his motion, Plaintiff requested his attorney fees and case expenses be paid by Defendant pursuant to S.C. Code Ann. § 30-4-100(b). In his Brief dated February 10, 2014, Plaintiff explained why he believes he is entitled to attorney fees and case expenses under FOIA and stated that counsel's fees and costs would be addressed in a supplemental Affidavit. At the March 31, 2014 hearing you ordered Defendant to provide Plaintiff with all of the documents he requested through FOIA and stated that Plaintiff should submit the supplemental Affidavit related to attorney fees and costs after the documents were received. Defendant has now provided the documents Plaintiff requested through FOIA.

Accordingly, enclosed please find the supplemental Affidavit relating to attorney's fees and costs in the above matter. Attached as Exhibit A of the Affidavit are the firm's time sheets and case expense sheet. Exhibit A provided to counsel for Defendant by this email and that will be filed with the Jasper Clerk is redacted. By separate email, we will forward an unredacted Exhibit A to you.

If you need any additional information or have any questions, please let us know.

With kind regards, I remain,

Cordially,

A handwritten signature in cursive script, reading "Jennifer I. Campbell". The signature is written in dark ink and is positioned above the printed name.

Jennifer I. Campbell

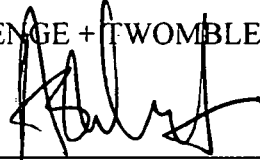
cc: Dwayne T. Mazyck (dmazyck@childs-halligan.net)

CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombly, hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

TWENGE + TWOMBLY LAW FIRM

BY:



J. ASHLEY TWOMBLY

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APR 01 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

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The Honorable Carmen T. Mullen, Fourteenth Judicial Circuit
Case No.: 2013-CP-27-327

APR 01 2015
SC Court of Appeals

Appellate Case No.: 2014-002612

Randy Horton.....Appellant

-VS-

Jasper County School District.....Respondent

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion when it reduced counsels' hourly attorney fee rates under FOIA to \$100.00 per hour?

STATEMENT OF THE CASE

Appellant Randy Horton (Horton) is an elected member of the Board of Trustees for Respondent Jasper County School District (School District). Horton requested that the School District provide him with information and documents under the Freedom of Information Act (FOIA). (R. pp. 41-46). The School District failed to respond to Horton's FOIA requests and did not provide the documents requested. (R. pp. 30-54, R. pp. 92-93). Horton then filed a Summons and Complaint dated June 19, 2013, with a cause of action alleging violations of the South Carolina FOIA. (R. pp. 30-54). Horton's Complaint also requested attorney fees. (R. pp. 30-54). The School District filed an Answer dated August 22, 2013, denying that Horton was entitled to any records. (R. pp. 55-75).

Horton filed a Motion for Summary Judgment dated October 9, 2013. (R. pp. 86 - 102). In the motion, Horton asked that summary judgment be entered finding that the School District violated FOIA, and asked for an award of attorney fees and litigation costs under S.C. Code Ann. § 30-4-100(b). (R. pp. 86-102).

A hearing on the Motion for Summary Judgment was initially held on January 31, 2014. The lower court asked the parties to prepare additional briefs relating to the matter and scheduled another hearing for March 31, 2014. Neither entitlement nor amount of attorney fees to be awarded was discussed at the January 31, 2014 hearing. At the March 31, 2014 hearing, the lower court ordered the School District to provide Horton with all of the documents he requested through FOIA, and directed Horton's counsel to submit a

supplemental Affidavit related to attorney fees and litigation costs after all of the documents at issue were received. (R. pp. 118-119). Neither entitlement nor amount of attorney fees to be awarded was addressed at the March 31, 2014 hearing.

On July 9, 2014, Horton provided the lower court and the School District with the requested Affidavit relating to attorney fees and litigation costs. The Affidavit stated that Horton's counsel spent over 135 hours working on this case at counsels' standard hourly rates of \$295.00 and \$250.00. The Affidavit also showed that the litigation costs were \$1,096.56. (R. pp. 103-116). The School District never responded to, objected to, or otherwise communicated with the lower court or with Horton relating to the Affidavit related to attorney fees and litigation costs. The School District never objected to the number of hours spent by counsel on this case, never objected to counsels' hourly rates, and never offered any counter affidavits. No hearing addressing the Affidavit related to attorney fees and litigation costs was scheduled by the lower court.¹

On September 5, 2014, the lower court granted Horton's Motion for Summary Judgment and awarded Horton all litigation costs of \$1,096.56 and awarded Horton attorney fees for each attorney hour spent on the file. However, the trial court reduced counsels' hourly rates from \$295.00 and \$250.00 to \$100.00 per hour.² (R. pp. 20-21). Horton timely filed a Motion for Reconsideration regarding what he believed was the improper reduction of counsels' hourly rates. (R. pp. 76-85) The lower court denied the

¹ Because the lower court never held a hearing addressing the amount of attorney fees and litigation costs to be awarded in this matter, there was no transcript for counsel to order prior to filing and serving the Initial Brief. Further, the amount of attorney fees and litigation costs were not addressed during the January 31, 2014 hearing or during the March 31, 2014; therefore, counsel did not order the transcripts for these hearings.

² The lower court did not award the paralegal and legal assistant time as set forth in the Affidavit. Horton is not challenging that portion of the decision.

Motion for Reconsideration, issuing a Form 4 Order, without holding a hearing. (R. pp. 2-18). Horton timely filed a Notice of Appeal.

STANDARD OF REVIEW

When reviewing a ruling left to the discretion of the lower court, an appellate court will reverse the ruling if the ruling constitutes an abuse of discretion. E.g. Laser Supply and Services, Inc., v. Orchard Park Associates, 382 S.C. 326, 676 S.E.2d 139 (Ct. App. 2009) (determination left to the discretion of the trial court will not be disturbed absent an abuse of discretion); Southeastern Housing Foundation v. Smith, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008) (appellate standard of review is limited to determining whether there was an abuse of discretion).

ARGUMENT

I. The lower court abused its discretion when it reduced counsels' hourly attorney fee rates under FOIA to \$100.00 per hour.

The lower court committed reversible error when it disregarded the hourly rates set forth in the Affidavit Regarding Legal Fees and Costs, ignored the fact that the School District never objected to the hourly rates and reduced Horton's counsels' hourly rates to \$100.00 per hour.

a. The lower court ignored the Affidavit Regarding Legal Fees and Costs and Motion to Reconsider.

In the Affidavit Regarding Legal Fees and Costs and Motion to Reconsider, Horton's counsel set forth evidence to show that the firm's hourly rates are \$295.00 for Partner and \$250.00 for Attorney. (R. pp. 103-104, ¶ 5). Horton's counsel also confirmed that these hourly rates are "customary legal fees for litigation cases in the Fourteenth Judicial Circuit" and that these were the hourly rates "Plaintiff's counsel charges to virtually all of its clients that pay by the hour." (R. pp. 105-106, ¶ 6(f); R. pp.

76-85). As to the experience of Horton's counsel, Horton's two attorneys are experienced litigators with combined twenty-five years of experience, and one of which holds a Martindale-Hubbard AV rating. (R. p. 105, ¶ 6(c)). Thus, the Affidavit and Motion for Reconsideration established that the hourly rates for Horton's counsel are \$295.00 for Partner and \$250.00 for Attorney, and that these are the rates that Horton's counsel charges to all of its hourly clients and that these hourly rates are customary in the Fourteenth Judicial Circuit. Nevertheless, the lower court disregarded the Affidavit and Motion to Reconsider without explanation.

b. The School District never objected to any aspect of Horton's fee request.

The School District never objected to Horton's requested legal fees and costs. The School District did not object to the hourly rates listed and did not argue that the hourly rates were not customary hourly rates fees in the Fourteenth Judicial Circuit or in South Carolina. The School District never offered any counter affidavits or any other evidence about customary hourly rates in the Fourteenth Judicial Circuit. Therefore, the only evidence before the lower court was that offered by Horton's counsel.

c. There is no evidence in the record to support the \$100.00 per hour fee.

When the lower court reduced Horton's counsels' hourly rates to \$100.00, the lower court did not cite any evidence to support its decision, because there was no other evidence in the record. Thus, there is no evidence in the records to support the fee reduction to \$100.00 per hour.

d. The lower court awarded a fee for each hour of time expended by Horton's counsel on the file.

The Affidavit Regarding Legal Fees and Costs established that J. Ashley Twombly expended 39.7 hours on the file and that Jennifer I. Campbell expended 95.6

hours on the file, for 135.3 total attorney hours on the file. (R. pp. 103-104, ¶ 5).³

In its Order, the lower court found that the Affidavit Regarding Legal Fees and Costs “portrays commensurate time, nature, extent, and difficulty expended by [Horton’s counsel] in procuring the FOIA requested documents and litigation related thereto.” (R. pp. 20-21). The lower court held that the legal fees relate to the preparation of the pleadings, preparation of a brief to the court relating to jurisdiction, standing, and the merits of the case, and review of over 2,000 pages of documents provided in seven separate submissions over the course of several months. (R. pp. 19-22). The lower court concluded that “[u]ltimately, my ruling produces beneficial results for their client.” (R. p. 21). The lower court awarded fees “for a total of 135.3 hours documented by J. Ashley Twombly, Esq. and Jennifer Campbell, Esq. for their work in compelling the document production at issue.” (R. p. 21). Therefore, the lower court found that Horton was entitled to an award of attorney fees for each hour spent by his attorneys.

- e. *The lower court concluded that Horton was entitled to an attorney fee award under Burton v. York County Sheriff’s Department, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004).*

Under Burton, the six factors to be considered when determining an award of attorney’s fees are (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. Id. at 357, 594 S.E.2d at 898. The lower court concluded that Horton was

³ In response to the FOIA requests, the School District ultimately produced over 2,460 pages of documents in seven separate mailings. The documents were provided in three different formats (consolidated monthly bills, individual cardholder statements, and monthly computer print-outs). The School District also provided individual statements and monthly computer print-outs for cardholders not included in the FOIA requests. (R. pp. 104-105, ¶ 6(b)). In addition, the School District redacted some of the documents. Counsel for the parties discussed the redaction, and the School District agreed to provide unredacted documents. (R. p. 117). These issues resulted in a significant amount of time being spent on the case.

entitled to attorney fees.

Specifically, the lower court found that Horton's counsel expended "commensurate time, nature, extent, and difficulty" in obtaining the FOIA requested documents and litigating this matter. (R. pp. 20-21). The lower court noted that counsel has "a combined twenty-five years of experience in litigation." (R. pp. 21). The lower court found that the legal fees appropriately relate to the preparation of the pleadings and briefs to the court as well as review of the documents provided. (R. pp. 21). The lower court concluded that "[u]ltimately, my ruling produces beneficial results for their client." (R. pp. 21). Thus, the lower court correctly found that Horton was entitled to an award of attorney fees in this matter under Burton and awarded a fee for each hour requested by Horton's counsel.

f. The lower court failed to exercise discretion and issued a ruling that abused discretion.

The decision about whether to award attorney's fees under a state statute like S.C. Code Ann. § 30-4-100(b) is left to the discretion of the lower court. See Kiriakides v. School Dist. Of Greenville County, 382 S.C. 8, 675 S.E.2d 439 (2009). An abuse of discretion occurs when a judge fails to exercise discretion, when a ruling is based upon an error of law, or, when a ruling based on factual conclusions is without evidentiary support. See Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 656, 566 (1987) ("An abuse of discretion occurs when the judge's ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support.") and Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997) ("A failure to exercise discretion amounts to an abuse of that discretion."). In this case, the lower court failed to exercise any discretion as the hourly fee amount.

1. The lower court failed to exercise discretion.

The lower court reduced counsels' hourly rate from their customary rates, down to \$100.00 per hour, across the board. The lower court did not explain why it felt it was appropriate to reduce counsels' hourly rates. After Horton filed a Motion for Reconsideration asking that the lower court to either award attorney fees at the hourly rates listed in the Regarding Legal Fees and Costs or explain why an hourly rate of \$100.00 was used, the lower court denied the motion with a Form 4 Order. (R. pp. 76-85; R. pp. 2-18). Thus, a review of the lower court's orders establishes that no discretion was exercised relating to the hourly rate of Horton's counsel. "When a trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred." Fontaine, 291 S.C. at 538, 354 S.E.2d at 566. Accordingly, the lower court's decision to reduce counsels' hourly rate to \$100.00 amounts to an abuse of discretion and an error of law.

2. The lower court's ruling reduced counsels' hourly fee to \$100.00 without evidentiary support.

In this case, the only evidence before the lower court relating to counsels' hourly rates and the customary rates in the Fourteenth Judicial Circuit was the Affidavit Regarding Legal Fees and Costs. There was no evidentiary support for the lower court to reduce counsels' rates from \$295.00 and \$250.00 to \$100.00 per hour.

3. There was no reason to reduce counsel's hourly rate.

Even if there were evidence in the record to support an exercise of discretion reducing counsels' hourly rates to \$100.00 per hour, counsel is not aware of any reason why the lower court would have wanted to implement such a reduction here. It is clear that the School District violated Horton's rights and refused to produce documents

Horton was entitled to under FOIA. The lower court concluded that counsel spent an appropriate amount of time on the case, that counsel was entitled to be compensated for each hour expended on the file, that counsels' work produced beneficial results to Horton, and that counsel had favorable professional standings in the Lowcountry legal community. There simply is no known reason to support the hourly rate reduction, even if the reduction were supported by evidence in the record.

g. The lower court awarded attorney fees at an hourly rate that results in inadequate protection of FOIA rights.

South Carolina Code Ann. § 30-4-100(b) was enacted to protect the rights granted by FOIA, and the lower court's award of attorney fees at an hourly rate of \$100.00 results in inadequate protection of FOIA rights.

In Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984), the appellant urged the Court to reverse a FOIA attorney's fee award on grounds that the state agency acted in good faith reliance on a regulation. The South Carolina Supreme Court declined to do so, holding the "trial judge did not abuse his discretion in awarding fees to encourage agencies to comply with FOIA requests." *Id.* at 568, 324 S.E.2d at 316. See also Sloan v. Friends of the Hunley, 393 S.C. 152, 711 S.E.2d 895 (2011) (honoring legislative intent of FOIA by awarding attorney fees serves as an impetus to comply with FOIA); Samples, 329 S.C. at 105, 495 S.E.2d at 213 (imposition of a sanction should serve to protect the rights provided by the Rules).

In this case, awarding statutory attorney fees at a rate of \$100.00 per hour, which is a steep reduction from the customary hourly rates of \$250.00-\$295.00, will likely discourage litigants from bringing litigation under FOIA, even when it is clear that their rights under FOIA have been violated. In fact, if the lower court's order stands, Horton

could be left with a debt of over \$24,331.26 for the attorney's fees incurred. Moreover, the lower court's ruling could discourage experienced attorneys from representing clients in cases similar to Horton's, even when counsel correctly believes that a state agency has violated FOIA. The lower court's ruling will not have the coercive effect of encouraging compliance with FOIA as intended by the South Carolina legislature.

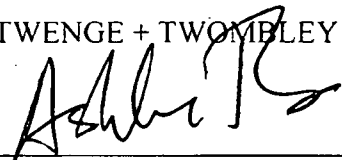
For these reasons, this Court should reverse the lower court's hourly rate of \$100.00 and order the School District to pay the full attorney fees as requested in the Affidavit Regarding Legal Fees and Costs.

CONCLUSION

For the reasons contained herein and as may be raised in any Reply Briefs or Supplemental Briefs and at oral arguments, this Court should reverse the lower court's hourly rate of \$100.00 and order the School District to pay the full attorney fees as requested in the Affidavit Regarding Legal Fees and Costs.

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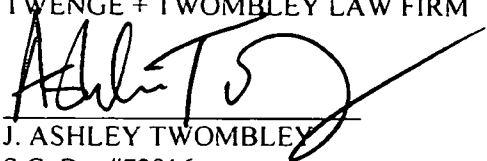
March 30, 2015

CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombly, certifies that the herein Final Brief of Appellants complies with Rule 211(b) the South Carolina Appellate Court Rules.

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The Honorable Carmen T. Mullen, Fourteenth Judicial Circuit
Case No.: 2013-CP-27-327

SC Court of Appeals

Appellate Case No.: 2014-002612

Randy Horton.....Appellant

-vs-

Jasper County School District.....Respondent

AFFIDAVIT OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is a Paralegal with TWENG + TWOMBLEY LAW FIRM, Attorneys for Appellant, and that on the 30th day of March 2015, a true and accurate copy of the attached of Final Brief of Appellant was placed in an envelope with first class postage thereon prepaid through the United States Postal Service and mailed to the following:

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SC Court of Appeals

APPEAL FROM JASPER COUNTY
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The Honorable Carmen T. Mullen, Circuit Court Judge

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Randy Horton.....Appellant,

v.

Jasper County School District.....Respondent.

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I. STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion in its award of \$14,626.56 in attorneys' fees and costs to Appellant?

II. STATEMENT OF THE CASE

On June 19, 2013, Plaintiff/Appellant Horton filed his Complaint against the Defendant/Respondent Jasper County School District seeking a declaratory judgment and attorneys' fees and costs for the alleged violations of the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. §§ 30-4-10, *et seq.*, as amended. (R. pp. 33-54, Complaint.)

Thereafter, on October 9, 2013, Appellant filed a motion for summary judgment. (R. pp. 86-102, Plaintiff's Summary Judgment Motion.) On September 5, 2014, the Honorable Carmen T. Mullen granted the Plaintiff's Motion for Summary Judgment and awarded Plaintiff \$13,530.00 in attorneys' fees and \$1,096.56 in costs, for a total of \$14,626.56. (R. pp. 19-22, Order Granting Summary Judgment and Award of Costs and Attorneys' Fees.)

On September 16, 2014, Appellant filed Motions pursuant to Rules 52 and 59, SCRPC, requesting that the September 5, 2014, Order be reconsidered, altered, and/or amended. Specifically, Appellant's counsel requested an attorneys' fees award of \$37,861.26, which was calculated using the hourly rates of \$295.00 per hour for partner, J. Ashley Twombly, \$250.00 per hour for associate, Jennifer Campbell, \$150.00 per hour for paralegal time, and \$75.00 per hour for legal assistant time. (R. pp. 76-79, Motion Pursuant to Rules 52 & 59.)

On November 3, 2013, the Honorable Carmen T. Mullen denied Appellant's Motion for Reconsideration. (R. pp. 2-6, Motion for Reconsideration.) Appellant filed a Notice of Appeal on December 4, 2014. (R. pp. 23-24, Notice of Appeal.)

III. STANDARD OF REVIEW

“An award of attorney's fees rests within the sound discretion of the trial judge and should not be disturbed on appeal unless there is an abuse of discretion.” *Patel v. Patel*, 359 S.C. 515, 599 S.E.2d 114 (2004). “Where an attorney's services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by any competent evidence.” *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989).

IV. ARGUMENTS

A. Under S.C. Code Ann. 30-4-100(B) The Award Of Attorneys' Fees Is Within The Discretion Of The Court.

South Carolina courts follow the “American Rule” that each party is responsible for paying his own attorney's fees. *Duke Power Co. vs. South Carolina Public Service Commission*, 284 S.C. 81, 326 S.E.2d 395 (1985). As a general rule, attorney's fees are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993).

FOIA does not mandate the award of attorneys' fees, but permits the court, in its discretion, to award reasonable attorneys' fees to a prevailing plaintiff under the Act.

Section 30-4-100(b) of the Act provides:

If a person or entity seeking such relief prevails, he or it *may* be awarded reasonable attorney's 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's fees or an appropriate portion thereof.

(Emphasis added.)

Clearly, the Appellant has no absolute right to the recovery of attorneys' fees, and the award of attorneys' fees rests in the discretion of the court. Appellant wrongfully interprets this statute to provide for a mandatory award of attorneys' fees, and not a

discretionary function to be decided by a judge on a case-by-case basis.

B. The Trial Court's Award Of Attorneys' Fees Was Reasonable, Supported By Adequate Findings, And There Was No Abuse Of Discretion.

The trial court's order awarding Appellant his attorneys' fees was reasonable and supported by adequate findings. South Carolina case law is clear that so long as a trial court makes specific findings of fact on the record for each factor set forth by *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), the order should be affirmed. See *Burton v. York County Sheriff's Dep't.*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004); See also *Blumberg*, 310 S.C. at 494, 427 S.E.2d at 661 (1993) ("When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor.")

In the instant case, the court recited the *Burton* factors, reflected upon the factors, made specific findings of fact on the record regarding the factors, and after doing so, concluded that "an award of costs and attorney's fees is appropriate under the circumstances and hereby award attorneys' fees at a rate of \$100 an hour." (R. pp. 19-22, Order Granting Summary Judgment and Award of Costs and Attorneys' Fees.) Specifically, the court addressed the time, nature, extent and difficulty of the case; counsels' preparation of pleadings; document review; and the fact that counsel has a combined twenty-five years of experience in litigation¹. By expressly considering the *Burton* factors and by reducing the amount awarded to Appellant from the original amount requested, the trial court appropriately evidenced its exercise of discretion in awarding Appellant his attorneys' fees and costs.

Further, Appellant's argument that it was unreasonable for the trial court to

¹ The Appellant's argument that they have a combined 25 years of litigation experience is irrelevant when the majority of the time they are attributing to this case had little to nothing to do with litigation, but collecting and cataloging documents requested by Mr. Horton.

reduce their attorneys' rate from \$250-295 to \$100 is misplaced. In *Farmers & Merchants Bank v. Fagnoli*, 274 S.C. 23, 260 S.E. 2d 185 (1979), the court propounded "[t]he law requires, however, that the award must be reasonable." *Id.* at 26, 260 S.E.2d at 187. See also *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 243, 616 S.E.2d 431, 436 (Ct. App. 2005). Thus, the award of attorneys' fees is the basis of reasonableness, not the reasonableness of the hourly rate charged by the attorneys. In the instant case, after the trial judge considered the *Burton* factors, within her discretion, she awarded reasonable attorneys' fees of \$13,530.00 plus costs.

Moreover, Appellant's contention that he is entitled to more because the Respondent never objected to Appellant's requested legal fees and costs is not accurate. In its brief in response to Plaintiff's Motion for Summary Judgment, Respondent stated that it was aware that attorneys' fees may be awarded, and that the award was within the discretion of the court. Although the Respondent believes no fee is justified, an award of \$13,530.00 and \$1,096.56 in costs was granted, within the court's discretion, and the District made a business decision to not pursue appeal.

**C. The Award Of Additional Attorneys' Fees In This Case
Would Serve No Useful Purpose.**

The essential purpose of the FOIA is to protect the public from secret government activity. *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 166 (Ct. App. 2003). However, the purpose of FOIA was not to allow the public or even school board members to demand copies of thousands of pages of documents at no cost. There are only two alternatives for who will bear the cost of compliance with requests for documents: requesters or taxpayers. FOIA clearly imposes compliance costs on requesters, at the same time that it protects the requesting public's rights by limiting what may be charged to what is "reasonable" and does "not exceed the cost." S.C. Code Ann. § 30-4-30.

In this case, Appellant was never denied access to these records. He was informed several times that he would be required to pay for the time to locate, search, and copy the records. Appellant also requested copies of "bonus checks" and the District denied this pursuant to Sections 30-4-40(a)(6)(B) and (C) of FOIA because he did not have Board approval to pursue this request. However, the District provided Appellant the ranges of bonuses as issue and the total amount of bonuses distributed. Respondent would like to clarify that if a majority Board decided it was necessary to review the records requested, they would have been provided to all Board members at no cost. However, the Board found no legitimate reason to review the records because all Board members are able to review the budget quarterly where they can track every penny that is spent. Accordingly, Appellant had no qualifying need as a Board member to be provided with the information he specifically requested, in the manner he specifically requested.

Further, the Respondent has already provided Appellant with thousands of pages of documents, at no charge. This production of documents required many hours, and the District had to assign an employee to organize Mr. Horton's requests. Clearly, the spirit of FOIA does not contemplate allowing attorneys to collect fees to review each and every document from an overly burdensome and tedious request to ensure compliance.

V. CONCLUSION

The circuit court properly considered, on the record, each of the six factors pertaining to an award of attorneys' fees. It awarded Appellant \$14,626.56, nearly 40% of their fees, and all of their costs. The award is supported by the Record and is within the bounds of reason. There was no abuse of discretion. Accordingly, the award should not be disturbed by this Court.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 18 2015

SC Court of Appeals

APPEAL FROM COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2014-002612

RANDY HORTON.....Appellant,

v.

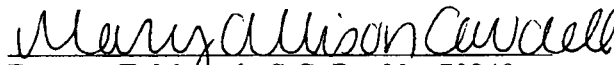
JASPER COUNTY SCHOOL DISTRICT.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

This 19 day of March, 2015

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COUNTY
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The Honorable Carmen T. Mullen, Circuit Court Judge

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RANDY HORTON.....Appellant,

v.

JASPER COUNTY SCHOOL DISTRICT.....Respondent.

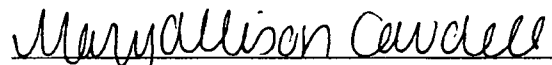
PROOF OF SERVICE

The undersigned hereby certifies that he has served Respondent's Final Brief on counsel for Appellant by depositing a copy of the same in the U.S. Mail service, postage prepaid and addressed as follows:

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Randy Horton, Appellant,

v.

Jasper County School District, Respondent.

Appellate Case No. 2014-002612

Appeal From Jasper County
Carmen T. Mullen, Circuit Court Judge

Unpublished Opinion No. 2016-UP-151
Submitted December 1, 2015 – Filed March 30, 2016

AFFIRMED

James Ashley Twombly, of Twenge & Twombly,
LLC, of Beaufort, for Appellant.

Dwayne Traynor Mazyck and Mary Allison Caudell,
both of Childs & Halligan, PA, of Columbia, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011) ("The decision to award or deny attorney['s] fees under a state statute will not be disturbed on appeal absent an abuse of discretion." (quoting *Kiriakides*

v. Sch. Dist. of Greenville Cty., 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009)); *id.* ("An abuse of discretion occurs when the conclusions of the [circuit] court are either controlled by an error of law or are based on unsupported factual conclusions." (quoting *Kiriakides*, 382 S.C. at 20, 675 S.E.2d at 445)); S.C. Code Ann. § 30-4-100(b) (2007) ("If a person or entity seeking such relief prevails [under the Freedom of Information Act (FOIA)], he or it may be awarded reasonable attorney['s] 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['s] fees or an appropriate portion thereof."); *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 288-89, 580 S.E.2d 163, 170 (Ct. App. 2003) (stating under section 30-4-100, "the only prerequisite to an award of attorney's fees and costs is that the party seeking relief must prevail, in whole or in part"); *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 357-58, 594 S.E.2d 888, 898 (Ct. App. 2004) ("The [FOIA attorney's fees] award, however, must be reasonable and supported by adequate findings."); *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) ("[O]n appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor.").

AFFIRMED.¹

HUFF, A.C.J, and WILLIAMS and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Fourteenth Judicial Circuit
Case No.: 2013-CP-27-327

Appellate Case No.: 2014-002612

Randy Horton.....Appellant

-VS-

Jasper County School District.....Respondent

APPELLANT'S PETITION FOR REHEARING

RECEIVED
MAY 16 2016
SC Court of Appeals

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Pursuant to Rule 221(a), Appellant Randy Horton petitions the Court of Appeals for a rehearing, respectfully submitting that the Court overlooked a critical lack of evidence in reaching its decision in this case.

I. This Court failed to recognize that there is no evidentiary support whatsoever for the lower court's decision.

The decision of whether to award attorney's fees under S.C. Code Ann. § 30-4-100(b) is left to the discretion of the lower court. *Kiriakides v. School Dist. Of Greenville County*, 382 S.C. 8, 675 S.E.2d 439 (2009). This gives the Court the power and privilege to *review the evidence* and make a decision as to what the lower court believes is fair and reasonable *based upon the evidence* before the lower court.

An abuse of discretion occurs when a lower court's ruling, if based upon factual conclusions, is without evidentiary support. *Bridges v. Wyandotte Worsted Co.*, 239 S. C. 37, 121 S. E. 2d 300 (1961); see also 16 S.C. Jur. Appeal and Error § 124. In addition, a ruling which reveals that the trial judge who was vested with discretion did not, in fact, exercise discretion is an error of law. *Fontaine v. Peitz*, 291 S. C. 536, 354 S. E. 2d 565 (1987); see also *CEL Products, LLC v. Rozelle*, 357 S.C. 125, 130, 591 S.E.2d 643, 645 (Ct. App. 2004) ("A failure to exercise discretion amounts to an abuse of that discretion."); *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997) ("A failure to exercise discretion amounts to an abuse of that discretion.").

In this case, the lower court reduced the hourly rate associated with Appellant's attorney's fees award from \$295 per hour to \$100 per hour.¹ The question this court was required to ask is: was there *any* evidentiary support in the record to justify the rate

¹ The lower court actually reduced Attorney Twombly's hourly rate from \$295 per hour to \$100 per hour and Attorney Campbell's hourly rate from \$250 per hour to \$100 per hour. For ease of reference, when Appellant references the reduction of Twombly's rate from \$295 per hour to \$100 per hour, he is also referring to the reduction of Campbell's rate from \$250 per hour to \$100 per hour.

reduction to \$100 per hour? Assuming there is evidence in the record to support reducing the hourly rate to \$100 per hour, the lower court's order could stand. However, if there is no evidentiary support in the record to support the lower court's reduction of the hourly rate to \$100 per hour, this court is required to overturn the lower court's decision.²

A review of each and every one of 122 pages that makes up the record on appeal reveals that there is not a single page, sentence, clause or word of evidence to support an hourly rate of \$100 per hour for Appellant's Counsel. The only evidence in the record was supplied by Appellant's Counsel, who submitted a fee affidavit and verified that the rate of \$295 per hour was a "customary" rate "for litigation cases in the Fourteenth Judicial Circuit" and that these were the hourly rates Appellant's counsel "charges to virtually all of its clients that pay by the hour." (R. pp. 105-106, ¶ 6(f); R. pp. 76-85). Respondent submitted no evidence regarding hourly rates. Respondent did not object that the rate of \$295 per hour was too high. Respondent did not argue that the hourly rate of \$295 per hour was outside of the norm. Respondent did not argue that Appellant's counsel were not talented enough to garner an hourly rate of \$295 per hour. Respondent did not argue that Appellant did not prevail in the litigation. Respondent did not submit any evidence or argument whatsoever regarding hourly rates, and there was no

² The lower court properly found that Appellant was entitled to an award of attorney fees under each of the factors listed in *Burton v. York County Sheriff's Department*, 358 S.C. 339 (Ct. App. 2004). In its order, the lower court found that the Affidavit Regarding Legal Fees and Costs "portrays commensurate time, nature, extent, and difficulty expended by [Horton's counsel] in procuring the FOIA requested documents and litigation related thereto," (R. pp. 20-21); that the legal fees relate to the preparation of the pleadings, preparation of a brief to the court relating to jurisdiction, standing, and the merits of the case, and review of over 2,000 pages of documents provided in seven separate submissions over the course of several months; (R. pp. 19-22) and that "[u]ltimately, my ruling produces beneficial results" for Appellant. (R. p. 21). The lower court awarded fees "for a total of 135.3 hours documented by J. Ashley Twombly, Esq. and Jennifer Campbell, Esq. for their work in compelling the document production at issue." (R. p. 21).

evidentiary support to justify setting the hourly rate for attorney's fees at \$100 per hour.³

Thus, a review of the lower court's orders establishes that no discretion was exercised relating to the hourly rate of Appellant's counsel, and moreover, that the record contains no evidentiary support whatsoever for the lower court's decision. "When a trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred." *Fontaine*, 291 S.C. at 538, 354 S.E.2d at 566.

Accordingly, for these reasons and as outlined in Appellant's Brief filed with this Court, the lower court's decision to reduce counsels' hourly rate to \$100 was an abuse of discretion and an error of law.

II. This Court failed to recognize that the lower court's Order has a chilling effect on protection of FOIA rights.

The lower court's reduction of the hourly rates for Appellant's counsel will have a chilling effect on the protection of FOIA rights. South Carolina Code Ann. § 30-4-100(b) was enacted to protect the rights granted by FOIA, and as the Supreme Court noted in *Society of Prof'l Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984), one reason to award attorney fees is to encourage agencies to comply with FOIA requests." *Id.* at 568, 324 S.E.2d at 316. See also *Sloan v. Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011) (honoring legislative intent of FOIA by awarding attorney fees serves as an impetus to comply with FOIA); *Samples*, 329 S.C. at 105, 495 S.E.2d at 213 (imposition of a sanction should serve to protect the rights provided by the Rules).

This was Appellant's Counsel first ever FOIA case, and if the lower court's order stands, Appellant's counsel will have to seriously consider getting involved in another

³ The lower court did not explain why it felt it was appropriate to reduce counsels' hourly rates or how it reached its decision as to which hourly rate to use. Appellant filed a Motion for Reconsideration asking that the lower court to either award attorney fees at the hourly rates set forth in the fee petition and affidavit, or explain why an hourly rate of \$100 was used. The lower court denied the motion with a Form 4 Order which included no justification for the lower court's decision. (R. pp. 76-85; R. pp. 2-18).

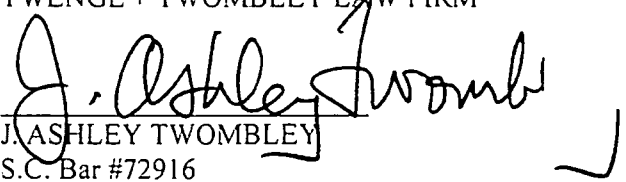
one, even if it is clear that FOIA rights have been violated. Blindly awarding attorney fees at a rate of \$100 per hour with no evidentiary support, which is a steep reduction from the customary hourly rate of \$295, will discourage litigants from bringing litigation under FOIA and discourage lawyers (Appellant's counsel) from taking FOIA cases, even when it is clear that rights under FOIA have been violated by state agencies. Litigants could be discouraged from bringing FOIA cases knowing that the court can, without *any* evidentiary support and without any explanation or justification, drastically reduce an attorney's *standard* hourly rates, potentially leaving the prevailing litigant personally responsible for the difference. Such a result is diametrically opposed to the legislature's intended effect of encouraging compliance with FOIA, and rewarding litigants and lawyers who prevail in enforcing FOIA rights. Ironically, the lower court's decision could place lawyers who defend state agencies pursuant to fee agreements that guarantee payment (even though the state agency is found to have violated FOIA and loses the FOIA litigation) stand to be compensated at a higher rate than the prevailing attorney who agreed to take on the representation on a contingency basis. Such a result is unfair, improper and at odds with FOIA attorney's fee jurisprudence.

CONCLUSION

For the reasons contained herein, the Petition for Rehearing should be granted and this Court should issue an Opinion reversing the lower court order reducing counsel's hourly rates to \$100 per hour. Moreover, because the only evidence in the record supports the rates requested by counsel, this court should award fees as requested in Appellant's Counsel Affidavit Regarding Legal Fees and Costs.

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May 16, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Fourteenth Judicial Circuit
Case No.: 2013-CP-27-327

Appellate Case No.: 2014-002612

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SC Court of Appeals

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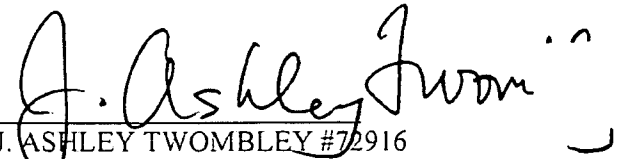
Jasper County School District.....Respondent

AFFIDAVIT OF SERVICE

The undersigned, J. Ashley Twombly of TWENGE + TWOMBLY LAW FIRM, Attorneys for Appellant, and that on the 16th day of May 2016, a true and accurate copy of the attached of Appellant's Petition for Rehearing was placed in an envelope with first class postage thereon prepaid through the United States Postal Service and mailed to the following:

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The South Carolina Court of Appeals

Randy Horton, Appellant,

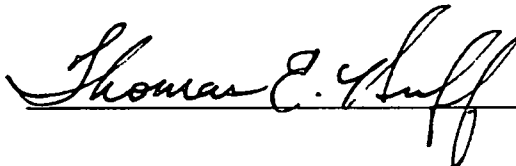
v.

Jasper County School District, Respondent.

Appellate Case No. 2014-002612

ORDER

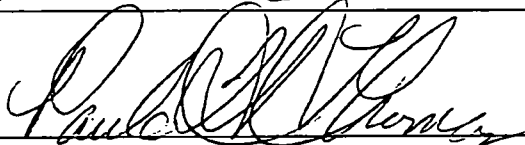
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

James Ashley Twombly, Esquire
Dwayne Traynor Mazyck, Esquire
Mary Allison Caudell, Esquire
The Honorable Carmen T. Mullen

FILED

June 23, 2016