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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Adele J. Pope,)
Plaintiff,)
v.)
Alan Wilson, in his capacity as Attorney)
General of South Carolina, and James)
Brown Legacy Trust, by Russell L.)
Bauknight, its Trustee,)
Defendants.)

IN THE COURT OF COMMON PLEAS AUG 19 2016
FOR THE FIFTH JUDICIAL CIRCUIT
SC Court of Appeals

Case No. 12-CP-40-350

ORDER GRANTING JAMES
BROWN LEGACY TRUST'S
MOTION TO DISMISS

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JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before the Court on the motion of Defendant James Brown Legacy Trust ("the Legacy Trust") for an order dismissing Plaintiff's complaint. The Plaintiff's complaint sought a declaratory judgment that Legacy Trust was a public body that was required to disclose certain documents under the Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. Having carefully considered all of the parties' arguments, the Court hereby GRANTS the Legacy Trust's Motion to Dismiss.

The Legacy Trust moves for an order dismissing this case pursuant to South Carolina Rule of Civil Procedure 12(b)(6) for failure to state facts sufficient to constitute a cause of action. The Legacy Trust asserts three grounds in support of its motion to dismiss: (1) the Legacy Trust is not subject to the Freedom of Information Act ("FOIA"); (2) the Legacy Trust no longer exists following *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013); and (3) the controversy is moot because Plaintiff is in possession of the documents requested by FOIA from the Legacy Trust.

As to its first ground, the Legacy Trust argues that it is not subject to the FOIA because it was created as a private trust and it is not a public body within the meaning of the act. In order

for an entity to be subject to the FOIA, it must fall within the definition of "public body." *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 400, 401 S.E.2d 161, 163 (1991). The FOIA's definition of "public body" does not explicitly cover a private trust. The definition does, however, extend to "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds." S.C. Code Ann. § 30-4-20(a) (2007). The Plaintiff argues that the Legacy Trust is subject to FOIA under this exception. *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991).

However, our Supreme Court has ruled that "the application of the FOIA beyond traditional governmental entities is limited to statutorily defined public bodies, which are only those entities supported by public funds." *Disabato v. S.C. Ass'n of School Adm'rs*, 404 S.C. 433, 454-55, 746 S.E.2d 329, 340 (2013) (citing *Weston*, 303 S.C. at 403, 401 S.E.2d at 164). As the Supreme Court has held, a private entity is only subject to the FOIA where it "receive[s] government funds *en masse*" or it is "generally supported by public funds." *Disabato*, 404 S.C. at 456, 746 S.E.2d at 341 (emphasis added).

Here, Plaintiff claims that some level of public funding has gone toward the creation of the Legacy Trust because of the Attorney General's involvement in the settlement agreement creating the Legacy Trust. Plaintiff has failed to allege facts necessary to quantify this alleged support and has failed to allege any facts showing how the Legacy Trust was generally supported by public funds, created to expend public funds, or has received government funds *en masse*. Absent these factual allegations, Plaintiff's complaint is insufficient to hold the Legacy Trust subject to FOIA, and dismissal on this first ground is warranted.

Second, the Legacy Trust argues that it no longer exists following the South Carolina Supreme Court's holding in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), and, as such,

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it cannot be subject to the FOIA. The Court agrees. The operation of the Legacy Trust and the entire compromise agreement creating the Legacy Trust were stayed pending the Supreme Court's review of the compromise agreement. In *Wilson v. Dallas*, the Supreme Court invalidated the compromise agreement that created the Legacy Trust. *Id.* at 450, 743 S.E.2d at 767-78. This Court finds that the Supreme Court's ruling that the compromise agreement could not replace James Brown's existing trusts by creating new trusts explicitly invalidated the existence of the Legacy Trust. *Wilson v. Dallas*, 403 S.C. at 446, 743 S.E.2d at 765. As such, the Legacy Trust does not exist and cannot be subject to FOIA.

Finally, the Legacy Trust argues that the controversy is moot because Plaintiff is in possession of the documents requested from the Legacy Trust. When the documents subject to FOIA are produced, no justiciable controversy remains. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Attorney General has stated in documents submitted to this Court that he has provided the only two documents that would be responsive to Plaintiff's FOIA request. Plaintiff does not contend otherwise. As such, the Court finds that no justiciable controversy remains and, accordingly, this case should be dismissed as moot.

The Court's dismissal of this action rests independently on each of Legacy Trust's three grounds for dismissal. Each ground is sufficient standing alone to grant Legacy Trust's motion to dismiss.

IT IS SO ORDERED.



DOYET A. EARLY, III
Circuit Judge, Second Judicial Circuit

Aiken, South Carolina
June ~~1~~⁸ 2016