

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SEP 14 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2014-002221

George S. Glassmeyer.....Respondent

v.

City of Columbia.....Appellant.

APPELLANT’S REPLY MEMORANDUM IN SUPPORT OF  
PETITION FOR REHEARING

On September 12, 2016, Respondent George S. Glassmeyer (“Glassmeyer”) filed a return to the Petition for Rehearing submitted by Appellant, City of Columbia (“City”) on September 1, 2016. In addition to the arguments advanced in the City’s memoranda on appeal and in support of its petition, for the following reasons, Glassmeyer’s return confirms the need for rehearing in this matter.

LEGAL ARGUMENT

1. **Attorney fees are available under the Freedom of Information Act (“FOIA”) only in the event that the requesting party prevails.**

By footnote, Glassmeyer contends that the attorney fee award by the trial court is “no longer disputed” even though the City continues to appeal the decision on the merits. (Respondent’s Return to Petition for Rehearing p.1, fn. 1) This curious assertion ignores the

fundamental principal that any attorney fee award depends on the outcome of this appeal. Argument that the City must pay attorney fees even if the decision of the lower court is reversed has no basis in logic or precedent. S.C. Code Ann. § 30-4-100(b) (“If a person or entity seeking such relief **prevails**, he or it may be awarded reasonable attorney fees and other costs of litigation . . .”) (emphasis added); see also, Sloan v. South Carolina Dept. of Revenue, 409 S.C. 551, 762 S.E.2d 687 (2014) (discussing “prevailing party”) Having preserved objections to Glassmeyer’s FOIA request, the issue of attorney fees remains open for determination.

**2. The argument on return and the decisions challenged by the City improperly expand Police Department procedures regarding investigation of citizen complaints.**

As pointed out to the trial court and this Court, there exist clear guidelines for presenting complaints regarding police activity. These published guidelines direct citizens to various alternatives available through the City’s Police Department. Throughout this proceeding, Glassmeyer has argued that the City “had an express obligation to investigate *any* complaint it received.” (Respondent’s Return to Petition for Rehearing p. 4, *citing* R. p. 72 at ¶ 9; p. 100 at Sect. 6, Chap. 2, ¶ 1.0 (“Directive”)) The directives relied upon in support of this position, however, are confined to reports presented to “City of Columbia Police Department.” (R. pp. 79-103)

Nothing in the Police Department Manual offered by Glassmeyer or contained elsewhere in the record compels individual City employees or elected officials to forward for police investigation communications received from third parties, whether verbal, written or electronic. Accordingly, reliance upon police guidelines as a basis for compelling disclosure of the communications in this matter constitutes error requiring reconsideration and rehearing.


## CONCLUSION

For all the reasons presented to the trial court, on appeal, and in support of rehearing, the unpublished *per curiam* opinion issued on August 24, 2016 dangerously expands the scope of FOIA to compel disclosure of unsolicited allegations regarding public employees regardless of the nature, source or recipient. It is respectfully submitted that FOIA was not intended by the General Assembly to provide disgruntled individuals a public forum to voice anonymous opinions or accusations.

Individuals genuinely concerned about the activities of the City's former police chief, including Glassmeyer, had multiple avenues available to request investigation of his conduct. None of these avenues were undertaken. Additionally, there is no evidence that the City prevented any individual from making public complaints about its officers, agents or employees. In this context, the City acted appropriately and in keeping with the published decisions in this State concerning balancing private and public interests. The City therefore requests that this Court reconsider its opinion and grant the petition for rehearing.

NICKLES LAW FIRM, LLC

By: \_\_\_\_\_

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

*Attorneys for Appellant*

September 14, 2016  
Columbia, South Carolina

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing Appellant's Reply Memorandum in Support of Petition for Rehearing by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

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

This 14<sup>th</sup> day of September, 2016.

NICKLES LAW FIRM, LLC

By: 

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

*Attorneys for Appellant*

NICKLES LAW FIRM, LLC

- ATTORNEYS AT LAW -

1122 Lady Street, Suite 610  
Columbia, South Carolina 29201

W. Allen Nickles, III

Telephone: (803) 779-8080  
Facsimile: (803) 256-1816  
Email: wanickles@nickleslaw.com

September 14, 2016

**Via Hand Delivery**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211


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**RE: George Glassmeyer v. City of Columbia(2)**  
**Appellate Case No.: 2014-002221**

Dear Ms. Kitchings:

Enclosed for filing, please find Appellant's Reply Memorandum in Support of Motion for Rehearing and Certificate of Service in the above matter. Please file the required number of copies and return the extra, clocked-in copies in the self-addressed, stamped envelope provided.

Sincerely,

  
W. Allen Nickles, III

WAN/pfb  
Enclosures  
cc: Kirby D. Shealy, Esquire  
Lyndey Ritz Zwingelberg, Esquire  
File #13-213