

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

RECEIVED

OCT 04 2016

S.C. SUPREME COURT

Unpublished Opinion No. 2016-UP-404
(S.C. Ct. App. Filed August 24, 2016)

George S. Glassmeyer.....Respondent,

v.

City of Columbia.....Petitioner.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2014-002221

RECEIVED

MAR 16 2015

SC Court of Appeals

George S. Glassmeyer.....Respondent

v.

City of Columbia.....Appellant.

RECORD ON APPEAL

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003982

George S Glassmeyer

City Of Columbia

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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:

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
		\$
		\$
		\$

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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 23 July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Kirby Darr Shealy III

W. Allen Nickles III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Janette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

vs.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-03982

ORDER

RICHLAND COUNTY
FILED
2014 JUL 23 AM 10:20
JEANETTE W. McBRIDE
C.C.P. & C.S.

This matter came before the Court on February 10, 2014 at a hearing on cross motions for Summary Judgment and Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees. Present at the hearing were Kirby Shealy, Esquire, counsel for Plaintiff; and Allen Nickles, Esquire, counsel for Defendant. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, including documentation provided by Defendant for an *in camera* review, Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendant's Motion for Summary Judgment is **DENIED**. Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees is **GRANTED**.

FACTS

This case is a declaratory judgment action arising under the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Plaintiff submitted a FOIA request on April 3, 2013 to the City of Columbia requesting to inspect, among other items, "copies of any and all documents including, but not limited to statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott" and "copies of any and all documents relating to any and all disciplinary actions imposed upon police chief Randy Scott." In response, on or about April 5, 2013 and April 19, 2013, Defendant provided some, but not all, of the requested documents. Specifically, Defendant's FOIA response of April 19, 2013 identified the following materials withheld:

1. Anonymous emails referring to Scott's alleged personal conduct;
2. Unsolicited, unverified complaints referring to Scott's alleged personal conduct; and
3. Third-party, unverified allegations of misconduct by Scott.

and
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Plaintiff initiated this case on July 10, 2013 by filing a Summons and Complaint. Defendant answered on July 16, 2013. Defendant filed its Motion for Summary Judgment on October 17, 2013. Plaintiff filed his Motion for Summary Judgment and Motion to Strike Defendant's Request for Attorneys' Fees on October 18, 2013. At the hearing, Defendant provided the withheld documents to the Court for *in camera* review.

STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRPC. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

DISCUSSION

I. Motions for Summary Judgment

Defendant claims that the information withheld from disclosure does not fall within FOIA's requirements for disclosure and does not deprive Plaintiff access to information regarding the activities of public officials pursuant to S.C. Code Ann. § 30-4-15. Defendant states the material requested by Plaintiff also includes personal information exempt from disclosure under S.C. Code Ann. § 30-4-40(a)(2). Defendant does not believe that Plaintiff has articulated a public interest to compel disclosure of information regarding the alleged personal conduct of Scott, which Defendant claims is the Plaintiff's burden to prove.

Plaintiff claims that the requested information must be disclosed because Plaintiff believes that the City violated its own City of Columbia Police Department ("Department") Policies and Directives Manual ("Manual") by failing to investigate the allegations set forth in the various complaints against Scott, which would be a matter of public interest. Plaintiff argues that the information withheld cannot be considered private to exempt it from disclosure. In the alternative, Plaintiff argues that the public interest in whether the Department investigated any allegations outweighs any right to privacy Scott may have in the information.

The purpose of FOIA is clearly enunciated in the South Carolina Code:

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. "The essential purpose of the FOIA is to protect the public from secret government activity." *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219, 221 (1991).

Section 30-4-30(a) states: "Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access." Public records are defined as

all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users... are not considered to be made open to the public under the provisions of this act...

S.C. Code Ann. § 30-4-20(c).

To legally withhold public records under the FOIA, Defendant must prove that the information falls into one of the fifteen exemption categories in Section 30-4-40. The presumption is in favor of disclosure, and the government has the burden of proving that an exemption applies. *Evening Post Pub. Co. v. Berkeley Cnty. School Dist.*, 392 S.C. 76, 708 S.E.2d 745 (2011). FOIA exemptions are construed narrowly to conform to the public purposes of the Act. *Evening Post Pub. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005). Whether an exemption applies is a case-by-case determination. *City of Columbia v. Am. Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996).

Defendants specifically claim Section 30-4-40(a)(2), the personal privacy exemption, applies because the information Plaintiff seeks is of a private nature as it relates to alleged off-duty conduct of Scott. The personal privacy exemption relieves the government from disclosing

Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in

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applications for business licenses and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

After a thorough review of the documents provided to the Court for *in camera* review, the Court first concludes that the documents provided fall within the broad definition of public records. Additionally, none of the exemption categories set forth in S.C. Code Ann. § 30-4-40 apply. While complaints by third parties of improper actions against Scott may be of a personal nature, public disclosure of the complaints would not constitute an unreasonable invasion of personal privacy. Such complaints are mere representations or allegations made by others, whether true or untrue, regarding conduct that may constitute violations of the law or Department policy by Department staff. Some of the materials submitted for *in camera* review are copies of records from family court proceedings. Generally, family court proceedings are available to the public unless sealed. "Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and the state constitution." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006). Therefore, there can be no level of privacy expected in those specific documents.

Moreover, even if the documents were considered "personal" or "private" such that such the information was exempt from disclosure, the South Carolina Supreme Court has instructed that where there is great public interest, disclosure should be made even if the information is of a personal nature. See *Society of Professional Journalists v. Sexton*, 282 S.C. 563, 324 S.E.2d 313 (1984). Both parties cite the case of *Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), to support their argument regarding whether this type of personal information must be disclosed. In *Burton*, the York County Sheriff's Department refused to provide information to the Plaintiff regarding a complaint of alleged illegal and unethical conduct, including falsification of investigative reports, possession of stolen property, abuse of authority, and sexual activity in patrol cars, of four deputy sheriffs who were suspended without pay. *Burton*, 358 S.C. at 344, 594 S.E.2d at 891. The Sheriff's Department claimed some of the information was exempt from disclosure under the personal privacy exemption of

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the FOIA because the information was of a personal nature and disclosing it would constitute an unreasonable invasion of personal privacy.

The South Carolina Court of Appeals held that the privacy exemption did not apply. The Court held that in analyzing whether information is exempt from disclosure based upon privacy, the trial court "must resort to general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual privacy on the one hand against the interest of the public's need to know on the other." *Id.* at 352, 594 S.E.2d at 895. The Court noted that "one of the primary limitations placed on the right of privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest." *Id.* (citations omitted). "Indeed, the Court has held that, as a matter of law, if a person, whether willingly or not, becomes an actor in an event of public or general interest, then the publication of his connection with such an occurrence is not an invasion of his right to privacy." *Id.* (internal quotations omitted). The Court concluded that "the manner in which the employees of the Sheriff's Department prosecute their duties [is] a large and vital public interest that outweighs their desire to remain out of the public eye...Burton and the newspaper did not seek information regarding the off-duty sexual activities of the deputies involved. Rather, the access to information they sought...was focused on the performance of public duties by the Sheriff and his deputies and the response of the Department to allegations of misconduct by the deputies." *Id.*

Defendant in the present case argues that because the Court of Appeals in *Burton* specifically stated that the information to be disclosed did not regard the "off-duty sexual activities of the deputies," the Court of Appeals implied that information regarding the "off-duty sexual activities" of officers should not be disclosed. Therefore, the information requested in the present case is exempt from disclosure because it pertains to alleged off-duty sexual activities of Scott. Plaintiff argues that he does not seek the information because it is related to off-duty sexual activities of Scott, but rather because it relates to whether the Department followed its policies and investigated complaints, which is a matter of public interest. Applying the balancing test required by *Burton* to the present case leads to the conclusion that Plaintiff is entitled, as a member of the public, to inspection of the requested complaints. Just as the plaintiff in *Burton*, Plaintiff seeks information relating to complaints against Scott and the Department's response to complaints. *See Burton*, 358 S.C. at 344, 594 S.E.2d at 891 (requesting records relating to a citizen complaint and the Sheriff's Department's response to the

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complaint and "reports of all complaints or allegations of illegal conduct"). Both in *Burton* and the present case, the information requested was not targeted to sexual activity but general complaints against officers and what the police department did when it received those complaints. Plaintiff only seeks information regarding complaints of "alleged wrongdoing" and "disciplinary action." *FOIA Request of Glassmeyer*, April 3, 2013. The court in *Burton* found that the "manner in which the employees of the Sheriff's Department prosecute their duties to be a large and vital public interest that outweighs their desire to remain out of the public eye." Just as in *Burton*, here, the information sought is "focused on the performance of public duties by the Sheriff...and the response of the Department to allegations of misconduct by the deputies." *Burton*, 358 S.C. at 352, 594 S.E.2d at 895.

Specifically, although the reasons were not given in the Complaint, Plaintiff claimed at the hearing and in its memorandum that the City violated its Manual by failing to investigate the allegations set forth in the various complaints against Scott. Plaintiff claims that the City stated in its April 5 letter to Plaintiff that there are no corresponding internal affairs investigations or disciplinary actions taken against Scott. Plaintiff states that the Department's Manual mandates the investigation of all citizen complaints, "including anonymous" complaints. Plaintiff explains that under the Manual, all sworn officers of the Department are required to comply with both the employee code of ethics and the law enforcement code of ethics, both of which address personal conduct. Further, Section 2, Chap. 6 of the Internal Affairs Policy in the Manual sets forth a requirement for the Department to conduct "an investigation of all citizen complaints, including anonymous complaints." The public has an interest in ensuring that the Department investigated the citizen complaints it admittedly received, whether anonymous emails referring to Scott's alleged personal conduct, unsolicited and unverified complaints referring to Scott's alleged personal conduct, or third-party unverified allegations of misconduct by Scott. The disparity between Defendant's receipt of various complaints against Scott and its failure to investigate the allegations despite Department policy requiring an investigation militates in favor of the public's interest in the allegations and the reason why Defendant chose not to investigate the allegations. If the complaints against Scott allege that he violated the law or used his authority to perform activities which constitute "conduct unbecoming" an officer, the public has a right to know why the Department failed to investigate the allegations or discipline Scott. Therefore, the withheld information should be disclosed.

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Defendant argues in its Motion for Summary Judgment that Fourth Circuit and United States Supreme Court case law interpreting the United States Freedom of Information Act ("US FOIA") and its personal privacy exemption state that once a privacy interest is implicated, the burden should shift to the requester to show a significant public interest in the material. The South Carolina Supreme Court has commented that federal case law interpreting the US FOIA is not binding on state courts interpreting the South Carolina FOIA. *Newberry Pub. Co., Inc. v. Newberry County Comm'n on Alcohol & Drug Abuse*, 308 S.C. 352, 354 n. 4, 417 S.E.2d 870, 872 n. 4 (1992). South Carolina case law clearly holds that the burden is on the government to prove that an exemption applies. *Evening Post Pub. Co., supra*, 392 S.C. 76, 708 S.E.2d 745 (2011). Defendant's application of a Fourth Circuit and United States Supreme Court "burden shifting" analysis with regard to the personal privacy exemption in the federal statute is inconsistent with binding South Carolina precedent interpreting South Carolina's FOIA.

Defendant also argues that compelling public disclosure of anonymous unsubstantiated complaints would allow parties the opportunity to libel and impugn public employees without any fear of recourse, and essentially anonymous complaints could be "self-published." Defendant asserts that sending an anonymous complaint concerning alleged conduct of a public servant does not make that complaint a matter of legitimate public interest of inquiry and the FOIA is not a legitimate vehicle for making anonymous accusations public. Defendant may be correct, but the focus in this case is not on the accusations themselves but the Department's knowledge of the complaints and its response upon receipt. The complaints filed against Scott are merely representations or allegations made by others whether true or untrue. This case focuses not on the content of these allegations, but what steps the Department took upon receipt of the information pursuant to its policies. These documents, and the information they contain, could be appropriately dismissed if they were meritless after an investigation by the Department pursuant to its policies. Therefore, pursuant to the analysis employed in *Burton*, even if Plaintiff's request appeared to implicate private or personal information regarding Scott, there exists a significant public interest regarding Scott's activities and the Department's response that substantially outweighs his right to privacy. Defendant must disclose the information withheld.

II. Motion to Strike Attorney's Fees

In its Answer, Defendant prays for attorneys' fees. In response, Plaintiff filed a Motion to Strike Defendant's Request for Attorneys' Fees on October 18, 2013. Defendant is not

entitled to attorneys' fees because it is not the "person or entity seeking such relief" by bringing an action to enforce the provisions of the FOIA. *See* S.C. Code Ann. § 30-4-100(b); *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 288-89, 580 S.E.2d 163, 170 (Ct. App. 2003). Therefore, Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees is **GRANTED**.

ORDER

For the reasons stated above, it is therefore **ORDERED** that Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendant's Motion for Summary Judgment is **DENIED**. Defendant must provide to Plaintiff the information it withheld within thirty days of receipt of this Order. Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees is **GRANTED**.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
July 32, 2014

ad
#8

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003982

George S Glassmeyer

City Of Columbia

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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 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:

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
		\$
		\$
		\$

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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 18 September 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Kirby Darr Shealy III

W. Allen Nickles III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

v.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-40-03982

ORDER

RICHLAND COUNTY
FILED
2014 SEP 18 PM 1:05
JEANETTE W. MORRIS
C.C.P. & G.S.

This matter comes before the Court on a Motion to Alter or Amend. A hearing on cross motions for Summary Judgment and Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees was held on February 10, 2014. Thereafter, an Order was filed on July 23, 2014 granting Plaintiff's Motion for Summary Judgment, denying Defendant's Motion for Summary Judgment, and granting Plaintiff's Motion to Strike Defendant's Request for Attorney Fees. Defendant filed a Motion to Alter or Amend ("Motion") on July 29, 2014, and a copy was received in this office on July 30, 2014.

Defendant contends that the Court should reconsider its July 23 Order because the analysis was flawed as to whether there is great public interest in the documents withheld. In the July 23 Order, the Court noted that the City of Columbia Police Department's ("Department") Internal Affairs policy ("policy") provides that anonymous complaints must be investigated.¹ Defendant argues in its Motion that the policy also notes, and the Court did not consider, that there is a specific procedure that must be followed when a citizen wishes to make a complaint. Defendant attached to its Motion a printout from the Internet explaining the procedure, a complaint form, and the citizen complaint process instructions. Defendant argues that because the withheld documents are complaints that did not follow this procedure for submission, the Department was under no obligation to investigate them, and therefore the Court's argument that there is a public interest in knowing why they were not investigated pursuant to the policy is flawed.

¹ This section was inadvertently identified as "Section 2, Chap. 6 of the Internal Affairs Policy" in the July 23 Order. It is actually Section 6, Chap. 2 of the policy.

In its July 23 Order, this Court granted Plaintiff's Motion for Summary Judgment for two reasons. First, the Court held that the withheld documents were not considered to contain information of a personal nature such that public disclosure would constitute an unreasonable invasion of personal privacy as required for exemption in S.C. Code Ann. § 30-4-40(a)(2). Second, the Court held that even if the documents were considered "personal" or "private" to be exempt from disclosure, the South Carolina Supreme Court has instructed that where there is great public interest, disclosure should be made even if the information is of a personal nature. Defendant, in its Motion, did not challenge the Court's ruling that the documents were not exempt from disclosure but only challenged the alternative ruling that great public interest required the disclosure. This Court reaffirms that holding.

Defendant for the first time argues that because the requested documents refer to complaints that were not filed by the complainants in accordance with the Department's procedures, the Department had no corresponding obligation to investigate those complaints. As a result, Defendant claims there were no complaints filed that prompted the Department to act.

"A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). The purpose behind Rule 59(e) is to allow a party to correct misapplications of law or fact or to preserve legal issues for appeal. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). Where a party does not raise an issue to the trial court prior to the Court's order or judgment, the party has waived its right to make that argument. Defendant failed to argue previously that it is justified in failing to investigate complaints that do not conform to the procedures outlined in the policy.

Defendant claims it could not have foreseen the Court's analysis and therefore should be allowed to respond through its Motion. However, the arguments Plaintiff presented regarding the public's interest in the Department's failure to investigate complaints were contained in Plaintiff's Motion for Summary Judgment, filed October 18, 2013, and Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment, filed November 26, 2013. The Court did not decide these issues *sua sponte*. Plaintiff's memorandum clearly states that it "seeks only to determine why Defendant failed to take any responsive action to the complaints at issue." Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment at 7 (Nov. 26, 2013). Defendant knew that this was an issue raised by Plaintiff well before the

February 10, 2014 hearing. Defendant failed to bring to the Court's attention any improper filing of a complaint.

While Defendant argues that only properly submitted complaints will be investigated, the policy upon which Defendant relied clearly states its directive is that "all citizen complaints, including anonymous complaints" will be investigated. The policy allows a citizen to make a complaint or an inquiry about a member of the Department. A complaint or inquiry may be made by mail, telephone, in person, or online. Regardless of the method of making a complaint or inquiry, the policy provides that it should be referred to the appropriate personnel. "This action will permit the complainant to be interviewed and appropriate action taken or initiated." ¶4.1, Section 6, Chapter 2 of the Internal Affairs Policy. The policy also states that "upon receipt of information constituting a complaint or inquiry against an employee of the Department, the Citizen Complaint Form will be completed and distributed" to the appropriate personnel listed. ¶4.0, Section 6, Chapter 2 of the Internal Affairs Policy. If the Department received information oral or written that raises a complaint or inquiry regarding a member of the Department, further action is required by the Department. Plaintiff filed this lawsuit seeking documents that might raise questions about whether the Department followed its policies and procedures. The documents in the Department's possession relate to a complaint or inquiry about a member of the Department. These documents are not exempt from disclosure as previously discussed.

Accordingly, this Court hereby **DENIES** Defendant's Motion to Alter or Amend. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

September 17, 2014
Columbia, South Carolina


#3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

v.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NUMBER: 2013-CP-40-

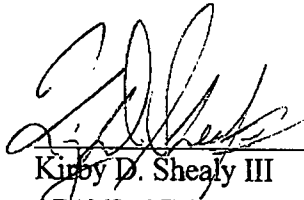
3982

SUMMONS

RICHLAND COUNTY
FILED
2013 JUL 10 AM 9:46
JEANETTE W. HEDDIE
C.C.P. & C.S.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE SUMMONED and required to Answer the Complaint in this action, a copy of which has been served upon you, and to serve a copy of your Answer to the Complaint on the person signing below at his office at 1501 Main Street, Fifth Floor, Columbia, South Carolina, 29201 or Post Office Box 2285, Columbia, South Carolina, 29202, within thirty (30) days after service, not including the day of such service; and if you fail to answer the Complaint within thirty (30) days, judgment by default will be rendered against you for the relief demanded in the Complaint.



Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
Telephone: (803) 254-4190
E-Mail: kirby.shealy@arlaw.com

Attorney for Plaintiff

July 9, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

v.

City of Columbia,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

C/A NUMBER: 2013-CP-40- 3982

COMPLAINT
(Non-Jury)

RICHLAND COUNTY
FILED
2013 JUL 10 AM 9:41
JEANETTE W. McBRIDE
C.C.P. & C.S.

Plaintiff George S. Glassmeyer, by and through his undersigned attorneys, complaining of the above-named Defendant, alleges:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the County of Richland, State of South Carolina.

2. Defendant City of Columbia is municipal body politic organized and existing pursuant to the law of South Carolina that is located within the County of Richland, State of South Carolina.

3. This Court has subject matter jurisdiction over this action pursuant to S.C. Code Ann. §§ 15-53-20 (Rev. ed. 2005) and 30-4-100 (Rev. ed. 2007).

4. Venue is proper in Richland County pursuant to S.C. Code Ann. § 15-7-20 (Rev. ed. 2005) and/or 15-7-30 (Supp. 2012).

STATEMENT OF FACTS

5. On or about April 3, 2013, Plaintiff submitted a request to Defendant pursuant to the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 *et seq.*, seeking documents related to former City of Columbia Police Chief Randy Scott. See **Exhibit A**.

6. Plaintiff requested the following documents related to former Police Chief Scott:

- a. "A copy of the written request for a leave of absence submitted on or about April 2, 2013 by police chief Scott";
- b. "Copies of any and all documents including, but not limited to, statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott"; and
- c. "Copies of any and all documents relating to any and all disciplinary actions imposed upon police chief Randy Scott."

See Exhibit A.

7. Within fifteen days of Plaintiff's FOIA request, on April 5, 2013, Defendant furnished a CD including some responsive documents to Plaintiff. See Exhibit B. Defendant redacted alleged personal information from Randy Scott's personnel file pursuant to S.C. Code Ann. § 30-4-30(c). *Id.* Defendant stated that there were no responsive documents to several requests, including: (1) contract of employment; (2) internal affairs investigation(s); and (3) disciplinary action(s). *Id.*

8. On or about April 19, 2013, Defendant supplemented its responsive documents to Plaintiff by letter. See Exhibit C. Although Defendant produced a significant number of responsive documents, Defendant refused to produce certain requested documents, including:

1. Anonymous emails referring to Chief Scott's alleged personal conduct;
2. Unsolicited, unverified complaints referring to Chief Scott's alleged personal conduct; and
3. Third party, unverified allegations of misconduct by Chief Scott.

See Exhibit C.

9. Defendant alleged that the reasons for not producing these documents included that the documents did "not qualify as public documents relating to the performance of public

officials” and/or the requested documents contained “information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy.” *Id.* (citing S.C. Code Ann. §§ 30-4-15 and 30-4-40(2)).

FOR A FIRST CAUSE OF ACTION

10. The allegations contained in the preceding paragraphs are hereby re-alleged as if repeated herein verbatim.

11. Defendant is a “public body” as that term is defined by S.C. Code Ann. § 30-4-20(a) (Rev. ed. 2007) and is subject to FOIA’s requirements.

12. Defendant wrongfully withheld documents relating to complaints alleged against former Police Chief Randy Scott from public disclosure in violation of S.C. Code Ann. § 30-4-30(a) and is not relying on valid reasons for redaction under S.C. Code Ann. § 30-4-40.

13. There exists a real and substantial controversy between the parties as to whether the information requested by Plaintiff was rightfully withheld by Defendant.

14. Plaintiff is informed and believes that he is entitled to a declaratory judgment pursuant to S.C. Code Ann. §§ 15-53-20 and 30-4-100 declaring Defendant to be in violation of FOIA.

15. Plaintiff is further informed and believes that he is entitled to an injunction prohibiting Defendant from further withholding the information sought by Plaintiff pursuant to S.C. Code Ann. § 30-4-100 (Rev. ed. 2007), given that a violation of FOIA is deemed to be an irreparable injury for which no adequate remedy at law exists.

16. Plaintiff is further informed and believes that he is entitled to be awarded his attorney’s fees, as well as the costs incurred in the prosecution of this action, pursuant to S.C. Code Ann. § 30-4-100 (Rev. ed. 2007).

WHEREFORE, the Plaintiff prays that this Court:

A. Issue a judgment declaring that Defendant has unlawfully failed to respond to Plaintiff's April 3, 2013 FOIA request;

B. Enjoin the withholding of documents or information that may be responsive to Plaintiff's April 3, 2013 FOIA request;

C. Award Plaintiff his costs and reasonable attorneys' fees in this action; and

D. Grant such other and further relief as this Court may deem just and proper.

Plaintiff seeks a speedy hearing of this matter pursuant to Rule 57, SCRCP.

Respectfully submitted,



Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, Fifth Floor
Post Office Box 2285 (29202)
Columbia, South Carolina 29201
Telephone: (803) 254-4190
Facsimile: (803) 779-4749
kirby.shealy@arlaw.com
Attorney for Plaintiff

July 9, 2013.

ATTN:
KIRBY STALY

2 PAGES

RECEIVED
APR 23 2013
3004-00001

FY#

For Office Use

(FILING FORM)

FREEDOM OF INFORMATION ACT REQUESTTO: CITY OF COLUMBIA
(PLEASE PRINT)NAME: George S. Glassmeyer
ADDRESS: 100 Denbeck Road, Irmo, SC 29063

E-mail address:

PHONE NUMBER(S) (DAYTIME):

I REQUEST THE FOLLOWING INFORMATION UNDER THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT. (PLEASE BE SPECIFIC).

1. A copy of the written request for a leave of absence submitted on or about April 2, 2013 by police chief Randy Scott.
2. Copies of any and all documents including, but not limited to, statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott.
3. Copies of any and all documents relating to any and all disciplinary action imposed upon police chief Randy Scott.

If no documents whatsoever exist that relate in any way to any of the above requests, please so state in writing.

INDIVIDUALS FILING FOIA REQUESTS ARE ASKED TO USE THE CITY'S FOIA REQUEST FORM OR SUBMIT A LETTER. ALL REQUESTS ARE TO BE SIGNED. REQUESTS ARE TO BE FAXED (803-343-8719), MAILED (CITY OF COLUMBIA ATTN: PUBLIC RELATIONS DEPT. PO BOX 147 COLUMBIA, SC 29217) OR HAND-DELIVERED (1737 MAIN STREET (CITY HALL-CORNER OF MAIN AND LAUREL STREETS). HAND-DELIVERED REQUEST SHOULD BE LEFT WITH CSO (SECURITY OFFICER) LOCATED IN THE FRONT ENTRANCE (MAIN & LAUREL STREETS) OF CITY HALL.

A MINIMUM OF .25 CENT PER PAGE COPY CHARGE, \$1.00 PER CD/DVD AND \$10.00 PER HOUR RESEARCH AND RETRIEVAL FEE MAY APPLY. DOCUMENTS MAY BE FURNISHED WHEN APPROPRIATE WITHOUT CHARGE OR AT A REDUCED CHARGE WHERE THE AGENCY DETERMINES THAT WAIVER OR REDUCTION OF THE FEE IS IN THE PUBLIC INTEREST BECAUSE THE INFORMATION CAN BE CONSIDERED AS PRIMARILY BENEFITTING THE GENERAL PUBLIC.

THE PUBLIC BODY MAY ESTABLISH AND COLLECT FEES NOT TO EXCEED THE ACTUAL COST OF SEARCHING FOR MAKING COPIES OF THE RECORD.

A PRE-PAID DEPOSIT MAY BE REQUIRED BEFORE SEARCHING FOR OR MAKING COPIES OF THE RECORDS.

SIGNATURE

04-03-13





We Are Columbia

1737 Main Street, Columbia, 29217 • Phone: 803-545-3020 • Fax: 803-343-8719

April 5, 2013

Re: Freedom of Information Act Request

The City of Columbia has received numerous Freedom of Information requests regarding Chief Randy Scott's personal leave of absence and other matters related to Chief Randy Scott.

The City is endeavoring to provide documents that are available and subject to disclosure.

Provided herewith is the following:

- 1) Personnel file (redacted) pursuant to SC Code 30 - 4 - 30 (c) to exclude:

Social security numbers

Personal home street number/name

Personal home phone number/cell numbers/email

Beneficiary information

Dependent information

Addresses and telephone numbers of references on employment application

Driver's license number

Copies of social security card

Copies of driver's license

Deduction amounts on email dated 1/29/13

Credit card transaction number on criminal records check

- 2) Request for personal leave of absence dated April 1, 2013

- 3) Letter of appointment dated April 2, 2013

Review of requests continues. Additional documents will be provided as appropriate and available.



ColumbiaSC.net



We Are Columbia

1737 Main Street, Columbia, 29217 • Phone: 803-545-3020 • Fax: 803-343-8719

Requests for which there are no documents include:

Contract of employment (as with all departments heads the police chief does not have a contract)

Internal affairs investigation(s)

Disciplinary action(s)

Respectfully,
City of Columbia
Public Relations Department



April 19, 2013

To: FOIA Requesters
Re: FOIA Responses

Dear Sir/Madam:

The City of Columbia has received numerous requests pursuant to the South Carolina Freedom of Information Act in reference to public records maintained with regard to Police Chief Randy Scott. In addition to documents provided on Friday, April 5, 2013, the following documents are now made available in response to requests received prior to April 10, 2013:

1. Applications for the position of Police Chief - October 2010 and January 2013.

Chief Scott was hired as Interim Chief of Police on October 4, 2010. No additional applications were received. Following Chief Scott's retirement, one other person applied for the position of Police Chief. All three applications are provided. (1 for 2010 and 2 for 2013)

Redactions from these materials are as follows: personal street names, personal phone numbers, personal email addresses, personal driver's license numbers, addresses and phone numbers of personal references.

2. Payroll time sheets for Chief Scott for the period December 26, 2011 through March 31, 2013.
3. Annual, sick and holiday leave history for Chief Scott as of April 8, 2013.

Upon retirement, Chief Scott was paid for 1/5 of his unused sick leave and all unused annual leave in keeping with City policy. All City department heads receive 120 hours annual and 120 sick leave upon hire. Thereafter, department heads accrue and use leave in the same fashion as other employees. As of April 1, 2013, Chief Scott had 101.33 hours of annual leave and 136 hours of sick leave.



4. Retirement purchase credit on behalf of Chief Scott. Home street address redacted. This purchase was intended to offset loss of future benefits, including health insurance following retirement, lost when Chief Scott resigned from the Richland County Sheriff's Department.
5. Vehicle maintenance records for Chief Scott for the period September 2011 to April 2013. These records show one accident in April 2012 resulting from debris on the roadway and one accident in June 2012 involving a second, parked vehicle in the Justice Square parking lot. In keeping with policy, Chief Scott voluntarily submitted to an alcohol/drug test following the June 2012 accident. Independent test results (provided) were negative.
6. 911 reports for 1601 Main Street, Apt. 304 for the period October 2012 - April 2013. See attached documents. Recordings are unavailable as the 90 day retention period has expired.
7. 911 reports for 135 Heyward Higgins Road, Lugoff, SC for the period January 1, 2009 - December 31, 2010. See attached documents. Recordings are unavailable as the 90 day retention period has expired.
8. Requested items that do not qualify as public documents relating to the performance of public officials or containing information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy. S.C. Code Ann. §§ 30-4-15 and 40(2):

Anonymous emails referring to Chief Scott's alleged personal conduct.

Unsolicited, unverified complaints referring to Chief Scott's alleged personal conduct.

Third party, unverified allegations of misconduct by Chief Scott.

Additional responses to requests will be provided as appropriate.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
George S. Glassmeyer,)
Plaintiff,)
vs.)
City of Columbia,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT

Civil Action File No.: 2013-CP-40-3982

ANSWER OF DEFENDANT
(Non-Jury)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2013 JUL 16 PM 3:53

RICHLAND COUNTY
FILED

FOR A FIRST DEFENSE
(General Denial)

I. Defendant City of Columbia ("City") responds to the allegations of the Complaint in the following fashion. Each and every allegation of the Complaint not specifically admitted or qualified is hereby denied, and strict proof thereof is demanded.

PARTIES, JURISDICTION AND VENUE

1. Admitted upon information and belief.
2. Admitted.
3. The allegations of this Paragraph are legal in nature and do not require a response.
Defendant does not challenge jurisdiction.

4. The allegations of this Paragraph are legal in nature and do not require a response.
Defendant does not challenge venue.

STATEMENT OF FACTS

5. In response to the allegations of this Paragraph, Defendant craves reference to the Freedom of Information Act request provided as Exhibit A to the Complaint.

6. In response to the allegations of this Paragraph, Defendant craves reference to the Freedom of Information Act request provided as Exhibit A to the Complaint.

7. In response to the allegations of this Paragraph, Defendant craves reference to the material provided as Exhibit B to the Complaint.

8. In response to the allegations of this Paragraph, Defendant craves reference to the material provided as Exhibit C to the Complaint.

9. In response to the allegations of this Paragraph, Defendant craves reference to the material provided as Exhibit C to the Complaint.

FIRST CAUSE OF ACTION

10. Defendant incorporates the responses to Paragraphs 1-9 as if set forth verbatim.

11. Admitted.

12. Denied.

13. Denied.

14. The allegations of this Paragraph are legal in nature and do not require a response.

By way of further response, Defendant denies any violation of law.

15. The allegations of this Paragraph are legal in nature and do not require a response.

By way of further response, Defendant denies any violation of law.

16. The allegations of this Paragraph are legal in nature and do not require a response.

By way of further response, Defendant denies any violation of law or liability for attorney fees.

FOR A SECOND DEFENSE **(Failure to State a Claim)**

II. Plaintiff's Complaint fails, in whole or in part, to state a cause of action upon which relief can be granted as to the Defendant.

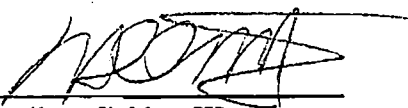
FOR A THIRD AND/OR AFFIRMATIVE DEFENSE
(Immunity)

III. Defendant specifically asserts and reserves all claims to immunity and qualified immunity available under law.

WHEREFORE, having fully responded to the allegations in Plaintiff's Complaint, Defendant respectfully requests that the Court enter an order dismissing the Complaint, with prejudice, and requiring the Plaintiff to pay the costs and attorneys fees incurred by Defendant in responding to the Complaint.

NICKLES LAW FIRM, LLC

By: _____


W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080

ATTORNEY FOR DEFENDANT

July 16, 2013
Columbia, South Carolina

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2013-CP-40-03982

George Glassmeyer,)
Plaintiff,)
vs.)
City of Columbia,)
Defendant.)
_____)

Transcript of Record

February 10, 2014
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

A P P E A R A N C E S:

Kirby D. Shealy, III, Esquire
Attorney for the Plaintiff

W. Allen Nickles, III, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Motion by Mr. Shealy	3
Motion by Mr. Nickles	7
Certificate Page	26

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

1 THE COURT: Our next matter is docket number
2 2013-CP-40-03982, *George Glassmeyer vs. the City of*
3 *Columbia*. The plaintiff is represented by Kirby Shealy, is
4 that correct, III?

5 MR. SHEALY: That is correct, Your Honor.

6 THE COURT: The defendant is represented by Allen
7 Nickles, III.

8 MR. NICKLES: That's correct.

9 THE COURT: We're here on multiple motions this
10 afternoon. There are competing motions for summary
11 judgement, and there's also a motion to strike the
12 defendant's request for attorney's fees. Let's start with
13 that one, and then we can go to the competing motions.

14 MR. SHEALY: May it please the court, Your Honor?

15 THE COURT: Yes, sir.

16 MR. SHEALY: Your Honor, I represent George
17 Glassmeyer, who is a citizen who has brought this action
18 under the Freedom of Information Act. And City of
19 Columbia, the defendant, in its answer asserted a prayer
20 and a request for attorney's fees. Under the Freedom of
21 Information Act, a successful citizen who is required to
22 resort to the act to obtain documents that that citizen is
23 entitled to under the act may recover attorney's fees.
24 There is no provision under the act that allows for a
25 successful public body to recover its attorney's fees.

1 This, just by way of background, this is the second
2 lawsuit in which I've been involved involving my client
3 against the city. In The first lawsuit, we brought the
4 same sort of -- well, similar issues were joined. Similar
5 defense was raised by the city, similar request for
6 attorney's fees was raised by the city, and our motion to
7 strike that prayer for attorney's fees was granted by order
8 of Judge Cooper filed June 19, 2013. That case is on
9 appeal, but not on the issue of the attorney's fees
10 request.

11 I'd be happy to hand up a copy of Judge Cooper's order
12 that discusses other issues that are not necessarily
13 germane to this case, but most specifically does rule in
14 the plaintiff's favor on this very issue.

15 We believe that it is, it's res judicata between these
16 two parties. But on the merits it's just -- there is no,
17 there is no legal authority for the city's assertion of
18 prayer for attorney's fees. And we would argue it is
19 anathema to the FOIA for a public body to receive its
20 attorney's fees if it's successful because that would chill
21 a citizen's right to seek records from a public body that
22 he or she asserts he's entitled to under the law. And
23 that's certainly the public policy underlying FOIA is to
24 provide a citizen's right to seek openness in government.
25 And that is why there is the provision allowing for a

1 citizen to recover its attorney's fees, and why there is
2 not a corresponding means of allowing a public body to
3 recover its attorney's fees if it is successful.

4 THE COURT: Mr. Nickles.

5 MR. NICKLES: Just a couple of comments, Your Honor.
6 I believe that in responding to plaintiff's motion in the
7 earlier suit, Judge Cooper correctly said he would take it
8 under advisement until he ruled on the merits, and he
9 determined at that time that no attorney fees were
10 available. That case is on appeal and not on that issue.

11 Your Honor, the court in its inherent authority can
12 offer either party any relief that's just and proper.
13 There have been cases before this court and our courts of
14 appeals and the South Carolina Supreme Court where
15 plaintiffs have been ordered in the past to pay the
16 attorney fees of the defendants. Now, those are
17 extraordinary, and I understand that we have a significant
18 burden to demonstrate that we are entitled to attorney fees
19 when the time comes for a ruling upon that order. But now
20 is not the time.

21 We suggest that this matter be taken under advisement
22 until the court's had an opportunity to hear the arguments
23 of parties. I believe the court has had an opportunity to
24 review some of the materials today for in-camera review,
25 and I would suggest to my learned adversary that this case

1 is very different from the last case.

2 Every FOIA case by its nature is unique. Every FOIA
3 case that comes before a court in this context requires an
4 individualized balancing of the interests. So, we can't
5 say res judicata. I think that may have been a slip of the
6 tongue. This case has to be judged on its individual
7 merits. Now is not the time to make any determination for
8 or against attorney fees on behalf of either party.

9 THE COURT: Mr. Nickles, you would agree, though, that
10 generally the relief of attorney fees, unless there is some
11 equitable basis to award them, would generally be by
12 statute or contract.

13 MR. NICKLES: Generally that would be the case, but
14 the courts have found that there are equitable bases for
15 the award of attorney fees. And, Your Honor, I don't think
16 there's anything prohibiting the city from making that
17 request. Whether it is, you know, accepted or rejected by
18 the court, we certainly have the opportunity to request
19 that relief.

20 THE COURT: Mr. Shealy, anything further?

21 MR. SHEALY: Just briefly, Your Honor. I'd be happy
22 to hand up Judge Cooper's order.

23 THE COURT: Yes, sir.

24 MR. SHEALY: And I've turned it to the page with his
25 signature. That order ruled on two motions: the

1 plaintiff's motion for summary judgement in that case, as
2 well as its motion to strike the prayer for attorney's
3 fees, which was granted. And, Your Honor, it's the same
4 argument in both cases: that FOIA just does not provide the
5 bases for this prayer for attorney's fees that has been
6 asserted by the defendant. And just on that simple basis,
7 we would ask for the same result in this case as Judge
8 Cooper granted in the other case.

9 THE COURT: I'll look at that more closely. So, that
10 takes us to motions for summary judgment. There are
11 competing motions, as I kind of view them. And I believe
12 the defendant's motion was filed first, and then there was
13 the plaintiff's motion that was filed after that, if I'm
14 not mistaken. So, I will hear from the defendants first.

15 MR. NICKLES: Thank you, Your Honor. We have before
16 you today a request by a plaintiff to receive unredacted
17 documents from the City of Columbia from two sources that
18 have been identified to the plaintiff. One source is an
19 alleged domestic dispute; the others are from anonymous,
20 non-traceable, fictitious emails. The common thread that
21 these two sources share is they make allegations about the
22 former police chief in his personal conduct that we believe
23 does not rise to the level of a public act, does not create
24 a public record discloseable under the Freedom of
25 Information Act, and would create a very hazardous

1 precedent should this court choose to ignore the ruling in
2 Burton, the logic of that decision which says that there
3 are divisions between our public and our private
4 activities, even if we happen to be employed by the
5 government.

6 Now, Your Honor, as I read through the plaintiff's
7 briefs in this, it occurs to me that this is really not
8 much of a FOIA case. What the plaintiff is asserting in
9 this case is that the City of Columbia should have opened
10 internal affairs investigations of these anonymous
11 allegations of this threat by a disgruntled husband and
12 should have created records so that the plaintiff could get
13 his hands on them.

14 Well, Your Honor, that's not what FOIA is about; FOIA
15 doesn't require the City of Columbia or any other agency of
16 government to create records. Doesn't require us to
17 investigate matters. In this instance, the city was the
18 passive recipient of bile from third parties, one of whom
19 threatened to make the matters public if the city didn't do
20 his bidding for him. The others didn't have the courage to
21 even identify themselves by name or identifiable source.
22 So, Your Honor, if we follow the plaintiff's argument in
23 this case, anything that's said by any crackpot about any
24 public servant automatically becomes a public document, and
25 it creates the threat and danger of folks self-publishing.

1 Now, I'm not suggesting that this plaintiff planted
2 any of this information, but I am telling you an
3 unscrupulous individual could send anonymous complaints
4 about an individual, then have a FOIA request submitted
5 either through proxy or personally, and lo and behold the
6 things that were anonymous, non-traceable allegations all
7 of a sudden become fodder for our media blogosphere,
8 whatever you might imagine. And, Your Honor, that just
9 ain't the way FOIA was intended to operate.

10 Now, we see in the *Burton* case how the trial judge
11 there distinguished between the acts of these deputies in
12 carrying out their duties and the -- I think what they
13 described as private sexual conduct. Well, Your Honor,
14 that case standing for that proposition answers this case.
15 It gives guidance in this case for your balancing, which
16 you know from *Burton* and from the *Evening Post* decision, a
17 more recent 2011 South Carolina Supreme Court decision,
18 that in every FOIA case where there's a dispute about
19 whether or not something should be made public, it is
20 incumbent upon the trial judge on a case-by-case basis to
21 evaluate the competing interests.

22 And, Your Honor, in this case there were many, many
23 media requests for information relating to Randy Scott.
24 They were answered in the same fashion. The same
25 objections and withholdings were made to the media. Where

1 are they today?

2 THE COURT: Mr. Nickles, the information that you sent
3 to me for in-camera review, how did the city come to have
4 possession of those documents?

5 MR. NICKLES: Well, they -- the domestic documents
6 were delivered either to the city manager or to the mayor
7 with a threat that if action wasn't taken against the
8 police chief, that the person involved, the disgruntled
9 husband, would make that information available to the
10 media. And the city, in its deliberations about this,
11 determined that they weren't going to do that fellow's
12 bidding. If he wanted to make that public, fine and dandy,
13 but they were not going to do that. They felt that it was
14 -- their allegations were relating to private conduct, and
15 they didn't warrant any investigation.

16 THE COURT: So, before I make an analysis as to
17 whether the documents should be released, do I have to
18 determine whether it's private, or do I -- is there some
19 other standard or some other test that I have to evaluate
20 before I make that determination?

21 MR. NICKLES: I think that there is one very serious
22 distinction that you might consider, Your Honor, and that
23 is are these documents that were gathered by or generated
24 by the government, or were these things that were -- just
25 literally happened to fall into government hands. And,

1 Your Honor, I think that is a very serious distinction to
2 be made.

3 Now, is it the case that anybody who wants to make a
4 matter public just has to go to their friendly neighborhood
5 town hall and give it to somebody, even if it doesn't have
6 their name on it? If it had nothing to do with the public
7 activity or the action of government, just hand it to them
8 and say voila, this is now a public record? This is now
9 something that anybody in the world who has the least bit
10 of curiosity can see. Your Honor, I think there is a
11 distinction to be made there. So, I think that there is
12 one hurdle as to is this the record that the General
13 Assembly was contemplating back in the seventies when they
14 were talking about free access to government in order to
15 evaluate government conduct, and I think the answer to that
16 question is no. I don't think anybody in that General
17 Assembly anticipated that FOIA would reach that far.

18 And then secondarily as you've identified, Your Honor,
19 the analysis would be if it reached that, would then the
20 balance be in favor or not in favor of disclosure? And,
21 Your Honor, I know that my learned opposing counsel has
22 made the arguments that we can't import into South Carolina
23 the wisdom of the federal judiciary, that we are somehow
24 segregated from other governments, and we've got to make
25 decisions on our own.

1 I tend to disagree. I think that the United States
2 Supreme Court and the courts of this circuit have analyzed
3 this type issue and said at a minimum, if you're seeking
4 something that is based -- at base is scurrilous, you've
5 got to show that you have a public interest in obtaining
6 that information. That there is a good, legitimate, public
7 reason for the disclosure of that information. And, Your
8 Honor, I suggest to you in this case that information
9 before you falls woefully short of that.

10 You may remember the case where the former assistant
11 to Bill Clinton killed himself near the Arlington National
12 Cemetery, and of course you had all sorts of vultures
13 flying around that situation wanting photographs of the
14 dead body and things of that nature, and the court said no,
15 no. Even though these photographs were taken by and used
16 by the government, there has to be a line drawn somewhere,
17 some line of responsibility and some line of humanity that
18 is drawn.

19 So, Your Honor, I would say that the submission of the
20 cowardly documents doesn't carry the imprimatur of a public
21 record that is worthy of disclosure under FOIA. And I
22 would suggest to you that a ruling to the contrary will
23 subject every public employee and official to the slings
24 and arrows of outrageous fortune and accusation, Your
25 Honor.

1 So, my understanding of the argument, they say the
2 city should have investigated it, but that's not a FOIA
3 argument, and that's not why we're here, Your Honor. They
4 may -- if they want to pursue that somewhere down the line
5 politically or legally, they would have the opportunity to
6 do that, but not in this case. This is not the time, the
7 place for that to be addressed.

8 THE COURT: So, to the extent that someone makes a
9 complaint about a public official and wants an
10 investigation or wants there to be some follow-up activity,
11 with or without threats, that would not be a document that
12 -- the city's position is that that would not be something
13 that would be required to be disclosed under the Freedom of
14 Information Act?

15 MR. NICKLES: Well, the first answer to that question
16 is that is not the issue before you, Your Honor, because
17 there is no government investigation record in this case.

18 THE COURT: Well, I'm just saying asking ---

19 MR. NICKLES: But if ---

20 THE COURT: --- asking that there be one.

21 MR. NICKLES: If there were, if there were one, I
22 think that we would have to go to *Burton*. We would have to
23 see whether or not those records were -- fell into the
24 category of legitimate public interest or not, and I think
25 the analysis would have to be driven by those concerns. I

1 don't think there would be a categorical answer to that
2 question because the courts have told us enthusiastically
3 that it's up to the trial judge to make that call. So,
4 Your Honor, I do, do think that would be another layer of
5 inquiry, if that were the case. But I don't think the
6 outcome would necessarily be dictated in favor of one party
7 or the other.

8 THE COURT: Mr. Shealy.

9 MR. SHEALY: May it please the court, Your Honor? A
10 couple of just general observations. Then I'll move into
11 the points that, that we have raised in our motion and in
12 responding to the defendant's motion.

13 First, we've learned some things today in this hearing
14 that were not, were not made available to us at any time
15 prior to today as to the nature of the materials in the
16 city's possession. The description that was, that was
17 provided to the plaintiff did not give the level of detail
18 that's been given today.

19 Secondly, the city in some respects makes the argument
20 that we're asserting for us. Let me explain how that is.
21 The city has withheld documents saying that they, first of
22 all, are not public documents subject to FOIA, and for --
23 just generally saying that's not what the General Assembly
24 intended. Well, the best evidence of what the General
25 Assembly intended is the definition of public documents,

1 and that is, quite simply, any document:

2 All books, papers, maps, photographs, cards,
3 tapes, recordings, or other documentary materials
4 regardless of physical form or characteristics
5 prepared, owned, used, in the possession of, or
6 retained by a public body.

7 I cannot think of a more -- of a broader definition
8 for the term public record. So, because these materials
9 are in the city's hands, they are indeed what the General
10 Assembly intended because it could have very easily carved
11 out something from the definition, and it didn't. It
12 intended to define that term as broadly as possible.

13 The city also indicates that this inquiry is a
14 case-by-case inquiry that is driven by considerations of
15 the public's legitimate right to know. We could not agree
16 more that that is indeed what *Burton* stands for.

17 Parenthetically I would say *Burton* does not stand for,
18 however, the proposition that the city advances that
19 there's a distinction, a per se distinction between a
20 police officer's private activities and his, and his public
21 activities. There is a passing comment that is clearly
22 dicta in that case that, that is not at issue in this
23 particular case, but the case does not stand for that
24 proposition. Clearly does not stand for such a
25 proposition. And it does state, however, that the -- that

1 this is a case-by-case determination.

2 Now, why is this case different? What is unique about
3 this case? Your Honor, we've pointed out that the city's
4 policy manual indicates that for discipline purposes, a
5 police officer, including the chief, is deemed to be on
6 duty at all times. The policy manual also says that all
7 complaints lodged against a police officer, whether
8 anonymous or not, will be investigated. And the city has
9 admitted in its response to our FOIA request that there was
10 no investigation of these requests. It has characterized
11 them as fictitious here today, scurrilous; they've used
12 other terms about them.

13 There's no way for us to know that if there's been no
14 investigation. That is merely a bald characterization. It
15 very well may be that a facial review of these documents
16 would substantiate or justify the city's decision here, but
17 the city has not given the public the ability to judge the
18 decision.

19 What we do know from newspaper reports, and I will, I
20 will just parenthetically state to Your Honor we have
21 attached newspaper articles to our motion. We believe they
22 are properly before this court under Rule 902(vi); they are
23 self-authenticating. They contain statements, admissions
24 of a party opponent, in addition to which the city referred
25 to any -- prayed reference to any contemporaneous record of

1 the city administrator's statements about this. But the
2 city administrator stated in the newspaper article that she
3 was considering disciplinary action.

4 And so the public's right to know here, that is why
5 this is an important case. That is why that is a FOIA
6 consideration. Because *Burton* says so. *Burton* says that
7 the public interest, the public right to know needs to be
8 weighed against whatever privacy interest is at play. And
9 so all of what we put in front of Your Honor is to show
10 that indeed there is a very legitimate public interest in
11 why there is a public policy statement that certain actions
12 will be taken, and then a response to a FOIA request saying
13 no, we didn't do that.

14 THE COURT: Would you be entitled, would a person,
15 would a member of the public be entitled to personnel
16 records, including any disciplinary action, of an employee
17 under FOIA in the absence of a specific lawsuit and
18 specific subject matter that would make those documents
19 more relevant?

20 MR. SHEALY: Your Honor, the -- depending upon the
21 nature of the employee and the nature of the disciplinary
22 action, yes, Your Honor. The *Burton* disciplinary actions
23 against police officers who are -- whose job is to interact
24 with the public, it's very important for the public to know
25 what actions are, are subjecting a police officer to

1 discipline, whether the discipline is appropriate, is an
2 appropriate response to misconduct. And here, conduct of
3 all descriptions, whether on -- whether off duty, and I put
4 that in quotes, or not subjects the person to discipline
5 because of the intensely public nature of the role of
6 police chief and of all police officers.

7 More than any other public employee, a police officer
8 deals intimately with the public. The public has got to
9 rely upon and trust its public safety officers in ways that
10 it doesn't necessarily have to rely upon somebody that
11 works in the back office of the water department. So, Your
12 Honor, yes. In most circumstances, but particularly in a
13 circumstance involving police officers, yes, the
14 disciplinary aspects of one's personnel file should be
15 subject to a FOIA request. And Burton, I think, stands for
16 that very proposition.

17 So, Your Honor, that's -- but, but before we get
18 there, we need to look at is there a privacy interest? Is
19 there a reasonable expectation of privacy held by the
20 subject of these records? These are not records that, as
21 the city has said, were created by the individual that is
22 the subject of the records. They were -- they're not --
23 that individual made no effort to keep the -- these -- this
24 information out on the public view such as one's credit
25 card number or Social Security number or things of that

1 nature where every individual takes efforts to keep that
2 information out of the public view. These are things being
3 said about the person by somebody, somebody else. There is
4 no reasonable expectation of privacy with respect to those
5 items.

6 So, Your Honor, in the first instance, we don't
7 believe that the section of FOIA that allows to -- a public
8 body to withhold information of a personal nature, the
9 disclosure of which would constitute an unreasonable
10 invasion of privacy, even exists here.

11 Lastly, I just want to point out the city says or
12 would characterize our argument with respect to the -- this
13 court's resort to federal case law concerning issues like
14 this as being improper. It's clear under South Carolina
15 law. Our courts have said no, no, no. The federal FOIA is
16 much more expansive in what it protects from disclosure
17 than the state FOIA. That's why we say that because the
18 law of this state is, is that. That's -- we're just
19 regurgitating back to this court what has been enunciated
20 by our appellate courts. It is not an attempt to
21 mischaracterize or to sort of pooh pooh federal case law.
22 It's just that our courts say it's not applicable here.

23 And the city goes to great lengths to try to have this
24 court engage in a burden-shifting analysis, and that's just
25 absolutely not what our courts say. The burden is on the

1 public body to show that the exemption applies, and the
2 public body in this case has not done that.

3 And so, Your Honor, for that reason we feel that the
4 defendant's motion for summary judgment should be denied,
5 that the plaintiff's motion for summary judgment in this
6 case should be granted, and that this court should then
7 consider a reasonable award of attorney's fees to the
8 plaintiff, in addition to requiring the defendant to turn
9 over these documents.

10 THE COURT: And, Mr. Shealy, I'll ask you, and then
11 I'll ask Mr. Nickles the same question. Does it make any
12 difference whether the documents that -- are documents that
13 are already publicly available?

14 MR. SHEALY: Well, certainly when we talk about one's
15 interest, privacy interest, we say, in fact, that there is
16 no such privacy interest. But if the documents are
17 otherwise publicly available, then that's just another
18 layer to add on to the argument that there is, there is no
19 privacy interest in these documents held by the subject of
20 the documents.

21 THE COURT: Thank you.

22 Mr. Nickles.

23 MR. NICKLES: Your Honor, the United States Supreme
24 Court has answered that question. It said that the
25 availability of documents by third party or other access

1 does not compel the government to participate in that
2 process, and that was a case that came out of South
3 Carolina. Had to do with some attorneys obtaining drivers
4 license information. I'll be happy to provide a copy of
5 that United States Supreme Court case to you.

6 Now, Your Honor, listening to plaintiff's arguments, I
7 first thought that the plaintiff only wanted to do the
8 city's job, and that is to compel the city to investigate
9 things that came uninvited to its door. Now I understand
10 the plaintiff wants to do your job as well, and that is to
11 decide whether or not these items should be made public.
12 That's something that our Supreme Court has said is for the
13 trial judge to decide, not for the plaintiff to decide. I
14 don't think the plaintiff can come in here and argue that
15 they get to look at it and tell you whether they think it
16 should be made public or not.

17 And, Your Honor, I have listened to the arguments
18 about the *Burton* case, and I would invite you to review
19 that opinion at pages 895 and 353. That's the, the
20 Southeastern 2d and the South Carolina page numbers, and
21 I'll just read it to you because it's very brief. It says:

22 In the present case, we find the manner in which
23 the employees of the sheriff's department
24 prosecute their duties to be a large and vital
25 public interest that outweighs the desire to

1 remain out of the public eye. The newspaper, in
2 fulfilling its obligation to report and hold
3 accountable those in public service, had a
4 legitimate interest and need to access the
5 records Burton requested.

6 Goes on to say:

7 Burton and the newspaper did not seek information
8 regarding off-duty sexual activities of deputies
9 involved. Rather, the access to information they
10 sought and the trial court granted was focused on
11 the performance of public duties by the sheriff
12 and his deputies, and the response to allegations
13 of misconduct by the deputies, what some said in
14 the performance of their official duties.

15 Your Honor, so, this is not a blank check to go
16 looking under the bedsheets of every deputy, law
17 enforcement officer, or other public employee. *Burton* is
18 far from saying that, Your Honor. And to suggest that the
19 city just has to say I'll turn over anything that comes
20 into my possession, whether it's email to a council member
21 from an anonymous, non-traceable source, whether it's
22 somebody coming in trying to blackmail the city into doing
23 something by saying we're going to make public these
24 judicial records, Your Honor, that's not what FOIA was
25 intended to do.

1 THE COURT: Then let's discuss for a moment. If the
2 idea is that they don't have to turn over documents that
3 come into its possession, then why would the public body
4 hold on to those documents if they weren't related to some
5 function that they were required to perform?

6 MR. NICKLES: Well, we'd be up here being sued for
7 destroying documents, Your Honor. I mean, there is a
8 retention of records law in this state that is independent
9 of the Freedom of Information Act compelling disclosure.
10 So, I think that ---

11 THE COURT: But what I hear you arguing is that
12 they're not records.

13 MR. NICKLES: I don't believe that they fall under the
14 definition of records for the purpose of disclosure under
15 FOIA, Your Honor. We can't deny that they were received.

16 Now, I don't think I would be in a very good posture
17 coming here and say oh yeah, we received them, but we
18 destroyed, you know. I think I'd rather have you take a
19 look at them and agree with me that these are things that
20 the public has no right to see.

21 THE COURT: Anything else?

22 MR. NICKLES: That's all for the defendant.

23 MR. SHEALY: Nothing from the plaintiff.

24 THE COURT: And anything further on your motion, Mr.
25 Shealy?

1 MR. SHEALY: No, Your Honor. I think we've covered
2 all issues in the arguments.

3 THE COURT: I will tell you that I will look at it,
4 and I will try to study it so that I understand it as well
5 as you all do.

6 I have reviewed the documents, and I have to say that
7 there are some documents there that I don't see -- there's
8 some documents that are public records that are not
9 necessarily records that would be related to the functions
10 of the city government, but they were documents that are
11 public records and are publicly available, and that I would
12 presume that any person would be able to go to the
13 appropriate authority and get a copy of. I could be
14 incorrect on that, and I will look at that further before I
15 make a final decision. But then there are some other
16 documents that may very well fall within that realm of
17 documents that Mr. Nickles is talking about.

18 So, I'll look at it and study the cases a little bit
19 more in detail, and look at the documents in light of
20 those, and try to separate these documents that -- this
21 isn't -- it doesn't appear to be documents under the
22 *Newberry* case because they don't appear to be investigative
23 reports, criminal investigative reports. And so it appears
24 that they are just documents that were possessed. And the
25 question for me is whether they were documents that were

1 part of a personnel record, or that they were documents
2 that are part of some disciplinary review, or were they
3 just documents that were simply received and stuck in a
4 file, and that's where they sat.

5 MR. NICKLES: And I can represent to you, Your Honor,
6 that nothing that you have before you is part of a
7 personnel file. And furthermore, Your Honor, the documents
8 I believe you're referring to, we do not know if those were
9 actually filed, filed under seal or have any protection
10 attached to them. We know that there are other nonpublic
11 individuals named in those documents. Thank you.

12 THE COURT: Thank you. All right, I'll review them
13 and get with you.

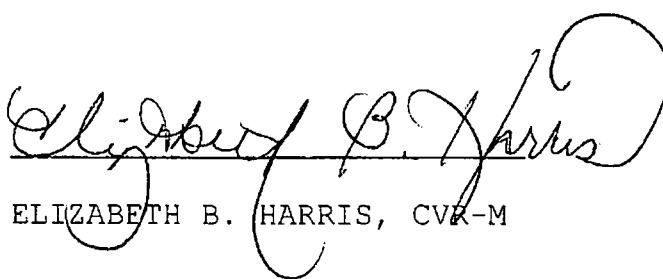
14 MR. SHEALY: Thank you, Your Honor.

15 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 10TH DAY OF FEBRUARY, 2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

DECEMBER 16TH, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
George S. Glassmeyer,)
)
Plaintiff,)
)
vs.)
)
City of Columbia,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT

Civil Action File No.: 2013-CP-40-3982

DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AND
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

FILED
2013 OCT 17 AM 11:43
RICHLAND COUNTY
CLERK OF COURT
JENNIFER W. MORRIS
C.P. & G.S.

Defendant City of Columbia ("City") hereby moves for summary judgment pursuant to Rule 56 of the SCRCP in the above matter. As supported by the pleadings, unredacted records to be provided by separate letter¹, and such other materials as may be presented, Plaintiff cannot establish the elements necessary for the relief requested in the Complaint.

STANDARD OF REVIEW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(b), SCRCP; Green v. Cottrell, 346 S.C. 53, 550 S.E. 2d 324 (Ct. App. 2001); Bruce v. Durney, 341 S.C. 563, 534 S.E. 2d 720 (Ct. App. 2000) The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)

Under Rule 56(b), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Carolina Alliance for Fair Employment v. South Carolina Department of Labor, Licensing, and Regulation, 337 S.C 476, 523 S.E. 2d 795 (Ct. App. 1999) In

¹ Upon notice of hearing, the withheld documents will be provided by confidential letter to the assigned judge.

determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003)

PROCEDURAL HISTORY

On April 3, 2013, Plaintiff submitted a request under the South Carolina Freedom of Information Act (FOIA) to inspect, among other items, “copies of any and all documents including, but not limited to statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott.” (Complaint Exhibit A, item 2) Numerous other FOIA requests were submitted by media outlets seeking similar information. The City responded in the same fashion to each request, providing public records redacted only to delete private/personal information and identifying material withheld from disclosure. (Complaint Exhibits B and C) Specifically, Defendant’s FOIA response of April 19, 2013 (Complaint Exhibit C) identified the following materials withheld pursuant to S.C. Code Ann. §§ 30-4-15 and 40(2):

- Anonymous emails referring to Chief Scott’s alleged personal conduct;
- Unsolicited, unverified complaints referring to Chief Scott’s alleged personal conduct; and
- Third-party, unverified allegations of misconduct by Chief Scott.

LEGAL ARGUMENT

The withheld documents sought by Plaintiff are provided by separate letter for review *in camera*. This review will confirm that the City responded appropriately in providing public information within the scope of Plaintiff’s request. S.C. Code Ann. § 30-4-30(c) Information withheld from disclosure does not fall within the requirements of law and does not deprive

Plaintiff access to information regarding the “activities of their public officials.” S.C. Code Ann. § 30-4-15. Additionally, the material requested by Plaintiff includes “personal information” exempt from disclosure. See, S.C. Code Ann. § 30-4-40(2) (Information of a personal nature where the public disclosure would constitute unreasonable invasion of personal privacy)

Once a privacy interest is implicated, the burden should shift to the requester to (1) “show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake,” and (2) “show the information is likely to advance that interest.” Casa de Maryland, Inc. v. U.S. Department of Homeland Sec., 409 Fed. Appx. 697, 700 (4th Cir. 2011) (construing the federal Freedom of Information Act) Statutory privacy interests do not replace common law or constitutional interests. Instead, statutes supplement constitutional and common law privacy interests. See, National Archives and Records Admin. v. Favish, 541 U.S. 157, 170 (2003)²

Plaintiff has articulated no public interest that would compel disclosure of information regarding the alleged personal conduct of former Police Chief Scott. Examination of the withheld material, provided to the Court as received, confirms that the City appropriately exercised its obligation to protect privacy interests while offering Plaintiff access to public information regarding Chief Scott’s public activities, compensation and benefits. See generally, City of Columbia v. ACLU, 323 S.C. 384, 475 S.E.2d 747 (1996) (exemptions to disclosure under FOIA must be reviewed on a case by case basis)

In reviewing the provided materials, this Court should be guided by the opinion of the South Carolina Court of Appeals in Burton v. York County Sheriff’s Department, 358 S.C. 339,

² State and federal FOIA’s serve the same purpose of providing access to public information while protecting privacy interests. To date, no published opinion has been issued in this state regarding the obligation to demonstrate a public interest when privacy issues are implicated. Nevertheless, as addressed herein, it is established that FOIA only compels disclosure of information relating to public activity and public conduct. Accordingly, alleged “private” conduct even by public officials is not a proper inquiry under FOIA.

594 S.E.2d 888 (Ct. App. 2004) In Burton, the trial judge was faced with a similar request to compel records relating to public and personal conduct of law enforcement officers. Following an *in camera* review, the judge determined that “allegations relating to off-duty sexual practices and activities of the deputies is personal and private. . .” 358 S.C. at 345, 594 S.E.2d at 891. Plaintiffs (an individual and newspaper corporation) did not appeal or otherwise contest this finding.

On review, the Court of Appeals held that the manner in which law enforcement officers “**prosecute their duties** to be a large and vital public interest that outweighs their desire to remain out of the public eye.” The Court also acknowledged that the appellants did not seek “information regarding the **off-duty** sexual activities of the deputies involved.” 358 S.C. at 352, 594 S.E.2d at 895 (emphasis added)

Plaintiff will likely argue that, because FOIA is to be liberally construed, all materials in the possession of a public body, regardless of origin or content are “public records” and must be produced unless exempted by statute. No court has endorsed such a broad interpretation. To the contrary, FOIA is available to access information only “of legitimate public or general interest.” Id. Examination of the material provided for *in camera* review will confirm that the alleged activities of former Chief Scott addressed therein are of a personal and private nature. Furthermore, compelling public disclosure of anonymous, unsubstantiated complaints would allow unscrupulous parties the opportunity to libel and impugn public employees without any fear of recourse. Clearly, sending an anonymous complaint concerning alleged conduct of a public servant does not make that complaint a matter of legitimate public interest or inquiry.

In withholding the information requested by Plaintiff, the City acted only to protect the privacy of former Chief Scott. The City has taken no action to prevent unknown accusers from

making public their complaints about former Chief Scott. Correspondingly, FOIA is not a legitimate vehicle for making anonymous accusations public. For these reasons, the material submitted for *in camera* review should not be disclosed to the Plaintiff and the City is entitled to an order granting summary judgment in this matter.

CONCLUSION

For the reasons set forth herein, the City is entitled to an order granting summary judgment.

Respectfully submitted,

NICKLES LAW FIRM, LLC

By: _____


W. Allen Nickles, III
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(803) 779-8080

ATTORNEY FOR DEFENDANT

October 17 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL DISTRICT
COUNTY OF RICHLAND	)	
	)	Civil Action File No.: 2013-CP-40-3982
George S. Glassmeyer,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MATERIALS FOR <i>IN CAMERA</i> REVIEW
	)	ONLY
City of Columbia,	)	
	)	ALL SHOWN REDACTIONS AS RECEIVED
<u>Defendant.</u>	)	

(SEALED MATERIALS PROVIDED TO COURT)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
George S. Glassmeyer,)
) Plaintiff,)
v.)
City of Columbia,)
) Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NUMBER: 2013-CP-40-3982

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

RICHLAND COUNTY
FILED
2013 OCT 18 PM 2:37
JEANETTE W. MCBRIDE
C.C.P. & S.S.

TO: W. ALLEN NICKLES, III, ESQUIRE, ATTORNEY FOR DEFENDANT

Pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, Plaintiff George S. Glassmeyer ("Plaintiff"), by and through his undersigned attorneys, hereby moves for an order granting Plaintiff summary judgment as to all causes of action in the above-referenced matter on the grounds that there is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law. This motion is based upon the following memorandum of law, affidavit of George S. Glassmeyer (**Exhibit 1**) and Defendant's Answers to Plaintiff's First Set of Requests to Admit (**Exhibit 2**), which are filed contemporaneously with this motion.

For the reasons set forth below, Plaintiff is entitled to an order requiring Defendant to produce unredacted public records in response to a request under the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.* ("FOIA").

STATEMENT OF UNDISPUTED MATERIAL FACTS

On or about April 3, 2013, Plaintiff submitted a request to Defendant pursuant to the South Carolina FOIA, S.C. Code Ann. §§ 30-4-10, *et seq.*, seeking documents related to former City of Columbia Police Chief Randy Scott ("Scott"). See Affidavit of George S. Glassmeyer attached as **Exhibit 1** ("Glassmeyer Affidavit") and Plaintiff's FOIA Request attached thereto as **Exhibit A**. Plaintiff's FOIA request asked for documents related to Scott's request for personal

leave of absence submitted to the City on or about April 22, 2013, and his subsequent resignation, effective May 1, 2013. *Id.*; see also Defendant's Answers to Plaintiff's First Set of Requests to Admit, Nos. 1 and 2, attached as Exhibit 2.

Surrounding Scott's resignation swirled allegations of incompetence and wrongdoing, sparking great public interest, especially when Columbia City Manager Teresa Wilson ("Wilson") admitted that she received allegations and a report of alleged personal misconduct by Scott while he was employed by the City. See Exhibit 2, Nos. 3, 6, and 7; see also Noelle Phillips and Clif LeBlanc, "Columbia police chief takes leave; could have been disciplined," *The State* (April 2, 2013), available at <http://www.thestate.com/2013/04/02/2704780/columbia-police-chief-randy-scott.html> ("city manager said she had been considering disciplinary action"), attached hereto as Exhibit 3; Noelle Phillips and Clif LeBlanc, "Columbia Police Chief Randy Scott resigns; citing stress," *The State* (April 22, 2013), available at <http://www.thestate.com/2013/04/22/2736927/randy-scott-to-resign-may-1-as.html> (Exhibit 4). Additionally, according to *The State* newspaper, Wilson publically stated that she had been considering disciplinary action against Scott. See Exhibits 3 and 4; see also Exhibit 2, Nos. 9-12 (craving reference to any record of Ms. Wilson's statements).

With regard to Scott's request for personal leave of absence and subsequent resignation, Plaintiff requested the following documents:

- a. A copy of the written request for a leave of absence submitted on or about April 2, 2013 by police chief Scott;
- b. Copies of any and all documents including, but not limited to, statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott; and
- c. Copies of any and all documents relating to any and all disciplinary actions imposed upon police chief Randy Scott.

See Glassmeyer Affidavit attached as Exhibit 1, and FOIA Request attached as Exhibit A.

Within fifteen days of Plaintiff's FOIA request, on April 5, 2013, Defendant furnished Plaintiff with a CD including some, but not all, responsive documents in its possession. See Exhibit 1 and Defendant's Response Letter, attached thereto as Exhibit B. Defendant stated that it had redacted alleged personal information from Scott's personnel file, citing S.C. Code Ann. § 30-4-30(c). *Id.* Defendant also reported there were no responsive documents to several requests, including: (1) contract of employment; (2) internal affairs investigation(s); and (3) disciplinary action(s). *Id.*

On or about April 19, 2013, Defendant supplemented its response to Plaintiff's FOIA request by letter. See Exhibit 1 and Defendant's Supplemental Response Letter, attached thereto as Exhibit C. Although Defendant produced a significant number of additional responsive documents, Defendant refused to produce certain requested documents which were admittedly in Defendant's possession, including:

- (1) anonymous emails referring to Chief Scott's alleged personal conduct;
- (2) unsolicited, unverified complaints referring to Chief Scott's alleged personal conduct; and
- (3) third party, unverified allegations of misconduct by Chief Scott.

Id. Defendant asserted that it was not producing these documents because the documents did "not qualify as public documents relating to the performance of public officials" and/or the requested documents contained "information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy." *Id.* (citing S.C. Code Ann. §§ 30-4-15 and 30-4-40(2)).

Subsequently, on or about May 14, 2013, Defendant requested a "copy of the Columbia Police Department Policy and Procedure manual as it existed on July 1, 2012 and a copy of any

and all subsequent amendments, additions, and deletions.” See Glassmeyer Affidavit, attached hereto as Exhibit 1, and second FOIA request attached thereto as Exhibit D. In response, Defendant provided Plaintiff with a copy of the Department Department’s Directives and Procedures Manual (*Id.* at Exhibit E) and Updates to the Directives and Procedures Manual, effective January, 2013. *Id.* at Exhibit F.

ARGUMENT

A. The Presumption in South Carolina is for Disclosure of Public Documents.

In order for a public body to legally withhold information under the FOIA, the information must fall in one of the fifteen exemption categories in Section 30-4-40, or be otherwise exempt from disclosure under various other FOIA provisions. “The FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 281, 580 S.E.2d 163, 166 (Ct. App. 2003) (citing *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001)). “The essential purpose of the FOIA is to protect the public from secret government activity.” *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219, 221 (1991). The presumption is for disclosure: “The burden of proving that an exemption to disclosure exists . . . lies with the government.” *Evening Post Pub. Co. v. Berkeley County School Dist.*, 392 S.C. 76, 708 S.E.2d 745 (2011); *Evening Post Pub. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005).

Section 30-4-30(a) states: “Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access.” S.C. Code Ann. § 30-4-30(a). This policy ensures that public business is performed in an open and public manner, and that citizens are informed of the activities of their public officials. See S.C. Code Ann. § 30-4-15.

FOIA exemptions are construed narrowly to conform to the public purposes of the Act. *Evening Post Pub. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005); see also *United States v. Tax Analysts*, 492 U.S. 136, 151 (1989). If a document does not fall within one of the enumerated exemptions, then the document and/or information cannot be withheld by a public body. *Id.* Whether an exemption applies is necessarily a case-by-case determination. *Id.*; *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). Defendant has violated the FOIA by refusing to produce the requested complaints and allegations against Scott.

B. The Requested Documents are Public Records Subject to Disclosure.

Defendant states that the complaints and allegations of wrongdoing against Scott “do not qualify as public documents relating to the performance of public officials.” See Exhibit 1, and Defendant’s Supplemental Response attached as Exhibit B. The FOIA clearly defines “public record” as

All books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.

S.C. Code Ann. § 30-4-20(c). The broad definition of “public records” clearly encompasses the complaints and/or allegations against former Scott and Defendant has no basis under the FOIA to claim that the documents “do not qualify as public documents” such that the documents may be properly withheld.

C. The Documents Withheld from Production are not Exempt from Disclosure under the FOIA.

The exemptions cited by Defendant for withholding the complaints and allegations of wrongdoing, S.C. Code Ann. §§ 30-4-15 and 30-4-40(a)(2), are not applicable in this case.

Section 30-4-15, cited as a basis for Defendant's withholding, provides the "findings and purpose" of the FOIA and specifically states:

[I]t 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.

Id. This section provides no authority to Defendant to withhold documents from production.

Likewise, S.C. Code Ann. § 30-4-40(a)(2) ("personal privacy exemption") does not apply in this case. The personal privacy exemption provides that "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy" may be withheld from production. *Id.* The personal privacy exemption specifically identifies a handful of information that *per se* constitutes personal information, disclosure of which would constitute an "unreasonable invasion of privacy" (for example, gross receipts contained in an application for business license); however, it leaves considerable room for interpretation.

It is unlikely that any of the information contained in the complaints against Scott is properly withheld under S.C. Code Ann. § 30-4-40(a)(2). Complaints of improper action made by third parties should not be considered "[i]nformation of a personal nature where public disclosure thereof would constitute unreasonable invasion of personal privacy." Rather, such complaints are mere representations or allegations made by others, whether true or untrue, regarding violations of the law or Departmental policy, by Departmental staff. These documents, and the information contained therein, are not properly considered "personal," "private," or otherwise subject to proper disclosure under S.C. Code Ann. § 30-4-40(a)(2). Defendant's attempt to shield Scott and itself from public scrutiny is unavailing.

Moreover, even if the documents were properly considered “personal” or “private” such that such information was exempt from disclosure under S.C. Code Ann. § 30-4-40(a)(2), the South Carolina Supreme Court has instructed that where there is great public interest, disclosure should be made even if the information is of a personal nature. See *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984). In *Burton v. York County Sheriff's Dep't*, 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004), the South Carolina Court of Appeals noted that “[w]e must . . . resort to general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public’s need to know on the other.” *Id.* (interpreting § 30-4-40(a)(2)).

In this case, the balancing test required by *Burton* leads to the inevitable conclusion that Plaintiff is entitled, as a member of the public, to inspection of the requested complaints. As indicated in the City’s letter dated April 19, 2013, it is in possession of various allegations and complaints against Scott for violations of the Department’s Policies and Directives as well as possible violations of the law. Yet, the City stated in its April 5 letter to Plaintiff that there are no corresponding internal affairs investigations or disciplinary actions taken against Scott. It is without question that the public has a right to know why the City’s own Policies and Directives were not followed when they admittedly received allegations of wrongdoing and complaints against former Police Chief Scott. See S.C. Code Ann. § 30-4-15 (“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”).

The City of Columbia Police Department's Directives and Procedures Manual ("Manual"), provided to Plaintiff by Defendant pursuant to Plaintiff's May 14, 2013 FOIA request, lays out the Department's policies and procedures regarding internal affairs and disciplinary procedures. See Glassmeyer Affidavit attached as Exhibit 1 and the Department's Manual attached thereto as Exhibits E, including specifically Section 2, Chap. 6 (amended shortly after Scott's leave per Exhibit F) and Section 3, Chap. 3. The Department's Disciplinary policies state:

All members of the Department . . . are responsible for conforming to departmental policies and procedures and are subject to discipline under the provisions of this chapter.

Id., Chap. 3, Sect. 3 at § 3.0. Under the Manual, all sworn officers of the Department are required to comply with both the employee code of ethics and the law enforcement code of ethics, both of which address personal conduct. See *e.g.*, Manual at Section 3, Chap. 3, providing that officers are always "on duty" and provides discipline for "Conduct Unbecoming" an officer.

The Manual also sets forth in Section 2, Chap. 6 the Internal Affairs Policy for the Department. This Chapter specifically states:

The Department requires an investigation of all citizen complaints, including anonymous complaints against the Department or Departmental personnel. It will also address citizen inquiries concerning Departmental regulations, policies, and procedures, actions taken by Departmental personnel in the performance of their duties and other issues that involve the Department and its personnel. Adherence to this directive will help ensure the integrity of the Department, while protecting the rights and interests of private citizens and Departmental personnel.

See Manual, Section 2, Chap. 6 at § 1.0 ("Directive") (emphasis added). The Manual's Directive contemplates that the purpose of this section is to protect the rights and interests of private citizens, not only who make complaints against the Department or its Personnel, but also citizens

who have a vested interest in ensuring that Defendant follows its stated policies and procedures. Scott presumably knew of the Manual's provisions and therefore had no reasonable expectation of privacy with respect to the City's receipt or possession of anonymous complaints by citizens.

The public has an interest in ensuring that the Department investigated the citizen complaints it admittedly received, whether anonymous emails referring to former Police Chief Scott's alleged personal conduct; unsolicited and unverified complaints referring to Scott's alleged personal conduct; or third-party, unverified allegations of misconduct by Scott. According to explicit Departmental policy, *all complaints* must be investigated, without exception, yet in this case Defendant denies that any investigations were taken in response to the admitted complaints in its possession. See Exhibit 1 and Exhibit E attached thereto; see also Exhibit 2, Nos. 13 and 14. The disparity between Defendant's receipt of various complaints against former Scott and its failure to investigate the allegations despite express Departmental Policy requiring an investigation, militates in favor of the public's interest in the allegations and the reason why Defendant chose not to investigate the allegations.

The Manual also provides a list of "Types of Formal Discipline" in Section 3, Chap. 3 at § 5.0. The types of action subject to formal discipline include any improper action taken by Departmental staff in both their official and personal capacities. Section 7.0 provides: "When disciplinary action is taken or recommended by a supervisor, a 'Report of Disciplinary Action and/or Termination form will be completed.'" Defendant admitted that it has received several complaints against Scott. See Exhibit 1 and Defendant's Supplemental Response Letter, attached as Exhibit C at ¶ 8; see also Exhibit 2, Nos. 6 and 7. Despite Defendant's admission, it has admittedly failed to make any corresponding investigations or taken any action to substantiate or refute the allegations. Defendant has also failed to take disciplinary action

against Scott. See Exhibit 2, Nos. 13 and 14. The public is entitled to know the content of the "unsubstantiated" and "anonymous" Complaints filed against Scott to determine whether or not the allegations should have given Defendant reason to take action.

The South Carolina Court of Appeals' decision in *Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) is instructive. In *Burton*, a reporter for a local paper requested information from the York County Sheriff's Department concerning a suspension of four of its officers following an internal investigation stemming from a citizen complaint. *Id.* at 344, 594 S.E.2d at 891. The Sheriff's Department denied portions of the plaintiff's request on the basis that the information was "personal" and disclosing it would result in an alleged "invasion of privacy." *Id.* at 345, 594 S.E.2d at 891.

The Court of Appeals disagreed with the Department, upholding the trial court and determining that the plaintiff's request for the complaints and investigative reports was not subject to the personal privacy exemption of the FOIA. *Id.* at 352, 594 S.E.2d at 895. The Court weighed the officers' right to privacy against the public nature of their position and the public's interest in the manner in which the officers discharged their duties. *Id.* at 352, 594 S.E.2d at 895. Considering that the documents requested by the plaintiff focused on the performance of the officers' duties and allegations of misconduct, the Court determined that the public interest substantially outweighed the officers' right to privacy, and held that the documents should have been disclosed. *Id.*

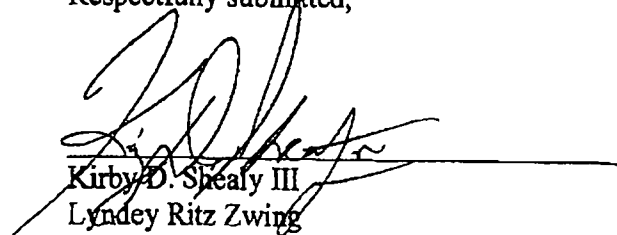
Under the provisions of the Defendant's Manual, Scott was subject to at least an investigation, and possibly disciplinary action, similar to any other line officer in the Department, based on the mere presence of complaints filed against him by members of the public, pertaining to his conduct while in uniform and otherwise. This Court should follow the

holding in *Burton* and similarly conclude that even if Plaintiff's request appeared to implicate private information regarding Scott, there exists a significant public interest regarding Scott's leave of absence which substantially outweighs his right to privacy.

CONCLUSION

For the above-stated reasons, Plaintiff is informed and believes that Defendant has no basis for claiming an exemption under FOIA and therefore Plaintiff is entitled to summary judgment.

Respectfully submitted,



Kirby D. Shealy III

Lyndey Ritz Zwing

ADAMS AND REESE LLP

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Columbia, South Carolina 29201

Telephone: (803) 254-4190

Facsimile: (803) 779-4749

kirby.shealy@arlaw.com

lyndey.zwing@arlaw.com

October 18, 2013.

Attorneys for Plaintiff

EXHIBIT 1

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

George S. Glassmeyer,)

C/A NUMBER: 2013-CP-40-3982

Plaintiff,)

**AFFIDAVIT OF GEORGE S.
GLASSMEYER**

v.)

City of Columbia,)

Defendant.)

RICHLAND COUNTY
FILED
2013 OCT 18 PM 2:37
JEANETTE W. MCORDE
C.C.P. & G.S.

PERSONALLY appeared before me, George S. Glassmeyer, who, being duly sworn, deposes and states that:

1. I am over the age of eighteen and am of sound mind to give the testimony provided in this affidavit.
2. I have personal knowledge of and am competent to swear to the facts set forth in this affidavit.
3. On April 3, 2013, I submitted a Freedom of Information Act ("FOIA") request to the City of Columbia. The request asked for specific documents, including:
 - a. A copy of the written request for a leave of absence submitted on or about April 2, 2013 by Randy Scott, Chief of Police;
 - b. Copies of any and all documents, including but not limited to statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by Chief Scott; and
 - c. Copies of any and all documents relating to any and all disciplinary actions imposed upon Chief Scott.

See Freedom of Information Act Request (April 3, 2013) attached as Exhibit A.



4. On or about April 5, 2013, the City of Columbia responded to my request by providing a CD of documents and information related to my requests. See Responses to Request attached hereto as Exhibit B.

5. The City alleged that it had "no documents" responsive to my FOIA request pertaining to:

- a. Contract of employment, stating "as with all department heads the police chief does not have a contract";
- b. Internal affairs investigation(s); and/or
- c. Disciplinary action(s).

6. On April 19, 2013, the City supplemented its responses to my FOIA request by letter. See Exhibit C.

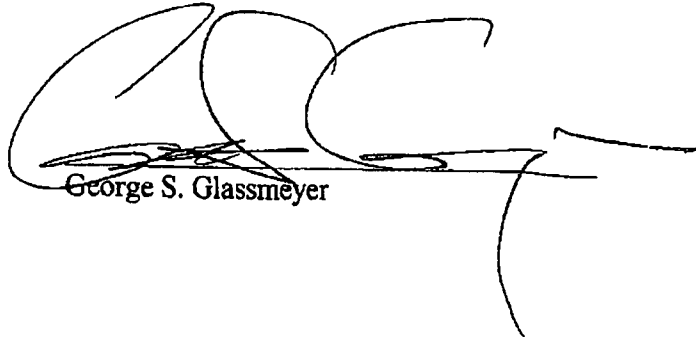
7. The City's supplemental response stated that it was withholding some of the requested documents and/or information because it considered them to "not qualify as public documents relating to the performance of public officials or containing information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy" under S.C. Code Ann. §§ 30-4-15 and 40[a](2). The documents withheld on this basis included:

- a. Anonymous emails referring to Chief Scott's alleged personal conduct;
- b. Unsolicited, unverified complaints referring to Chief Scott's alleged personal conduct;
- c. Third party, unverified allegations of misconduct by Chief Scott.

8. On or about May 14, 2013, I submitted a second FOIA request seeking: "One copy of the Columbia Police Department Policy and Procedure manual as it existed on July 1, 2012 and a copy of any and all subsequent amendments, additions, and deletions." See Exhibit D.

9. In response to my second FOIA request, the City provided the Department's Directives and Procedures Manual, attached hereto as Exhibit E, and Updates to the Directives and Procedures Manual, effective January, 2013. See Exhibit F.

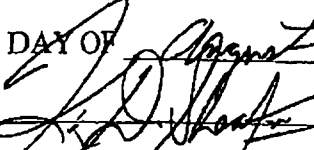
FURTHER AFFIANT SAYETH NOT.



George S. Glassmeyer

SWORN TO BEFORE ME THIS 5th

DAY OF August 2013


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 12/3/2017

ATTN:
KIRBY SHAW

2 PAGES

RECEIVED
APR 23 2013

3004-00001

7Y#

For Office Use

(FILING FORM)
FREEDOM OF INFORMATION ACT REQUEST

TO: CITY OF COLUMBIA
(PLEASE PRINT)

NAME: George S. Glassmeyer

ADDRESS: 100 Denbeck Road, Irmo, SC 29063

E-mail address:

PHONE NUMBER(S) (DAYTIME):

I REQUEST THE FOLLOWING INFORMATION UNDER THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT. (PLEASE BE SPECIFIC).

1. A copy of the written request for a leave of absence submitted on or about April 2, 2013 by police chief Randy Scott.

2. Copies of any and all documents including, but not limited to, statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott.

3. Copies of any and all documents relating to any and all disciplinary action imposed upon police chief Randy Scott.

If no documents whatsoever exist that relate in any way to any of the above requests, please so state in writing.

INDIVIDUALS FILING FOIA REQUESTS ARE ASKED TO USE THE CITY'S FOIA REQUEST FORM OR SUBMIT A LETTER. ALL REQUESTS ARE TO BE SIGNED. REQUESTS ARE TO BE **FAKED** (803-343-8719), **MAILED** (CITY OF COLUMBIA ATTN: PUBLIC RELATIONS DEPT. PO BOX 147 COLUMBIA, SC 29217) OR **HAND-DELIVERED** (1737 MAIN STREET (CITY HALL-CORNER OF MAIN AND LAUREL STREETS). HAND-DELIVERED REQUEST SHOULD BE LEFT WITH CSO (SECURITY OFFICER) LOCATED IN THE FRONT ENTRANCE (MAIN & LAUREL STREETS) OF CITY HALL.

A MINIMUM OF .25 CENT PER PAGE COPY CHARGE, \$1.00 PER CD/DVD AND \$10.00 PER HOUR RESEARCH AND RETRIEVAL FEE MAY APPLY. DOCUMENTS MAY BE FURNISHED WHEN APPROPRIATE WITHOUT CHARGE OR AT A REDUCED CHARGE WHERE THE AGENCY DETERMINES THAT WAIVER OR REDUCTION OF THE FEE IS IN THE PUBLIC INTEREST BECAUSE THE INFORMATION CAN BE CONSIDERED AS PRIMARILY BENEFITTING THE GENERAL PUBLIC.

THE PUBLIC BODY MAY ESTABLISH AND COLLECT FEES NOT TO EXCEED THE ACTUAL COST OF SEARCHING FOR MAKING COPIES OF THE RECORD.

A PRE-PAID DEPOSIT MAY BE REQUIRED BEFORE SEARCHING FOR OR MAKING COPIES OF THE RECORDS.

SIGNATURE

04-03-13





We Are Columbia

1737 Main Street, Columbia, 29217 • Phone: 803-545-3020 • Fax: 803-343-8719

April 5, 2013

Re: Freedom of Information Act Request

The City of Columbia has received numerous Freedom of Information requests regarding Chief Randy Scott's personal leave of absence and other matters related to Chief Randy Scott.

The City is endeavoring to provide documents that are available and subject to disclosure.

Provided herewith is the following:

- 1) Personnel file (redacted) pursuant to SC Code 30 - 4 - 30 (c) to exclude:
 - Social security numbers
 - Personal home street number/name
 - Personal home phone number/cell numbers/email
 - Beneficiary information
 - Dependent information
 - Addresses and telephone numbers of references on employment application
 - Driver's license number
 - Copies of social security card
 - Copies of driver's license
 - Deduction amounts on email dated 1/29/13
 - Credit card transaction number on criminal records check
- 2) Request for personal leave of absence dated April 1, 2013
- 3) Letter of appointment dated April 2, 2013

Review of requests continues. Additional documents will be provided as appropriate and available.



ColumbiaSC.net



We Are Columbia

1737 Main Street, Columbia, 29217 • Phone: 803-545-3020 • Fax: 803-343-8719

Requests for which there are no documents include:

Contract of employment (as with all departments heads the police chief does not have a contract)

Internal affairs investigation(s)

Disciplinary action(s)

Respectfully,
City of Columbia
Public Relations Department



April 19, 2013

To: FOIA Requesters
Re: FOIA Responses

Dear Sir/Madam:

The City of Columbia has received numerous requests pursuant to the South Carolina Freedom of Information Act in reference to public records maintained with regard to Police Chief Randy Scott. In addition to documents provided on Friday, April 5, 2013, the following documents are now made available in response to requests received prior to April 10, 2013:

1. Applications for the position of Police Chief - October 2010 and January 2013.

Chief Scott was hired as Interim Chief of Police on October 4, 2010. No additional applications were received. Following Chief Scott's retirement, one other person applied for the position of Police Chief. All three applications are provided. (1 for 2010 and 2 for 2013)

Redactions from these materials are as follows: personal street names, personal phone numbers, personal email addresses, personal driver's license numbers, addresses and phone numbers of personal references.

2. Payroll time sheets for Chief Scott for the period December 26, 2011 through March 31, 2013.
3. Annual, sick and holiday leave history for Chief Scott as of April 8, 2013.

Upon retirement, Chief Scott was paid for 1/5 of his unused sick leave and all unused annual leave in keeping with City policy. All City department heads receive 120 hours annual and 120 sick leave upon hire. Thereafter, department heads accrue and use leave in the same fashion as other employees. As of April 1, 2013, Chief Scott had 101.33 hours of annual leave and 136 hours of sick leave.



4. Retirement purchase credit on behalf of Chief Scott. Home street address redacted. This purchase was intended to offset loss of future benefits, including health insurance following retirement, lost when Chief Scott resigned from the Richland County Sheriff's Department.
5. Vehicle maintenance records for Chief Scott for the period September 2011 to April 2013. These records show one accident in April 2012 resulting from debris on the roadway and one accident in June 2012 involving a second, parked vehicle in the Justice Square parking lot. In keeping with policy, Chief Scott voluntarily submitted to an alcohol/drug test following the June 2012 accident. Independent test results (provided) were negative.
6. 911 reports for 1601 Main Street, Apt. 304 for the period October 2012 - April 2013. See attached documents. Recordings are unavailable as the 90 day retention period has expired.
7. 911 reports for 135 Heyward Higgins Road, Lugoff, SC for the period January 1, 2009 - December 31, 2010. See attached documents. Recordings are unavailable as the 90 day retention period has expired.
8. Requested items that do not qualify as public documents relating to the performance of public officials or containing information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy. S.C. Code Ann. §§ 30-4-15 and 40(2):

Anonymous emails referring to Chief Scott's alleged personal conduct.

Unsolicited, unverified complaints referring to Chief Scott's alleged personal conduct.

Third party, unverified allegations of misconduct by Chief Scott.

Additional responses to requests will be provided as appropriate.

RECEIVED

MAY 14 2013

FY# 12-13-757
For Office Use

(FILING FORM)

FREEDOM OF INFORMATION ACT REQUEST**TO: CITY OF COLUMBIA**
(PLEASE PRINT)**NAME:** George S. Glassmeyer**ADDRESS:** 100 Denbeck Road, Irmo, SC 29063**E-mail address:****PHONE NUMBER(S) (DAYTIME):** (803**I REQUEST THE FOLLOWING INFORMATION UNDER THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT. (PLEASE BE SPECIFIC).**

One copy of the Columbia Police Department Policy and Procedure manual as it existed on July 1, 2012 and a copy of any and all subsequent amendments, additions, and deletions. I prefer that this information be provided to me in an electronic format (i.e., CD ROM).

INDIVIDUALS FILING FOIA REQUESTS ARE ASKED TO USE THE CITY'S FOIA REQUEST FORM OR SUBMIT A LETTER. ALL REQUESTS ARE TO BE SIGNED. REQUESTS ARE TO BE FAXED (803-343-8719), MAILED (CITY OF COLUMBIA ATTN: PUBLIC RELATIONS DEPT. PO BOX 147 COLUMBIA, SC 29217) OR HAND-DELIVERED (1737 MAIN STREET (CITY HALL-CORNER OF MAIN AND LAUREL STREETS). HAND-DELIVERED REQUEST SHOULD BE LEFT WITH CSO (SECURITY OFFICER) LOCATED IN THE FRONT ENTRANCE (MAIN & LAUREL STREETS) OF CITY HALL.

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SIGNATURE

05-14-13



Directives and Procedures Manual



City of Columbia Police Department

RANDY SCOTT
CHIEF OF POLICE



Revised 11/8/2010

Directives and Procedures Manual Change Record (10-25-2010 to date)

Directives Distribution 2011-1 (02/01/2011)	
Special Order 2011-01 Video Camera Repair Procedure	<u>Modifies:</u> Section 01, Chapter 04 Use and Operation of Police Department Vehicles - Subsection 7.8
Special Order 2011-01 Utility Uniforms	<u>Modifies:</u> Section 03, Chapter 04 of the Directives and Procedures Manual – Uniform Standards and Personal Appearance, Subsection 4.0
Section 04, Chapter 01 Recruitment and Selection (Jan. 2011)	<u>Replaces:</u> Recruitment and Selection (2008)
Directives Distribution 2011-1 (02/01/2011)	
Section 04, Chapter 01 Recruitment and Selection (Mar. 2011)	<u>Replaces:</u> Recruitment and Selection (Jan. 2011)
Section 04, Chapter 04 Promotion (Mar. 2011)	<u>Replaces:</u> Promotion (2008)

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SECTION 03 CHAPTER 03 DISCIPLINARY PROCEDURES

1.0 DIRECTIVE

The Columbia Police Department will exercise disciplinary action, when required, in a consistent and impartial manner.

2.0 DISCIPLINARY PHILOSOPHY

Although internal consistency in administering discipline is desirable, numerous factors should be considered in determining the appropriate level of discipline to be assessed at each successive step. Some of the factors involved include but are not limited to; length of service, time intervals between offenses, effectiveness of prior disciplinary actions, willingness to improve, overall work performance, job attitude and disciplinary measures previously administered to other comparable members or employees for similar offense. A repetition of the same offense or another serious offense indicates that more severe disciplinary measures should be administered. Formal disciplinary action will be kept indefinitely in the employee's city personnel file.

Nothing contained herein will limit the right, power and authority of the Chief of Police to administer disciplinary action he deems appropriate under the given circumstance.

3.0 PERSONNEL SUBJECT TO DISCIPLINE

All members of the Department, both sworn and non-sworn, are responsible for conforming to departmental policies and procedures and are subject to discipline under the provisions of this chapter. Any member who violates the oath of office or trust, the laws of the United States, the State of South Carolina, or the City of Columbia or who violates any provision of departmental policies and procedures or who disobeys the lawful order of a supervisor, or who is incompetent in the performance of his duties is subject to disciplinary action. It is the supervisor's duty to ensure that those personnel subordinate to them conform to the Department's guidelines. This is best accomplished by supervisors setting a positive example for their subordinates. In those cases where the Department's guidelines are violated, there must be a uniform system of discipline.

4.0 COUNSELING AND RETRAINING

It may be determined that while an incident may have resulted from less than satisfactory job performance, the infraction is not severe enough to rise to the level of an oral reprimand. In such cases, an appropriate alternative to disciplinary action may be counseling or retraining, either of which should be directed toward improving employee performance through positive and constructive means.

When counseling or retraining is used as an alternative to disciplinary actions, it is not considered formal discipline, but a "Report of Disciplinary Action and/or Termination" form will be completed by the supervisor as a written record and maintained in the member's Personnel Performance File for the remainder of the employee's evaluation year.

Nothing in this directive prohibits the use of counseling or retraining in combination with the formal disciplinary penalties identified in this section nor in matters not directly associated with infractions of regulations.

5.0 TYPES OF FORMAL DISCIPLINE

Subject to the City of Columbia Employee Handbook and, when necessary, the approval of the City Manager, the following penalties may be imposed against a member of the Department for disciplinary purposes:

5.1 Oral Reprimand

Any first offense violation of a minor directive or procedure may be grounds for an oral reprimand. The supervisor issuing an oral reprimand will verbally discipline the employee and will document the oral reprimand on the "Report of Disciplinary Action and/or Termination" form checking oral reprimand as the action taken. The report will then be forwarded up the employee's chain of command to the Chief of Police.

The supervisor issuing the oral reprimand will inform the employee that the oral reprimand has been documented and a copy will be maintained in the employee's Personnel Performance File for the remainder of the employee's evaluation year. The original report will be maintained in the Department's Human Resources Unit.

5.2 Written Reprimand

Any first or second offense violation of a minor directive or procedure may be grounds for a written reprimand. The supervisor issuing a written reprimand will verbally discipline the employee and will document the written reprimand on the "Report of Disciplinary Action and/or Termination" form checking written reprimand as the action taken.

The supervisor issuing the written reprimand will inform the employee that the written reprimand has been documented and will be permanently maintained in the employee's Personnel Performance File. Written reprimands will be forwarded up the employee's chain of command to the City Personnel Office.

5.3 Suspension

The Chief of Police may, for disciplinary purposes, suspend without pay any employee of this Department for a length of time, as he considers appropriate, not exceeding five days per offense.

The Chief of Police will give a written statement specifically setting forth the reason for the suspension to the affected employee and a copy submitted to the City Personnel Director. With the approval of the City Manager, an employee may be suspended for longer periods pending a trial or investigation of any charges against him.

5.4 Demotion

Any serious violation of a directive or procedure may be grounds for a demotion in rank and pay.

The Chief of Police will give a written statement specifically setting forth the reasons for the demotion to the affected employee and a copy submitted to the City Personnel Director.

5.5 Dismissal from the Department

Dismissals are discharges or separations made for delinquency, misconduct, inefficiency or inability to perform the duties of a position satisfactorily. The Chief of Police may dismiss any probationary or regular employee and they shall be informed in writing of the following:

- Reason for dismissal.
- Effective date of dismissal.
- Status of fringe and retirement benefits after dismissal.
- Contents of the officer's employment record relating to the dismissal.

The City Manager may dismiss any employee when he concludes that such dismissal is for the good of the City. The City Manager is not required to give any reason for disciplinary actions or dismissal.

All regular employees discharged for reasons of inefficiency or inability to discharge duties of their position will be given two weeks notice of discharge or granted two weeks severance pay in lieu of notice.

6.0 LEVEL OF AUTHORITY FOR DISCIPLINE

All supervisors are held responsible for any discipline administered at any level below them within their span of authority. Final disciplinary authority and responsibility for departmental members rests with the Chief of Police, and if necessary, the City Manager.

All supervisors, to include first level supervisors (Sergeants, Inspectors, Lieutenants and Civilian Supervisors) and Division Commanders may exercise the following disciplinary measures with members under their control:

- Change of duty assignment within their span of supervisory control.
- Counseling and retraining.
- Oral reprimand.
- Written reprimand.
- Recommend a higher level of discipline, such as suspension or dismissal.
- Emergency relief from duty.

The Chief of Police may exercise the following additional disciplinary measures:

- Suspension for not more than five (5) days.
- Demotion in rank or pay grade.
- Dismissal from the Department.

Whenever any sworn supervisor observes improper officer conduct, it shall be their responsibility to administer the appropriate disciplinary action and then inform the offending member's supervisor of the action taken and reasons for those actions. Civilian supervisors have direct authority only over members of their sections and will report violations by sworn personnel to the officer's supervisor for action.

A first level supervisor or higher may relieve a member from duty on an emergency basis for serious violations of law or directive or when the member is physically or mentally incapable of performing his duties (i.e., intoxication, gross insubordination). Such relief from duty will remain in effect until 10:00 a.m. on the next day, unless otherwise directed by competent authority. At that time, the relieved member and the supervisor effecting the relief will report to the Division Commander. The relieved member and the supervisor effecting the relief will then follow the chain-of-command up to the Chief of Police who will render the final decision.

7.0 REPORT OF DISCIPLINARY ACTION AND/OR TERMINATION

When disciplinary action is taken or recommended by a supervisor, a "Report of Disciplinary Action and/or Termination" form will be completed. This form will contain the following information:

- Name, rank and present assignment of the member being disciplined.
- Date, time and location of the violation.
- Section, Chapter and Subsection numbers of the directive or procedure violated, and/or the common name of the infraction.
- A complete statement of the facts of the violation.
- The written signature of the supervisor preparing the disciplinary and his rank.
- The written signature of all supervisors in the member's chain-of-command.

7.1 Forwarding of the "Report of Disciplinary Action and/or Termination"

The supervisor imposing or recommending the disciplinary action will be responsible for forwarding the "Report of Disciplinary Action and/or Termination" to the member's first link in his chain-of-command. Each level of command must review; take any action within their authority and forward the disciplinary report up through the chain-of-command to the Chief of Police. Any change at any level in discipline administered must be recorded in the report and forwarded.

7.2 Distribution of the "Report of Disciplinary Action and/or Termination"

The "Report of Disciplinary Action and/or Termination" will be distributed as follows:

- Original - forwarded to the City Personnel Department by the Human Resources Unit.
- Copy - to be retained in the disciplined member's performance records within the Division.
- Copy - to member being disciplined.
- Copy - to the Internal Affairs Unit.
- Copy - to member's Division Commander.
- Copy - to member's Unit/Section Commanding Officer.

7.3 Review of the "Report of Disciplinary Action and/or Termination"

The supervisor must show the "Report of Disciplinary Action and/or Termination" (with the exception of terminations and oral reprimands) to the employee and request his signature. The employee's signature acknowledges that he has seen the report but does not indicate agreement with the contents of the report or the action taken, nor does it prevent an appeal from the action. If the employee declines to sign the report, the supervisor shall note on the report the time and date it was shown to the employee and sign the notation.

8.0 CODE OF CONDUCT

Employees will not commit acts or omit any acts that constitute a violation of any rules, regulations, written directives, procedures, or orders of this Department, whether stated in these rules or elsewhere.

It is not possible to list all acts or omissions that may result in disciplinary action. The following lists are merely a guideline of some of the more obvious types of misconduct and the probable disciplinary action that may result from them.

In every circumstance where the listed recommended disciplinary action is modified or recommended for modification by a supervisor due to extenuating circumstances, the supervisor must document the reasons for the modification in discipline. Supervisors may contact the Internal Affairs Unit for examples of similar violations and extenuating circumstances. However, the disciplinary action that is administered for any particular act or acts of misconduct rest in the sole discretion of the Chief of Police subject to review by the City Manager by way of the City grievance procedure.

8.1 Insubordination Offense

1. Respect Toward Superiors

Employees will display respect and will address supervisors and superior officers by proper rank or title.

- 1st Offense: Written reprimand
2nd Offense: Suspension 1 - 3 days to dismissal

2. Abusiveness

Employees will not use abusive language or gestures toward a supervisor or superior officer of the Department.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 2 - 5 days and/or demotion
- 3rd Offense: Dismissal

3. Prompt Compliance with a Direct Lawful Order of a Superior

Departmental personnel will promptly execute the direct lawful orders and/or instructions of a supervisor or superior officer, and will not delay or fail to carry out such orders or instructions.

- 1st Offense: Suspension of 3 - 5 days and/or demotion
- 2nd Offense: Dismissal

4. Truthfulness

Upon the order of the Chief, the Chief's designee or a superior officer, employees will truthfully answer all questions specifically directed and narrowly related to their scope of employment and operations of the Department.

- 1st Offense: Dismissal

5. Concerted Job Actions

Departmental personnel will not engage in concerted job actions such as curtailment or restriction of work output, or interfere with work in or about other departmental work stations including, but not limited to, instigating, leading or participating in any walk-out, strike, sit-down, stand-in, slow-down, refusal to return to duty at the scheduled time, or otherwise instigate, lead, or contribute to job actions that undermine supervisory authority and seriously effect discipline, morale or organizational effectiveness.

- 1st Offense: Dismissal

8.2 Neglect of Duty Offenses

1. Abuse of Meal Periods

Sworn personnel will be permitted to suspend their assigned activities for the purpose of having a meal during their tour of duty. The meal will be taken at an establishment within the officer's assigned district or patrol area and will last no longer than thirty (30) minutes. Officers will be subject to call during the meal break.

Sworn employees in an administrative assignment will be permitted to take a one (1) hour meal break at an establishment of their choice. Civilian employees will be permitted to take a one (1) hour lunch.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 day

2. Reporting for Duty

Employees will report for duty at the time and place required by assigned orders and will be physically and mentally fit to perform their duties. They will be properly equipped and cognizant of information required for the proper performance of duty so that they can immediately assume their duties. Judicial subpoenas will constitute an order to report for duty under this section.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

3. Report for Cause of Absence

Employees that are unable to report for duty due to illness or other valid reasons will notify their supervisor at least thirty (30) minutes prior to the start of their tour of duty.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 day

4. Misuse of Sick Leave

Departmental personnel will not feign illness or injury or falsely report themselves ill or injured or otherwise deceive any superior or supervisor of the Department as to the condition of their health for purposes of avoiding normal duties through use of accumulated sick leave. Performance of income producing or recreational activities while on sick leave will be prima-facie evidence of sick leave abuse. For the purpose of this directive, sick leave will be considered to be the 24 - hour period following the employee calling in sick.

Employees are expected to remain at their place of residence while on sick leave, or to cause prompt notification of the Unit/Section supervisor with a location at which they may be reached. Departmental personnel may, however, leave the place of residence for short durations as necessary for obtaining medical aids or assistance, food or sustenance, for performing necessary domestic errands, or exercise of civil rights to vote, travel to or engage in religious activities.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

5. Fictitious Illness or Injury Report

Employees will not feign illness or injury or falsely report themselves ill or injured or otherwise deceive or attempt to deceive any supervisor of the Department as to the condition of their health for purposes of making a fraudulent claim for insurance, workers compensation or disability retirement.

- 1st Offense: Dismissal

6. Response to Radio Calls

Departmental personnel will respond promptly to radio calls when logged or listed as being in-service with Columbia/Richland Communications Center.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

7. Completion of Reports and Documents

Departmental employees will complete and submit all reports and documents required in the execution of their

duties prior to concluding a tour of duty except as authorized by a supervisor.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

8. Willful Violation of Policies and Procedures (Not Endangering Persons or Property)

Employees will not willfully ignore or violate official policies and procedures, supervisory instructions, or knowingly fail to properly execute the duties and responsibilities of their assigned position.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

9. Willful Violation of Policies and Procedures (Endangering Persons or Property)

Employees will not willfully ignore or violate official policies and procedures, supervisory instructions, or knowingly fail to properly execute the duties and responsibilities of their assigned position that endangers persons or property.

- 1st Offense: Suspension of 1 - 5 days and/or demotion
- 2nd Offense: Dismissal

10. Leaving Duty Post

Employees will not leave their assigned duty posts during a tour of duty except when authorized by proper authority, unless an incident of higher priority dictates immediate action.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

11. Failure to Report a Motor Vehicle Accident

Departmental personnel will immediately report motor vehicle accidents that involve a departmental vehicle.

- 1st Offense: Suspension of 1 - 5 days and/or demotion
- 2nd Offense: Dismissal

12. Failure to Report Loss of Equipment, Badge or ID Card

Departmental employees will immediately report the loss of badge, ID card, or departmental equipment to a supervisor.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

13. Citizen Complaints to be Recorded

Employees will courteously and promptly adhere to policies and procedures established for processing citizen complaints.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

14. Notification of Correct Address and Telephone Number

Employees will have telephones in their residences and will immediately report any change of telephone numbers or addresses to their immediate supervisor, the Human Resources Unit and Division Commander.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

15. Identification Required

Employees will carry their identification cards on their persons at all times, except when impractical or dangerous to their safety or to an investigation. They will furnish their name and badge number to any person requesting that information when they are on or off duty while holding themselves in an official capacity, except when the withholding of such information is necessary for the performance of police duties or is authorized by proper authority.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

16. Unsatisfactory Performance

- A. Employees will maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Employees will perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by lack of knowledge of the application of laws required to be enforced; unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the employee's rank, grade or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving their attention, or absence without leave.

- 1st Offense: Written reprimand to suspension of 1 - 2 days and/or demotion
- 2nd Offense: Suspension of 3 - 5 days and/or demotion
- 3rd Offense: Dismissal

- B. Employees will make corrective efforts when notified of improper or poor performance. The following will be considered evidence of unsatisfactory performance; repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the Department.

- 1st Offense: Written reprimand to suspension of 1 - 2 days and/or demotion
- 2nd Offense: Suspension of 3 - 5 days and/or demotion
- 3rd Offense: Dismissal

17. Sleeping On Duty

Employees will remain awake while on duty. If unable to do so, they will report to their superior officer who will determine the proper course of action.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

18. Cowardice

Sworn police personnel shall perform their required duties and shall not avoid such duties because of fear or cowardice. Sworn officers are not expected or required to enter imminently hazardous situations without assistance; however, they shall not fail to come to the aid of another member of the Department who is already engaged in an imminently hazardous situation. Officers shall respond to the aid of all persons in danger unless the probability of losing their own life exceeds the probability of successful rescue.

- 1st Offense: Dismissal

19. Failure to Comply With NCIC Policies and Procedures

Those employees authorized to enter information into or access information from NCIC shall not allow unauthorized personnel the use of any NCIC terminal, except for formal job training towards NCIC certification. Employees will comply with all established policies and procedures established in the SLED/CJICS-FBI/NCIC Operations and Procedures Manual and its' record keeping procedures.

- 1st Offense: Suspension of 3 - 5 days and/or demotion
- 2nd Offense: Dismissal

8.3 Unlawful Conduct Offenses

1. Conviction of Traffic Violations

Departmental personnel will adhere to all local and state traffic laws and ordinances.

Four (4) Point Violation

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

Six (6) Point Violation

- 1st Offense: Suspension of 1 - 2 days to dismissal
- 2nd Offense: Dismissal

2. Conviction of Criminal Offenses

Departmental personnel will adhere to all federal, state and local criminal laws and ordinances.

- 1st Offense: Dismissal

8.4 Improper Conduct Offenses

1. Courtesy

Employees will be courteous to the public and to other departmental personnel. Employees will be tactful in the performance of their duties, shall control their temper, exercise the utmost patience and discretion and will not

engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane, insolent, sexually provocative or degrading language or gestures and will not express any prejudice toward any individual or group concerning gender, race, religion, politics, national origin, lifestyle or similar personal characteristics.

- 1st Offense: Oral reprimand to dismissal
- 2nd Offense: Written reprimand to dismissal
- 3rd Offense: Suspension of 3 - 5 days and/or demotion to dismissal

2. Home Address and Telephone Number Confidential

Departmental personnel will treat the home address and telephone number of other employees as confidential information. Such information will be released only when authorized by competent authority, or with the consent of the personnel concerned.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

3. Radio Transmission

Departmental personnel will use official radio channels in accordance with established procedures, and will avoid the use of sarcasm, impertinent remarks, or other improper radio transmissions.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

4. Testimonials

Departmental employees will obtain the approval of the Chief of Police before authorizing use of their names, photos, or official titles which identify them as members of the Columbia Police Department in testimonials or advertisements of any commodity, or commercial enterprises.

- 1st Offense: Suspension of 1 - 2 days
- 2nd Offense: Suspension of 3 - 5 days and/or demotion
- 3rd Offense: Dismissal

5. Employment Outside of Department

Employees may engage in off-duty employment subject to the following limitations:

- A. Such employment will not render the employee unavailable during an emergency, physically or mentally exhaust the employee, require special consideration for the scheduling of the employee's regular duty hours or bring the Department into disrepute or impair the operation or efficiency of the Department or employee.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

- B. Employees will not engage in employment of any nature involving bail bond agencies, private investigative work, private security agencies, or towing services.

1st Offense: Dismissal

- C. All secondary and off-duty employment must be approved by the employee's respective supervisor. Employees will submit a written request for any off-duty employment that he works on a regularly scheduled basis. If this employment exceeds six (6) months, the request must be resubmitted annually.

1st Offense: Written reprimand
2nd Offense: Suspension of 1 - 2 days
3rd Offense: Suspension of 3 - 5 days

- D. All officers engaged in security work off-duty will be required to wear their uniform and will be restricted to security work within the City Limits.

1st Offense: Suspension of 1 - 2 days
2nd Offense: Suspension of 3 - 5 days and/or demotion
3rd Offense: Dismissal

6. Endorsements and Referrals

Employees will not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service or commercial service, (such as an attorney, towing service, bondsman, mortician, etc.). In the case of towing service, when such service is necessary, and the person needing the service is unable or unwilling to procure it or requests assistance, employees will proceed in accordance with Section 2-4008 of the Columbia City Code of Ordinances.

1st Offense: Suspension of 1 - 2 days and/or demotion
2nd Offense: Suspension of 3 - 5 days and/or demotion
3rd Offense: Dismissal

7. Alcoholic Beverages and Drugs in Police Institutions

Employees will not store in or bring into any police facility or vehicle, alcoholic beverages, controlled substances, narcotics or hallucinogens, except alcoholic beverages, controlled substances, narcotics or hallucinogens that are held as evidence.

1st Offense: Dismissal

8. Violation of Drug and Alcohol Policy

Employees will not possess any controlled substances, narcotics, or hallucinogens except when prescribed as treatment by a physician or dentist. When controlled substances, narcotics, or hallucinogens are prescribed, or if they intend to use over the counter drugs or any substance that might impair their ability to satisfactorily perform their duties they will notify their supervisor prior to beginning their shift.

Employees will not consume intoxicating beverages while in uniform or on duty, except in the performance of duty and while acting under proper and specific orders from a superior officer.

1st Offense: Dismissal

9. Refusal to submit to Drug and Alcohol testing

Employees shall not refuse to submit to random, reasonable suspicion, post accident, probationary or promotion related drug and alcohol testing.

1st Offense: Dismissal

10. Abuse of Position

- A. Employees will not use their official position, identification cards or badges for personal or financial gain, obtaining privileges not otherwise available to them except in the performance of duty, or to avoid the consequences of illegal acts. Employees will not lend to another person their identification cards or badges or permit them to be photographed, reproduced or have in their possession reproductions without the approval of the Chief of Police. This rule will apply to off-duty badges or other reproductions of official identification.

1st Offense: Suspension to dismissal

- B. No Officer shall use their position of public trust and authority to intimidate, manipulate, persuade, improperly influence, request favors of, or harass any citizen, this will include sexual harassment.

Sexual harassment is the deliberate behavior of a sexual nature by one person to another that is unwelcome, unasked for or rebuked by the other person. The behavior can be verbal, nonverbal, or physical in nature.

1st Offense: Suspension to dismissal

11. Intentional Abuse of Departmental Equipment

Departmental personnel will utilize departmental equipment for its intended purpose in accordance with established procedures, and not intentionally abuse, misuse, or damage departmental equipment or vehicles.

1st Offense: Suspension of 1 - 2 days and/or demotion

2nd Offense: Suspension of 3 - 5 days and/or demotion

3rd Offense: Dismissal

12. Use and Handling of Weapons

Departmental personnel will use or handle weapons in a careful and prudent manner on or off-duty. Weapons will be used in accordance with the law and established departmental procedures.

1st Offense: Written reprimand

2nd Offense: Suspension of 1 - 2 days and/or demotion

3rd Offense: Suspension of 3 - 5 days and/or demotion

13. Dissemination of Information

Employees will treat the official business of the Department as confidential. Information regarding official business will be disseminated only to those for whom it is intended. Employees may remove or copy official records or reports from a police installation only as it is necessary for the performance of their duties. Employees will not divulge the identity of persons giving confidential information except as authorized by proper authority. This specifically includes but is not limited to: Unauthorized disclosure of SLED/CJICS - FBI/NCIC criminal justice information, release of driver's license or vehicle registration information to other than criminal justice employees who do not have a user agreement with the Columbia Police Department.

1st Offense: Suspension of 3 - 5 days and/or demotion

2nd Offense: Dismissal

14. Processing Property and Evidence

Property or evidence that has been discovered, gathered or received in connection with departmental responsibilities will be processed in accordance with established procedures. Employees will not convert to their own use, create, conceal, falsify, destroy, remove, tamper or withhold any property or evidence in connection with an investigation or other police action except in accordance with established departmental procedures.

1st Offense: Dismissal

15. Associations

Employees will avoid regular or continuous associations or dealings with persons whom they know, or should know based upon relative circumstances, are persons under criminal investigation or indictment, or who have a reputation in the community or the Department for present involvement in felonious or criminal behavior, except as necessary to the performance of official duties, or are unavoidable because of other personal relationships of the employee.

1st Offense: Written reprimand

2nd Offense: Suspension of 1 - 2 days and/or demotion

3rd Offense: Suspension of 3 - 5 days and/or demotion

16. Excessive or Unnecessary Force

Departmental personnel will use only that degree of force necessary to perform official duties in accordance with established departmental directives or procedures.

1st Offense: Written reprimand to 1 - 2 days suspension and/or demotion

2nd Offense: Suspension of 5 days and/or demotion

3rd Offense: Dismissal

17. Chain of Command

Departmental personnel will adhere to the organization chain of command in the course of regular duties except when necessary for maintaining the morale and/or the integrity of the Police Department, or in cases of justifiable personal need.

1st Offense: Oral reprimand

2nd Offense: Written reprimand

3rd Offense: Suspension of 1 - 2 days

18. Abuse of Process

Employees will not make false accusations of a criminal or traffic charge.

1st Offense: Dismissal

19. Gifts, Gratuities, Bribes, or Rewards

Employees shall not solicit any gift (including money, tangible or intangible personal property, food, beverage, loan promise, service entertainment, or special discount) from any person, business or organization. Employees shall not accept any gift whatsoever where the acceptance would appear to be intended to influence the action of the employee in his official capacity. This rule does not prohibit any employee from partaking of minor social graces or negligible gifts in the spirit of a social or a holiday nature.

1st Offense: Suspension of 3 - 5 days and/or demotion

2nd Offense: Dismissal

20. Always On Duty

All employees of the Columbia Police Department for disciplinary purposes will be considered as being on duty at all times. Although certain hours are allotted to a respective employee for the performance of duty on ordinary occasions, he is required to respond immediately, day or night in any emergency on notice that their services are needed.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

21. Use of Tobacco

Use of tobacco, in any form, is prohibited inside all City of Columbia facilities. Outside City of Columbia facilities, employees may not use tobacco if they are engaged in providing services to the public or while in departmental vehicles.

- 1st Offense: Oral reprimand
- 2nd Offense: Written reprimand
- 3rd Offense: Suspension of 1 - 2 days

22. Political Activity

All employees are urged to exercise their individual right to vote as citizens. As City employees, in an official capacity, however, employees shall not engage in public political activity, for or against any political candidate or political issue.

- 1st Offense: Dismissal

23. Intervention

Employees will not interfere with cases being handled by other employees of the Department or by any other governmental agency unless:

- A. Ordered to intervene by a superior officer, or;
- B. The intervening officer believes beyond a reasonable doubt that a manifest injustice would result from failure to take immediate action.

Employees will not undertake any investigation or other official action not part of their regular duties without obtaining permission from their supervisor unless the demands of the situation require immediate police action.

- 1st Offense: Written reprimand
- 2nd Offense: Suspension of 1 - 2 days and/or demotion
- 3rd Offense: Suspension of 3 - 5 days and/or demotion

24. Revocation or Suspension of Drivers License

Employees who operate departmental vehicles will immediately report the revocation or suspension of their driver's license to the Chief of Police.

- 1st Offense: Dismissal

25. Criticism and Malicious Gossip

Employees of the Department will not criticize any other member or employee, except in the line of duty as a supervisor to a subordinate, nor will any employee maliciously comment about any supervisor, or any order, directive, procedure, case or event that should remain police information. No employee will maliciously cause discredit to, or lower or injure the morale of the Department or that of any individual of the Department.

- 1st Offense: Oral Reprimand
- 2nd Offense: Written Reprimand
- 3rd Offense: Suspension 1 - 2 days

26. Conduct Unbecoming a Law Enforcement Officer

No Officer, while in uniform or identified as a representative of the Department, shall engage in any conduct or activity which would reasonably be construed as bringing disrepute upon the City of Columbia Police Department or the profession of Law Enforcement as a whole.

- 1st Offense: 1-2 days suspension to dismissal
- 2nd Offense: Dismissal

27. Use Dynamic URLS sites (Blogs)

Social networking (dynamic URLS) websites are virtual online communities use to share information, opinions, photos, music and videos.

When an employee of the Columbia Police Department discusses sensitive issues or publicly communicates an association with the department in such a forum, they may be placing themselves or the department at risk. Employees should consider the integrity of the department, the safety of its members and the potential risks of disclosing sensitive or personal information.

All employees of the Columbia Police Department are hereby prohibited from using images of department equipment, uniforms, and insignias on any social networking Internet site without the written permission of the Chief of Police.

- 1st Offense: Written Reprimand
- 2nd Offense: 1-2 days suspension to dismissal

9.0 HARASSMENT DIRECTIVE

The Columbia Police Department will provide a businesslike work environment free from all forms of employee discrimination including incidents of unlawful workplace harassment or sexual harassment. Appropriate disciplinary actions will be taken for all violations of this directive. Sworn employees will be disciplined under the guidelines for Conduct Unbecoming a Law Enforcement Officer. Civilian employees will be disciplined under City guidelines for Sexual Harassment.

9.1 Definition of Unlawful Harassment

Unlawful harassment is conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

9.2 Definition of Sexual Harassment

Sexual harassment is the deliberate or repeated behavior of a sexual nature by one person to another that is unwelcome, unasked for or rebuked by the other employee. The behavior can be verbal, nonverbal, or physical in nature.

Examples of sexual harassment include, but are not limited to, the following:

- Creating an intimidating, hostile, or offensive working environment
- Utilizing the submission to or rejection of unwelcome sexual conduct as a basis for employment decisions affecting that individual
- Making acceptance of unwelcome sexual conduct or advances or requests for sexual favors of any nature a condition of employment or continued employment.

9.3 Reporting Procedure

An employee who feels that he or she has been unlawfully or sexually harassed shall immediately file a complaint with their supervisor who will send the complaint through the Chain of Command to the Chief of Police. The Internal Affairs Unit will promptly and thoroughly investigate the allegation in a confidential manner. A report detailing the findings of the investigation will be submitted to the Chief of Police who will determine what, if any, disciplinary action will be taken.

If the offending party is in the employee's Chain of Command, the employee may file the complaint directly with the Chief of Police or City's Human Resources Director.

9.4 Protection of Complainants against Retaliation

Retaliatory action against anyone filing a complaint of unlawful or sexual harassment, as described in this directive, is strictly prohibited.

9.5 Training

All supervisory personnel in the Department will receive annual training on the prevention of unlawful or sexual harassment. This training will be scheduled and coordinated by the Training Unit.

This directive is effective upon receipt.



Tandy P. Carter, Chief of Police
City of Columbia, SC Police Department



City of Columbia Police Department
Office of the Chief
Memorandum



TO: ALL CPD PERSONNEL

DATE: 01/08/2013

FROM: Chief Ruben R. Santiago

**SUBJECT: Directives and Procedures Manual
(Bridging Document)**

INITIALS:

All Directives and Procedures, Unit SOP's, Special Orders or the like, signed by Chief Scott and Carter and/or Interim Chiefs Reaves, Caldwell, Burke shall remain in effect and are hereby adopted by Chief Ruben R. Santiago, unless specifically rescinded or superseded.

This directive is effective upon receipt


Ruben R. Santiago, Interim Chief of Police
City of Columbia, SC Police Department



"The Positive Difference"
#1 Justice Square Columbia, SC 29201

SECTION 02 CHAPTER 06 INTERNAL AFFAIRS

1.0 DIRECTIVE

The Department requires an investigation of all citizen complaints, including anonymous complaints, against the Department or Departmental personnel. It will also address citizen inquiries concerning Departmental regulations, policies and procedures, actions taken by Departmental personnel in the performance of their duties and other issues that involve the Department and its personnel. Adherence to this directive will help ensure the integrity of the Department while protecting the rights and interests of private citizens and Departmental personnel.

2.0 GOALS OF THE INTERNAL AFFAIRS FUNCTION

The Department's Internal Affairs Unit provides an internal investigating system where by objectivity; fairness and justice are guaranteed by an impartial investigation and review.

3.0 OPERATION OF THE INTERNAL AFFAIRS UNIT

The Department shall maintain an Internal Affairs Unit whose supervisor shall answer directly to the Chief of Police. The Unit shall be responsible for conducting complaint investigations in accordance with this directive, as well as conducting any administrative investigations assigned by the Chief of Police. The Internal Affairs Unit shall also be responsible for coordinating, supervising and assisting in complaint investigations conducted by staff personnel. The Internal Affairs Unit will maintain a liaison with the appropriate prosecutor's office concerning internal investigations involving alleged criminal conduct on the part of an employee.

The Internal Affairs Unit will post a brochure in a public location in every Police Station or substation that outlines the procedures the public will follow in lodging a complaint against the Department or its employees. Complaints may also be submitted on-line via the Police Department website.

3.1 Maintenance of Complaint Records

The Internal Affairs Unit shall be responsible for maintaining accurate records of all complaints against the Department and its personnel.

All records maintained by the Internal Affairs Unit shall be considered confidential and only those person(s) authorized by the Chief of Police or his designee shall have access to these records. Internal Affairs records will be maintained in a secure area.

3.2 Notification of Allegations

The Internal Affairs Unit shall notify, as soon as practical, any employee who is under investigation. The notification shall be in writing and shall identify the nature of the investigation and the employee's rights and responsibilities relative to the investigation.

3.3 Garrity Warning

Every employee who is under investigation will be given, and required to sign a copy of the "Garrity Warning", which is a result of Garrity V. New Jersey, 385 U.S. 483 87 S.Ct. 616 (1967).

INTERNAL INVESTIGATION WARNING

"I wish to advise you that you are being questioned as part of an official investigation of the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges that could result in your dismissal from the police department. If you do answer, neither your statements nor any information or evidence that is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges".

4.0 PROCESSING PROCEDURES

Complaints that involve allegations that relate to the following will be referred directly to the Internal Affairs Unit for investigation:

- Use of Force (or any incident) involving serious injury or death;
- Allegations of criminal conduct
- Conduct involving moral turpitude
- Vehicle accidents of a major nature involving on-duty police personnel; and
- Complaints that require extensive investigation and/or out of town travel.

The Internal Affairs Unit will immediately notify the Chief of Police of any complaint involving the above listed items.

Upon receipt of information constituting a complaint or inquiry against an employee of the Department, the Citizen Complaint Form will be completed and distributed as follows:

- Original - Employee's Unit/Section Commanding Officer;
- Copy - Employee's Region/Division Commanding Officer; and
- Copy - Internal Affairs Unit.

It shall be the responsibility of the Region/Division Commanders and/or Region Executive Officer to investigate all other complaints or inquiries against subordinates under their command. The Region/Division Commanders and/or Region Executive Officer may request assistance in the investigation from the Internal Affairs Unit. Upon completion of the investigation, all reports and findings will be forwarded to the Internal Affairs Unit for review and records maintenance.

4.1 Receiving Complaints

Employees of the Department who are contacted by any citizen for the purpose of filing a complaint or inquiry against Departmental personnel will refer the matter to the accused employee's supervisor, if on duty, or an on duty supervisor if the accused employee's supervisor is either unknown or off duty. This action will permit the complainant to be interviewed and appropriate action taken or initiated.

Complaints received by mail by the Office of the Chief or Internal Affairs will be handled as any other complaint.

4.2 Investigative Procedures

The investigative process will be handled on the basis of determining whether or not the allegation constitutes

misconduct on the part of the personnel involved. Based on the findings of the investigation as it progresses, the matter may be handled in one of the following ways:

- Handled as a complaint investigation, whereby the allegation would constitute a violation of law, misconduct, and breach of Departmental directives, policies or procedures.
- Handled as an inquiry, whereby the allegation would not constitute a violation of law, misconduct, breach of Departmental directives, policies, procedures, but may be a result of a lack of understanding of directive, procedure or judicial process. Under these circumstances the following dispositions would be appropriate:
 - Resolution through discussion or explanation and/or no further investigation deemed necessary.
 - Referral to the judicial process.

If a Region Executive Officer conducts the investigation, he will ensure that a complaint control number is obtained from the Internal Affairs Unit and assigned to the complaint or inquiry.

If the complaint is of a nature that requires an investigation to be conducted by the Internal Affairs Unit, notification of the accused employee's Region/Division Commander will be made if it is appropriate and practical to do so.

Regardless of the procedure selected for resolving the matter, the Internal Affairs Unit will contact the complainant in writing within as soon as it is practical to do so, acknowledging receipt of the complaint or inquiry. The complainant will also be kept informed regarding the status of the investigation.

All Internal Affairs investigations will be completed as soon as it is practical to do so

4.3 Investigative Methods

Upon approval by the Chief of Police, certain investigative methods may be used during complaint investigations or other administrative investigations. These methods will only be used when they are specifically directed and narrowly related to a particular internal investigation being conducted by the Department. Employees may be required to submit to the following for administrative purposes only:

- Breathalyzer or other medical analysis;
- Polygraph examinations;
- Employee line-ups;
- Produce financial disclosure statements;
- Employee photographs.

5.0 SPECIAL EVENTS AND OFF-DUTY EMPLOYMENT

Citizen complaints or inquiries arising from and reported during a special event will be assigned to the event commander. The event commander will be responsible for ensuring the matter is processed pursuant to established procedures. If a complaint or inquiry originates from a special event but is reported after the event is concluded, then the matter will be handled as described in this directive.

Citizen complaints or inquiries arising from, and reported during, non-duty status employment activity will be assigned to an on-duty supervisor in the geographical area where the employment occurred. If the complaint or inquiry is reported

after the employment has concluded, the matter will be handled as described in this directive.

6.0 FINDINGS

If the allegation of wrongdoing is resolved utilizing the procedure for complaint investigations, then the complaint will be classified as one of the following:

- **Unfounded** - the allegation is false or there is insufficient evidence to support the allegation.
- **Not Sustained** - there is insufficient evidence to prove or disprove the allegation.
- **Exonerated** - the incident occurred but was lawful and proper.
- **Sustained** - the allegation is supported by sufficient evidence to indicate that the allegation is true.

Sustained complaints may be appropriately handled as performance matters in accordance with established departmental disciplinary procedures.

If the investigation reveals that the complaint originated as a result of an inappropriate or ambiguous departmental directive, procedure, rule or regulation, then the investigating officer will forward a copy of his report and his recommendation regarding the matter to the Chief of Police. The Chief of Police will then determine if there is a need to change the existing directive, procedure, rule or regulation or if there is a need to expand training on the matter.

Once the complaint has been resolved, the Internal Affairs Unit or appropriate Region/Division Commander or Region Executive Officer shall ensure that the complainant is notified regarding the findings of the investigation.

7.0 PUBLISHED REPORTS

The Internal Affairs Unit will publish an annual report, which outlines the nature of complaints received and the statistical outcomes of these complaints. These reports will be of a general statistical nature and shall not contain any specific information on individual complaints or employees.

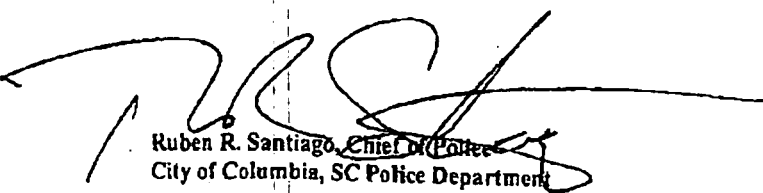
7.1 Internal Distribution

The Internal Affairs Unit Annual report will be distributed to all Police Department units for the general information of all employees. Supervisors will discuss the report with their employees, pointing out problem areas and underscoring the importance of the complaint process.

7.2 Public Distribution

The Internal affairs Unit will make a copy of the Annual Report available to any member of the Public who requests it.

This directive is effective upon receipt.


Ruben R. Santiago, Chief of Police
City of Columbia, SC Police Department

4. The allegations of wrongdoing and/or complaints about Randy Scott's behavior referenced in Request number three (3) above came from private citizens not employed by the City of Columbia.

RESPONSE:

Denied as stated. The source of anonymous allegations is unknown.

5. The allegations of wrongdoing and/or complaints about Randy Scott's behavior referenced in Request number three (3) above came from employees of the City of Columbia.

RESPONSE:

Denied as stated. The source of anonymous allegations is unknown.

6. ~~Allegations of wrongdoing and/or complaints about Randy Scott's behavior~~
were received by the City of Columbia's employees, agents or servants in written form.

RESPONSE:

Denied as stated. Certain allegations were made in electronic form via email from anonymous sources.

7. Allegations of wrongdoing and/or complaints about Randy Scott's behavior referenced in Request number three (3) above were memorialized in writing.

RESPONSE:

Denied as stated. Certain allegations were made in electronic form via email from anonymous sources.

8. In April 2013, Teresa Wilson stated to one or more reporters at *The State* newspaper that she had considered taking disciplinary action against Scott.

RESPONSE:

Denied as stated. By way of further response, Defendant craves reference to any record of Ms. Wilson's statements.

9. In April 2013, Teresa Wilson did not state to one or more reporters at *The State* newspaper that she had considered taking disciplinary action against Scott.

RESPONSE:

Denied as stated. By way of further response, Defendant craves reference to any record of Ms. Wilson's statements.

10. In April 2013, Teresa Wilson stated to one or more reporters at *The State* newspaper that she had knowledge of wrongdoing and/or complaints against Scott.

RESPONSE:

~~Denied as stated. By way of further response, Defendant craves reference to any record of Ms. Wilson's statements.~~

11. In April 2013, Teresa Wilson stated during a televised news conference that she had considered taking disciplinary action against Scott.

RESPONSE:

Denied as stated. By way of further response, Defendant craves reference to any record of Ms. Wilson's statements.

12. In April 2103, Teresa Wilson did not state during a televised news conference that she had considered taking disciplinary action against Scott.

RESPONSE:

Denied as stated. By way of further response, Defendant craves reference to any record of Ms. Wilson's statements.

13. The City of Columbia did not make any investigation into the allegations of wrongdoing against Scott referenced in Request number three (3) above.

RESPONSE:

Denied as stated. By way of further response, the referenced "allegations of wrongdoing" did not relate to Mr. Scott's performance of his duties, were not substantiated and did not require formal investigation.

14. The City of Columbia investigated the allegations of wrongdoing and/or complaints against Scott referenced in Request number three (3) above.

RESPONSE:

Denied as stated. By way of further response, the referenced "allegations of wrongdoing" did not relate to Mr. Scott's performance of his duties, were not substantiated and did not require formal investigation.

15. In the course and scope of his or her employment, Teresa Wilson or one of the Defendant's assistant city managers spoke with Randy Scott about the complaints and/or allegations of wrongdoing made against him.

RESPONSE:

Denied as stated. By way of further response, the referenced "allegations of wrongdoing" did not relate to Mr. Scott's performance of his duties, were not substantiated and did not require formal investigation. Mr. Scott was advised of the allegations.

16. The City of Columbia did not take any disciplinary action against Randy Scott in response to the complaints or allegations made against him at any time.

RESPONSE:

Admitted. By way of further response, the referenced "allegations of wrongdoing" did

not relate to Mr. Scott's performance of his duties, were not substantiated and did not support disciplinary action.

17. There are currently no written records or notes of Teresa Wilson's or any assistant City Managers' discussions with Randy Scott about allegations of wrongdoing and/or complaints about his behavior.

RESPONSE:

Denied as stated. Any written materials prepared by Ms. Wilson were for the purpose of attorney consultation and are not subject to disclosure.

18. Written records or notes of Teresa Wilson's or any assistant City Managers' discussions with Randy Scott about allegations of wrongdoing and/or complaints about his behavior were made at the time those discussions took place.

RESPONSE:

Denied as stated. Any written materials prepared by Ms. Wilson were for the purpose of attorney consultation and are not subject to disclosure.

19. The police chief for the City of Columbia is subject to discipline for illegal or improper acts or omissions while off-duty.

RESPONSE:

Denied as stated. The City of Columbia Police Chief is subject to discipline in keeping with the provisions of the City of Columbia Handbook (Not a Contract).

20. The police chief for the City of Columbia is considered to be always on duty for disciplinary purposes.

RESPONSE:

Denied as stated. The City of Columbia Police Chief is subject to discipline in keeping

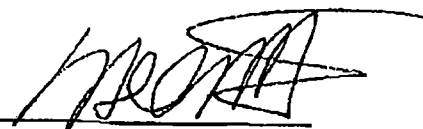
with the provisions of the City of Columbia Handbook (Not a Contract).

21. It is the policy of the City of Columbia to conduct an internal affairs investigation of all complaints against police officers, including the chief of police.

RESPONSE:

Denied as stated. The process for internal affairs investigations is set forth in the City of Columbia Police Department policies and procedures.

NICKLES LAW FIRM, LLC

By: 

W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080

ATTORNEY FOR DEFENDANT

August 22 2013
Columbia, South Carolina

The State

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Columbia firefighters put out blaze at City Motor Works

Columbia turmoil

Columbia police chief takes leave; could have been disciplined

Published: April 2, 2013

By NOELLE PHILLIPS and CLIF LeBLANC — cleblanc@thestate.com

COLUMBIA, SC — Columbia Police Chief Randy Scott took an unexpected leave of absence Tuesday as the city manager said she had been considering disciplinary action against him.

City manager Teresa Wilson told The State newspaper that Scott's City Hall bosses had become aware of workplace issues and had talked to the chief about the problems. She would not elaborate on what those problems are.

Scott asked for an indefinite leave for personal reasons. Had he not, Wilson said it's "possible" she would have taken personnel action against him.

"Since I became city manager, there have been a few instances that were brought to my attention," said Wilson, who became the city's chief administrative officer in December. "I've talked to the chief about them, and his supervisor talked to him about them."

Efforts to reach the popular chief on Tuesday were unsuccessful.

Scott will be paid his normal salary, which is \$112,000 yearly, during the period of leave. He is using accumulated time off, but the date that expires was not immediately available.

Asked if the complaints she has heard amount to misconduct in office, Wilson said, "I do not have any substantiated reason to believe that."

"He has requested an indefinite period of time and that's what I felt was appropriate to grant," Wilson said. "My every hope is that chief Scott returns to his full responsibilities."

Ruben Santiago was named acting chief. He had been the department's deputy chief. He will have administrative help from Assistant Chief Les Wiser, city officials said.

Ups and downs

In his 2½ years, Scott has overhauled the department, earning praise from his supervisors and the community.

He has installed a new command staff, created multiple specialized units, hired dozens of officers and improved the department's records management and crime analysis. He quickly became a high-profile figure who showed up at everything from crime scenes to neighborhood meetings to protests to major festivals.

But he has had problems during his tenure — both professional and personal.

The most embarrassing moment for the department came last February when city police officers failed to find the body of a lobbyist who had been reported missing. Tom Sponseller had shot himself in a room off a parking garage in his downtown office building, and his car was parked just feet from that door. But officers did not find him for 10 days even after conducting multiple searches of the building. They also failed to find an empty gun box

and an apparent suicide note in Sponseller's desk drawer.

Scott fired two of his top officers over the bungled search.

Last month, one of those officers, a deputy chief, Isa Greene, a 33-year department veteran, sued him and the department. She alleges discrimination and claims in the suit the department "allowed a hostile work environment to exist based upon unwelcome sexual advances, requests for sexual favors, verbal and physical conduct of a lewd sexual nature and sexual favoritism that is so severe and pervasive as to render the working conditions in the CPD psychologically intolerable for female officers."

In the lawsuit, Greene also offered examples of female officers receiving preferential treatment after entering into relationships with male officers.

Greene said she had denied a woman a job because she lacked qualifications but that Scott overrode her decision "because he was having a relationship with the female employee," the lawsuit said.

Scott and the department denied Greene's accusations.

Greene also spoke of the alleged relationship during a public personnel hearing as she tried to get her job back. But Assistant Chief Les Wiser, who was representing the police department, said that the chief's dating choices had nothing to do with the Sponseller investigation's missteps.

Meetings with city bosses

Scott's surprise leave capped two days of talks with his immediate supervisor, senior assistant city manager Allison Baker. On Tuesday, Baker took the issue to Wilson, who approved the leave.

The chief put his request into writing, but Wilson said the city's legal staff has advised her that the letter is not subject to an open-records request because it deals with a personnel matter.

"I want to reassure the public that my ultimate responsibility ... is to maintain the integrity of the department," Wilson said. She said she feels "very comfortable" with the department being in the hands of Santiago and Wiser.

The personal leave of absence was announced in a news release emailed to the media Tuesday afternoon on behalf of Wilson. No explanation was given as to the reason, but the statement said Scott had requested the leave.

"I'm just as shocked as you are," Councilwoman Leona Plough said about an hour after the city made the announcement.

Scott was hired away from the Richland County Sheriff's Department in October 2010 when he was named interim police chief. He was hired permanently in January 2011.

In December, Scott resigned to take advantage of changes in the state retirement system. He was rehired 15 days later. After he was reinstated as chief, Scott said his absence had been the hardest 15 days of his career and he intended to be the city's police chief for the long haul.

That's why the sudden decision to take a leave of absence caught people off guard.

City leaders react

At-large Councilwoman Tameika Isaac Devine, one of council's most senior members, said she learned of Scott's departure Tuesday from Wilson.

Devine said she had no advance knowledge that the chief was stepping aside. Council had not discussed any problems with Scott's leadership of the department or his job performance, she said.

"Randy has been a great chief," Devine said. "As far as I know this has nothing to do with job performance. I don't have any information that this has to do with anything other than he's having personal issues he feels he needs to deal with."

Scott has gotten divorced since becoming chief.

Asked if she had any information or concerns about misconduct or judgment so bad it could cost Scott his job, Devine said, "I'm not answering that. I don't have reason to believe that. I know of nothing legitimate."

Councilman Cameron Runyan said he, too, was taken aback.

"I really don't know any more than you do," the at-large member of council, said of Tuesday's announcement.

Wilson called Runyan to tell him the news, the councilman said.

"Teresa said, 'It's a personnel matter so I can't discuss it,'" Runyan said. "You're the city manager and that's your staff. I didn't press her. I didn't want to make her uncomfortable."

Mayor Steve Benjamin is on vacation and could not be reached, his aide, Michael Wukela said. "It's a personnel issue, so he wouldn't comment on it," Wukela said, directing inquiries to Wilson.

Devine, Plough and Runyan all said Scott's job status had not been discussed in a closed-door meeting, something allowed—but not required—by the state's Freedom of Information Act.

Efforts to reach council members Sam Davis, Brian DeQuincey Newman and Moe Baddourah, a mayoral candidate, were unsuccessful.

While council has seemed pleased with Scott's performance, that body does not have the authority to hire or fire the police chief. That responsibility lies with Wilson.

Columbia has been known for having a revolving door in its police chief's office. Scott was the city's sixth chief in seven years.

The lack of consistency was among the troubles that have plagued the capital city's police force. Many had thought the city had turned a corner with Scott's hiring.

On Tuesday, Devine said the circumstances of Scott's absence and Santiago's naming as acting officer should not be as unsettling as earlier shakeups. "This is nothing like what we've had in the past," she said.

Scott was hired by former city manager Steve Gantt, who has said his decision to name Scott as police chief was one of the best in his tenure. Last year, Benjamin nominated Scott for the prestigious Strom Thurmond Award for Excellence in Law Enforcement, and Scott was selected as one of the four S.C. winners by the U.S. Attorney's office.

Scott was noted for the department's community partnerships, customer service and pro-active law enforcement efforts.

Tige Watts, who lives in Brandon Acres/Cedar Terrace and is active in neighborhood associations both on the local and national level, said he recently sent an email to several police officers, including Scott, about an uptick in car break-ins in his community.

Scott was the first to reply, and he attended the next neighborhood meeting, he said.

"He's gone a long way in building partnerships," Watts said. "There's been more visible, proactive enforcement. There's been more of a dedication to community policing."

But Scott's relationship with the community has not been completely rosy.

Repeated violence in Five Points has caused angst between him and the Five Points Association and young people who believe officers have a misplaced focus on underage drinking while they ignore more serious criminals.

Sheriff Leon Lott, who is Scott's former boss and a mentor, said he had spoken to Scott about the leave but would not offer reasons behind it.

"A chief of police is a very stressful job because you get pulled in so many directions," Lott said. "He has so many bosses – a city manager, city council, community leaders.

"He's been trying to deal with a lot of difficult issues. I think it's smart on his part. If needs to step away for his mental health's sake, it's good for him."

Devine said she's hopeful that Scott does not leave permanently.

"My prayers are with him, and I hope we get him back," she said.

Reach Phillips at (803) 771-8307 and LeBlanc at (803) 771-8664.

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Billy Graham encourages Nixon on newly released tapes

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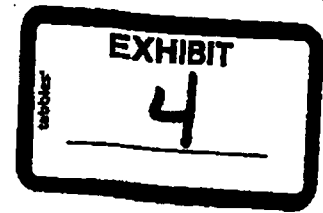
Columbia firefighters put out blaze at City Motor Works

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Chapin police looking for suspect in Rite Aid theft

Columbia Police Chief Randy Scott resigns, citing stress

Published: April 22, 2013

City manager, mayor plan national search to replace Chief Randy Scott, who said he suffers from PTSD

By NOELLE PHILLIPS and CLIF LEBLANC — nophillips@thestate.com, cleblanc@thestate.com

COLUMBIA, SC — Police Chief Randy Scott tearfully promised Monday to reveal more details about a post-traumatic stress disorder condition that ended his career at the police department, as Columbia officials embark on a national search to find the city's seventh chief since 2007.

Scott announced his resignation, effective May 1, after revealing that he has been receiving counseling for PTSD. He said he developed the condition after the 2005 death of Richland County Sheriff's Deputy Keith Cannon, whom Scott had hired when he worked for the sheriff's department.

"On my leave of absence I received counseling and help in realizing that my personal life is as important as my law enforcement career," Scott wrote in his resignation letter to City Manager Teresa Wilson. "I learned that the stress of being the Chief of the Columbia Police Department has brought out severe stress-related issues. This is more commonly known as Post-Traumatic Stress Disorder that I have from incidents that have occurred in my career."

Ruben Santiago, who has been running the department in Scott's absence, will be the interim chief. Wilson and Mayor Steve Benjamin said there is not yet a plan in place for hiring a new chief.

Scott will remain on the city's payroll until May 1. He is using leave while he is getting counseling, which is being paid for by his city health insurance, Wilson said. There have been no discussions about how the nearly \$52,000 in an early retirement payout in 2012 on behalf of Scott will be addressed, she said.

Scott left April 2 on an unexplained, indefinite leave of absence. At the time, Wilson said she had become aware of workplace issues involving Scott, and she said she had been considering disciplinary action against him.

Monday, she said the conclusion that Scott has PTSD matches the explanations he had provided during their conversations in recent weeks.

The inquiry into Scott's professional conduct is now over, Wilson said.

Wilson said Monday was the first time Scott told her he had PTSD, a type of anxiety that affects people who have experienced trauma such as combat or a natural disaster. She said she had talked to Scott multiple times since he took his leave, and she learned Sunday that he was planning to come to her office Monday to discuss his future with the department.

Councilwoman Tameika Isaac Devine said she and Scott had discussed the effects of stress, especially as his second marriage unraveled.

"People have got to respect that this guy has identified his problem and sought out treatment," she said Monday.

Devine and Scott spoke Monday before his resignation announcement, during which he mentioned how much Cannon's death affected him.

"Officer Cannon and that kind of thing," Devine said. "No, I had never heard that before."

Scott said the decision to resign was a personal one, and he asked to make a public statement about his counseling.

Scott said he wanted to allow the department's officers to continue their good work rather than focus on him and why he had taken a leave.

During Monday's news conference at police department headquarters, Scott often struggled to speak as he described Cannon's wreck, which occurred during a high-speed chase on I-20.

Scott said he had hired Cannon, and that the young deputy had reservations about the job Scott assigned to him. Scott said he went to the scene after Cannon's wreck and had learned in counseling that "You shouldn't hire someone, look in a car and see them deceased."

"So, they call it PTSD. You can call it stress. But I have to call it what it is and that's something that was tearing me apart for a very long time," he said.

Scott, who was divorced in January, also said he was proud of the work he had done to improve the department, but said there was something he had neglected during his 2 1/2-year tenure.

"I am a law enforcement officer," Scott said. "But I had forgotten that I also have a family."

Scott said he plans to return to law enforcement once his treatment is complete, though he offered no details. He did not stay at the news conference to take questions. He left with Richland County Sheriff Leon Lott, his former boss and mentor at the sheriff's department.

"I beg of you," Scott said, "let me complete what I've started. Once I complete, I will come back and I will detail it for you."

Scott was named interim police chief in October 2010 and immediately began restructuring the department. He named a new command staff, went on a hiring spree and created several new units.

In January 2011, the interim label was removed.

From that point, Scott was seen as the answer to years of problems at the department. He was its sixth police chief in six years.

Some past police chiefs created their own problems. But the job also is notoriously difficult because of the structure of city management. The police chief reports directly to the city manager. But the chief also must please the mayor and six council members as well as neighborhood leaders, who carry political clout.

Scott managed to please all of those parties and quickly became a star in the community.

But his tenure at the police department was not perfect.

He has clashed with the Five Points Association and the late-night party crowd over how to control increasing violence.

The department was embarrassed in February 2012 when city officers bungled a search for a missing lobbyist. They failed to find Tom Sponseller's body for 10 days even though he had shot himself in a storage room off the parking garage of his downtown building, just yards from his car.

In the wake of the missteps, Scott fired two high-ranking officers.

One of them, Isa Greene, a 33-year department veteran, sued him and the department, alleging discrimination. In the suit, she claims the department "allowed a hostile work environment to exist based upon unwelcome sexual advances, requests for sexual favors, verbal and physical conduct of a lewd sexual nature and sexual favoritism that is so severe and pervasive as to render the working conditions in CPD psychologically intolerable for female officers."

Last year, the city paid nearly \$52,000 toward Scott's early retirement in December and then rehired him 15 days

later. The city's purchase of retirement credits on Scott's behalf allowed him to retire and return to work and draw a pension before state laws changed early retirement payouts in January.

There was no agreement in place that would require Scott to repay the money should he leave the department.

While the chief's office has had a revolving door in recent years, Mayor Benjamin insisted the Columbia police chief's position would be attractive to law enforcement from around the city, state and nation.

He cited a citywide reduction in crime during the first quarter of 2013 as the reason the job would be desirable.

"It's tough being a chief of police because it's such a high-profile position," Benjamin said. "You stand out."

Benjamin said the numbers speak for themselves, and he is confident the city will find a qualified replacement.

"I think the city manager said that in the next 60 days we'll have a process laid out and we'll conduct a search to find another strong, successful Chief Scott," Benjamin said.

Randy Scott's letter of resignation

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

v.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NUMBER: 2013-CP-40-3982

**PLAINTIFF'S MOTION FOR TO
STRIKE DEFENDANT'S REQUEST
FOR ATTORNEYS' FEES**

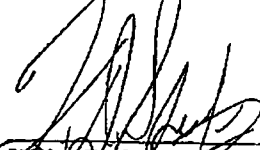
TO: W. ALLEN NICKLES, III, ESQUIRE, ATTORNEY FOR DEFENDANT:

Pursuant to Rule 12(f) of the *South Carolina Rules of Civil Procedure*, Plaintiff George S. Glassmeyer ("Plaintiff"), by and through his undersigned attorneys, hereby moves for an order striking Defendant City of Columbia's ("Defendant" or "the City") prayer for attorneys' fees from Defendant's Answer. Plaintiff's grounds for this motion are that Defendant has alleged no basis for its request for fees, and no affirmative defense pled by Defendant gives rise to such relief.

It is well established that "[a]s a general rule, attorneys' fees are not recoverable unless authorized by contract or statute." *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 549, 243 S.E.2d 443, 444 (1978); *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 383-84, 377 S.E.2d 296, 297 (1989); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993); *Snider v. Butler*, 278 S.C. 232, 294 S.E.2d 246 ("Ordinarily, an attorney must look to his client for compensation for services rendered."). When a party requests attorney's fees, that party "has a burden to show a request for attorney's fees is well-founded." *Gainey v. Gainey*, 279 S.C. 68, 70, 301 S.E.2d 763, 764 (1983).

Defendant has failed to allege any basis for its request for attorneys' fees in this case. In fact, there is no basis under South Carolina law for Defendant's request. Accordingly, Defendant's request for attorneys' fees should be stricken from the pleadings.

Respectfully Submitted,



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October 18, 2013.

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

v.

City of Columbia,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

CIVIL ACTION NO. 2013-CP-40-03982

) **PLAINTIFF'S MEMORANDUM IN**
) **OPPOSITION TO DEFENDANT'S**
) **MOTION FOR SUMMARY JUDGMENT**
)

Plaintiff George S. Glassmeyer ("Plaintiff"), by and through his undersigned counsel, hereby submits this memorandum of law in opposition to Defendant City of Columbia's ("Defendant" or "City") Motion for Summary Judgment, filed on October 17, 2013. For the reasons set forth below, and as additionally set forth in Plaintiff's cross Motion for Summary Judgment, filed on October 18, 2013, Plaintiff respectfully requests that this Court deny Defendant's Motion for Summary Judgment.

PROCEDURAL POSTURE AND BACKGROUND

Plaintiff initiated this action on July 10, 2013 by the filing of a Summons and Complaint for declaratory judgment. Plaintiff alleged that on or about April 3, 2013, Plaintiff submitted a request to the City pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.* ("FOIA"), seeking documents related to former City of Columbia Police Chief Randy Scott ("Scott"). See Affidavit of George S. Glassmeyer, attached to Plaintiff's Motion for Summary Judgment, filed October 18, 2013. Specifically, Plaintiff sought to obtain:

- Copies of any and all documents including, but not limited to, statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott; and
- Copies of any and all documents relating to any and all disciplinary actions imposed upon police chief Randy Scott.

Id. Plaintiff alleged in his complaint that on or about April 5 and April 19, 2013, Defendant provided some, but not all, requested documents in response to his FOIA request and failed or refused to provide others. *Id.*

ARGUMENT

Defendant takes the position in its Motion for Summary Judgment that:

In withholding the information requested by Plaintiff, the City acted only to protect the privacy of former Chief Scott. The City has taken no action to prevent the unknown accusers from making public their complaints about former Chief Scott. Correspondingly, FOIA is not a legitimate vehicle for making anonymous accusations public.

See Defendant's Motion for Summary Judgment at pp. 4-5. Defendant's attempt to shield Scott and itself from public scrutiny is unavailing. Defendant's Motion for Summary Judgment reflects a deep misinterpretation of the underlying basis for Plaintiff's request for the purportedly "anonymous, unsubstantiated complaints" against former Police Chief Scott. As more fully set forth in Plaintiff's cross Motion for Summary Judgment, Plaintiff is informed and believes that City violated its own City of Columbia Police Department ("Department") Policies and Directives Manual ("Manual") by failing to investigate the allegations set forth in the various complaints against former Police Chief Scott.

As indicated in City's letter dated April 19, 2013, it was in possession of various allegations and complaints against Scott for violations of the Department's policies and directives as well as possible violations of the law.¹ Yet, City responded to Plaintiff's FOIA request on or about April 5 that there were no corresponding internal affairs investigations or disciplinary actions in response to the complaints it received. It is Plaintiff's position in this matter that the complaints lodged against former Police Chief Scott warranted, at a minimum, a department investigation and potential

¹ Including: "Anonymous emails referring to Chief Scott's alleged personal conduct[;] [u]nsolicited, unverified complaints referring to Chief Scott's alleged personal conduct[;] [and] [t]hird party, unverified allegations of misconduct by Chief Scott.

disciplinary action against Scott. The Department's Manual mandates the investigation of all citizen complaints, "including anonymous" complaints. See Manual, Section 2, Chap. 6 at § 1.0 ("Internal Affairs Directive"). The public has a right to know why the Department's Manual was not followed when City admittedly received allegations of wrongdoing and complaints. See S.C. Code Ann. § 30-4-15 ("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").

Defendant's characterization of the numerous complaints as "anonymous and unsubstantiated" begs the question of why the City did not take action to verify the complainants' identities and/or explore the merits of the claims through a departmental investigation. Defendant's attempt to withhold the complaints by characterizing them as "anonymous and unsubstantiated," despite its admitted failure to investigate them, and then argue that because the complaints are unsubstantiated, Defendant is not required to produce the documents, is exactly the type of "activities of public officials" that FOIA was intended to subject to public disclosure. "The essential purpose of the FOIA is to protect the public from secret government activity." *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219, 221 (1991). Section 30-4-30(a) states: "Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(a). This policy ensures that public business is performed in an open and public manner, and that citizens are informed of the activities of their public officials, and government officials cannot as easily hide or avoid scrutiny where appropriate. See S.C. Code Ann. § 30-4-15.

Even if the complaints at issue include "personal information" regarding former Police Chief Scott, Defendant had an obligation to investigate the complaints' merit according to the

Department's own Policies and Directives Manual. Defendant's admission that it has no investigative or disciplinary files regarding the "anonymous and unsubstantiated" complaints against former Police Chief Scott provides Plaintiff and the public with a right to know why the allegations were chosen to be ignored without further inquiry.

In *City of Columbia v. American Civil Liberties Union of South Carolina, Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996), the South Carolina Supreme Court stated:

We disagree with [the City's] contention that the internal investigation reports of law enforcement agencies are *per se* exempt because they contain personal information as a matter of course. The determination of whether documents or portions thereof are exempt from the FOIA must be made on a case-by-case basis.

Id. at 387, 475 S.E.2d at 749 (citations omitted). In the case at bar, this Court should conclude that the public's right to know outweighs whatever privacy interests form the predicate for Defendant's attempt to withhold the complaints against former Police Chief Scott from public view.

Defendant's Motion for Summary Judgment cites inapplicable Fourth Circuit and United States Supreme Court case law interpreting the United States Freedom of Information Act ("US FOIA") and its personal privacy exemption. The South Carolina Supreme Court has held that federal case law interpreting the US FOIA is not binding on state courts interpreting the South Carolina Freedom of Information Act. Specifically, in *Newberry Pub. Co., Inc. v. Newberry County Comm'n on Alcohol & Drug Abuse*, 308 S.C. 352, 417 S.E.2d 870 (1992), the South Carolina Supreme Court noted: "In support of its argument, [the public body] relies on various federal cases. However, [the public body]'s reliance on these cases is misplaced; the exemptions contained in the federal FOIA are more expansive than those contained in South Carolina's FOIA." *Id.* at 354 n. 4, 417 S.E.2d at 872 n.4. Defendant's attempt to apply a Fourth Circuit and United States Supreme Court "burden shifting" analysis with regard to the personal privacy exemption is inconsistent with binding South Carolina precedent.

Defendant baldly asserts that Plaintiff “has articulated no public interest that would compel disclosure.” However, Plaintiff has demonstrated in exhibits to his Motion for Summary Judgment that a discrepancy exists between the Department’s Policies and Directives Manual and the actions it took with respect to the allegations against former Police Chief Scott. The public has a right to know why.

Burton v. York County Sheriff’s Department, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), does not stand for the proposition stated by Defendant. To the contrary, in *Burton* a reporter for a local newspaper requested information from the York County Sheriff’s Department concerning the suspension of four of its officers following an internal investigation stemming from a citizen complaint. *Id.* at 344, 594 S.E.2d at 891. The sheriff’s department denied portions of Burton’s request on the basis that the information was “personal” and disclosing it would result in an “invasion of personal privacy.” *Id.* at 345, 594 S.E.2d at 891. The Court of Appeals disagreed with the department’s conclusion, upholding the trial court’s decision that Burton’s request was not subject to the personal privacy exemption. *Id.* at 352, 594 S.E.2d at 895.

In determining that the personal privacy exemption was inapplicable, the Court weighed the officers’ right to privacy against the public nature of their position and the public’s interest in the manner in which the officers discharged their duties. *Id.* at 352, 594 S.E.2d at 895. Considering that the documents requested by Burton focused on the performance of the officers’ duties and allegations of misconduct, the Court determined that the public interest substantially outweighed the officers’ right to privacy and held that the documents should have been disclosed. *Id.*

Defendant’s attempt to analogize Burton’s failure to appeal or otherwise contest the trial court’s finding that “allegations relating to off-duty sexual practices and activities of the deputies [are] personal and private . . .” is not convincing. *See Burton* at 345, 594 S.E.2d at 891. Plaintiff in

this case is not attempting to find out former Police Chief Scott's "off-duty sexual practices and activities," but rather is attempting to investigate why the Department failed to take any investigative or disciplinary action in response to numerous complaints alleging violations of Departmental policy and/or applicable law. The public has a right to know the substance of the allegations asserted in the complaints against former Police Chief Scott so that the Department may be held accountable for its failure to investigate the alleged offenses and take any appropriate disciplinary action.

In *Burton*, the South Carolina Court of Appeals instructed that the manner in which law enforcement officers "prosecute their duties" is "a large and vital" part of the public interest. *Id.* In this case, the Department's Manual states that "[a]ll members of the Department . . . are responsible for conforming to departmental policies and procedures and are subject to discipline under the provisions of this chapter." See Manual attached to Plaintiff's Motion for Summary Judgment at Chap. 3, Sect. 3 at § 3.0. The fact that "off duty" activities of former Police Chief Scott may be at issue here is not relevant as it was in *Burton*. In this case, the Department's Manual required that all sworn officers comply with both the employee code of ethics and the law enforcement code of ethics, both of which address personal conduct. See e.g., Manual at Section 3, Chap. 3, providing that officers are always "on duty" and provides discipline for "Conduct Unbecoming" an officer. If the complaints against Scott allege that he violated the law and/or used his authority to perform activities which constitute "conduct unbecoming" an officer, the public has a right to know why the Department failed to investigate the allegations and/or discipline Scott. Here, however, Defendant has not even provided generic descriptions of the types of allegations against Scott such that Plaintiff would be capable of conducting an independent investigation.

Defendant's expressed concern that "compelling disclosure of anonymous, unsubstantiated complaints would allow unscrupulous parties the opportunity to libel and impugn public employees without any fear of recourse[.]" shows a miscomprehension of the nature of Plaintiff's request. Plaintiff does not seek to "libel and impugn" former Police Chief Scott, but rather seeks only to determine why Defendant failed to take any responsive action to the complaints at issue. See Defendant's Motion for Summary Judgment at p. 4. Defendant's admission that it did not have any investigative and/or disciplinary reports, notes, and/or actions, emphasizes the need for the public to know what types of complaints were actually filed against Scott.

Moreover, Defendant's fear that by producing the complaints against Scott, "unscrupulous parties [would have] the opportunity to libel and impugn public employees without any fear of recourse," is unfounded. The complaints filed against Scott are mere representations or allegations made by others, whether true or untrue, regarding violations of the law or departmental policy. These documents, and the information they contain, are merely claims made by third parties and could be appropriately dismissed if they were meritless. The complaints are not "reports of an official action or proceeding," such that the common-law "fair report" privilege would apply, and anyone, including Plaintiff, who published the substance of the complaints, where such allegations turned out to be false, could be sued for defamation.

"The fair report privilege shields news organizations from defamation claims when publishing information originally based upon government reports or actions." See *Cobin v. Hearst-Argyle Television, Inc.*, 561 F.Supp.2d 546 (D.S.C. 2008) (quoting *Reuber v. Food Chemical News, Inc.*, 925 F.2d 703, 712 (4th Cir. 1991)). The fair report privilege has only been recognized to extend to "judicial records and proceedings and other *official* acts, reports, and records." *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997) (emphasis added) (citing S.C. Jur. *Libel and*

Slander § 61 (1993) (footnote omitted)). It has also been held to extend to matters in the public record. *See Jones v. Garner*, 250 S.C. 479, 158 S.E.2d 909 (1968).

Although the complaints constitute “public records” under FOIA² such that the Defendant must produce them in response to a citizen request, the complaints do not qualify as judicial records or proceedings or other official acts, reports, and records such that the fair report privilege would apply to republication of the allegations. As explained in the Restatement (Second) of Torts § 611:

The publication . . . of the contents of preliminary pleadings[,] *such as a complaint* or petition, before any judicial action has been taken is not within the [fair report privilege]. An important reason for this position has been to prevent implementation of a scheme to file a complaint for the purpose of establishing a privilege to publicize its content and then dropping the action.

Restatement (Second) of Torts § 611, Comment e, at 300 (1977) (emphasis added); *see also Solaia Technology, LLC v. Specialty Pub. Co.*, 221 Ill.2d 558 (Ill. 2006) (holding statement that attorney was being sued personally, based solely on pleadings filed, was outside the fair report privilege); *Howell v. Enterprise Pub. Co., LLC*, 920 N.E.2d 1, 20 note 19 (Mass. 2010) (noting the fair reporting privilege does not protect reports based on complaints alone).

Although the Restatement and available case law relate to the reporting of allegations in *judicial* complaints, the underlying rationale for non-application of the privilege would likely extend to citizen complaints lodged against public officials and in the possession of public bodies. Because the complaints are merely third-party allegations of wrongdoing, the complaints are not official actions or reports, and any republication of the allegations contained in such documents would subject the publisher to potential liability for defamation.

Under the provisions of the Department’s Manual, Scott was subject to at least an investigation, and possibly disciplinary action, similar to any other line officer in the department,

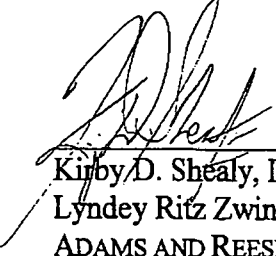
² S.C. Code Ann. § 30-4-20(c) defines “public record” broadly, as “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.”

based on the mere presence of complaints filed against him by members of the public pertaining to his conduct while in uniform and otherwise. This Court should follow the holding in *Burton* and similarly conclude that even if Plaintiff's request appeared to implicate private information regarding Scott, there exists a significant public interest regarding Scott's leave of absence which substantially outweighs his right to privacy.

CONCLUSION

For the above-stated reasons, and as more fully addressed in Plaintiff's cross Motion for Summary Judgment filed October 18, 2013, Plaintiff respectfully requests that this Court deny Defendant's Motion for Summary Judgment and grant Plaintiff's Motion for Summary Judgment.

Respectfully submitted,



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Attorneys for Plaintiff

November 26, 2013.

Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

vs.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT

Civil Action File No.: 2013-CP-40-3982

**DEFENDANT'S MEMORANDUM
IN SUPPORT OF MOTION TO ALTER
OR AMEND JUDGMENT**

RICHLAND COUNTY
FILED
2014 JUL 29 AM 10:00
CLARENCE W. MOORE
C.D. & C.P.

By order filed July 23, 2014, this Court granted Plaintiff's Motion for Summary Judgment, denied Defendant's Motion for Summary Judgment, and granted Plaintiff's Motion to Strike Defendant's Request for Attorney Fees. For the following reasons, Defendant moves pursuant to Rule 59(e), SCRCF, to alter or amend that order.

PROCEDURAL BACKGROUND

This is a declaratory judgment action arising under the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 et seq. On April 3, 2013, Plaintiff requested that the Defendant City of Columbia ("City") produce "copies of any and all documents including, but not limited to statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by Police Chief Randy Scott" and "copies of any and all documents relating to any and all disciplinary actions imposed upon Chief Randy Scott." The City responded to this request by producing numerous documents and identified the following withheld materials:

1. Anonymous emails referring to Scott's alleged personal conduct;
 2. Unsolicited, unverified complaints relating to Scott's alleged personal conduct;
- and

3. Third-party, unverified allegations of misconduct by Scott.

Plaintiff moved to compel the disclosure of the identified withheld information. Following submission of briefs and consideration of oral argument, this Court examined the withheld materials and entered the following findings:

- To withhold “public records under FOIA” an agency must prove that the information falls into one of fifteen exemptions in § 30-4-40; (Order, p. 3)
- The materials withheld fall within the “broad definition of public records” set forth in § 30-4-40; (Order, p. 4)
- Although the materials may relate to “off-duty” conduct, the Plaintiff has a legitimate interest in determining “whether the Department followed its own policies and investigated complaints, which is a matter of public interest” (Order, p. 5)
- Plaintiff “only seeks information regarding complaints of ‘alleged wrongdoing’ and ‘disciplinary action.’ ” (Order, p. 6)
- Although the reasons were not given in the Complaint, Plaintiff claimed at the hearing and in its memorandum that the City violated its [Police Department] manual by failing to investigate allegations set forth in various complaints against Scott. (Order, p. 6)
- Plaintiff bases this contention on the representation that “The Internal Affairs Policy in the manual sets forth a requirement for the Department to conduct ‘an investigation of all citizen complaints including anonymous complaints.’ ” (Order, p. 6)
- The Department policy “requiring an investigation militates in favor of the

public's interest in allegations and the reason why the Defendant chose not to investigate the allegations." (Order, p. 6)

- The focus of this case is not on the accusations themselves but the Department's knowledge of the complaints and its response upon receipt. (Order, p. 7)
- The case focuses not on the content of these allegations, but on what steps the Department took upon receipt of the information pursuant to its policies. (Order, p. 7)

The above findings represent a misreading of the record and a misapplication of law. In addition to argument presented in Defendant's memorandum and at the February 10, 2014 hearing, for the following reasons this Court should alter or amend the order filed July 23, 2014.

LEGAL ARGUMENT

In responding to Plaintiff's FOIA request, the City produced all responsive materials with the narrow exception of items identified above and presented to the Court for *in camera* review. In its order, this Court acknowledges that production of anonymous and potentially libelous allegations of personal conduct may open the door to "self-publication." For this reason, the Court entered a narrow decision holding that the "legitimate" inquiry is "what steps the Department took upon receipt of the information pursuant to its policies." (Order, p. 7)

In seeking the information under review, Plaintiff argued to the Court that he only wanted to make certain that the City of Columbia Police Department did not provide favorable treatment to former Police Chief Scott and that the Department followed its published policies in responding to allegations of police misconduct. In support of this argument, Plaintiff relied upon Section 06, Chapter 02 (Internal Affairs) of the City of Columbia Police Department Manual.¹

¹ This section is inadvertently identified as "Section 2, Chap. 6 of the Internal Affairs Policy" in this Court's order. (Order, p. 6)

The policy relied upon by Plaintiff is provided as Attachment A. This public document provides, in relevant part:

The Department requires an investigation of all citizen complaints, including anonymous complaints, against the Department or its personnel. (Paragraph 1.0)

The Internal Affairs Unit will post a brochure in a public location in every police station or substation that outlines the procedures the public will follow in lodging a complaint against the Department or its employees. (Paragraph 3.0)

The Internal Affairs Unit shall be responsible for maintaining accurate records of all complaints against the Department or its personnel. (Paragraph 3.1)

Complaints received by mail by the Office of the Chief or Internal Affairs will be handled as any other complaint. (Paragraph 4.1)

The Internal Affairs policy places citizens on notice that reports of wrongdoing on the part of police officers may be made in person, by telephone, in writing, electronically and anonymously. The procedures for making such reports are available to the public through various sources. For example, in addition to visiting, calling or writing the Department, citizens may use the web to access the complaint process and procedure. (Attachment B). A complaint form is provided. (Attachment C). The Department also offers a Citizen Complaint Process with instructions. (Attachment D)

As illustrated in the attached publications, and addressed in the City's memorandum and oral argument, individuals and organizations seeking to make allegations of impropriety involving members of the City's Police Department may do so. None of the requested materials were submitted to the Internal Affairs Unit. Instead, all established procedures for reporting and investigating allegations of misconduct were bypassed. There can be no "public interest" in determining why a departmental investigation never requested was not performed.

This Court has determined that the content of the material submitted for review does not justify publication. Instead, following Plaintiff's argument, the Court held that the public's interest is confined to the "steps the Department took upon receipt of the information pursuant to its policies." (Emphasis added) (Order, p. 7) A journey must begin for one to question the steps taken. There being no report, anonymous or otherwise, pursuant to Department policies, there is no legitimate basis for compelling disclosure of the information identified in the City's FOIA response and provided to this Court for *in camera* review.²

CONCLUSION

For the reasons set forth herein, this Court should alter or amend its order issued July 23, 2014. This action is necessary to conform the order to controlling law and to correct misconceptions regarding the opportunity to submit complaints regarding police conduct and the obligation to investigate such complaints.

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ATTORNEY FOR DEFENDANT

July 29, 2014
Columbia, South Carolina

² The Court noted that certain materials reviewed *in camera* appeared to derive from a family court proceeding and observed that such documents are public in nature. The Court may take judicial notice that family court proceedings are subject to seal. Neither the City nor Mr. Scott was party to the referenced family court action. Furthermore, the materials provided for review do not carry a family court stamp and are identified as attachments to a request for admission. Items of discovery are not normally filed. At a maximum, the City should be required to provide only the civil action number of the proceeding in question. In this fashion, Plaintiff will be afforded the opportunity to review any "public" information relating to that proceeding.

ATTACHMENT A

SECTION 06
CHAPTER 02
INTERNAL AFFAIRS

1.0 DIRECTIVE

The Department requires an investigation of all citizen complaints, including anonymous complaints, against the Department or Departmental personnel. It will also address citizen inquiries concerning Departmental regulations, policies and procedures, actions taken by Departmental personnel in the performance of their duties and other issues that involve the Department and its personnel. Adherence to this directive will help ensure the integrity of the Department while protecting the rights and interests of private citizens and Departmental personnel.

2.0 GOALS OF THE INTERNAL AFFAIRS FUNCTION

The Department's Internal Affairs Unit provides an internal investigating system where by objectivity, fairness and justice are guaranteed by an impartial investigation and review.

3.0 OPERATION OF THE INTERNAL AFFAIRS UNIT

The Department shall maintain an Internal Affairs Unit whose supervisor shall answer directly to the Chief of Police. The Unit shall be responsible for conducting complaint investigations in accordance with this directive, as well as conducting any administrative investigations assigned by the Chief of Police. The Internal Affairs Unit shall also be responsible for coordinating, supervising and assisting in complaint investigations conducted by staff personnel. The Internal Affairs Unit will maintain a liaison with the appropriate prosecutor's office concerning internal investigations involving alleged criminal conduct on the part of an employee.

The Internal Affairs Unit will post a brochure in a public location in every Police Station or substation that outlines the procedures the public will follow in lodging a complaint against the Department or its employees.

3.1 Maintenance of Complaint Records

The Internal Affairs Unit shall be responsible for maintaining accurate records of all complaints against the Department and its personnel.

All records maintained by the Internal Affairs Unit shall be considered confidential and only those person(s) authorized by the Chief of Police or his designee shall have access to these records. Internal Affairs records will be maintained in a secure area.

3.2 Notification of Allegations

The Internal Affairs Unit shall notify, as soon as practical, any employee who is under investigation. The notification shall be in writing and shall identify the nature of the investigation and the employee's rights and responsibilities relative to the investigation.

3.3 Garrity Warning

Every employee who is under investigation will be given, and required to sign a copy of the "Garrity Warning"

(attachment #1) which is a result of Garrity V. New Jersey, 385 U.S. 483 87 S.Ct.616 (1967) :

INTERNAL INVESTIGATION WARNING

"I wish to advise you that you are being questioned as part of an official investigation of the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges that could result in your dismissal from the police department. If you do answer, neither your statements nor any information or evidence that is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges".

4.0 PROCESSING PROCEDURES

Complaints that involve allegations that relate to the following will be referred directly to the Internal Affairs Unit for investigation:

1. Use of Force (or any incident) involving serious injury or death;
2. Allegations of criminal conduct
3. Conduct involving moral turpitude
4. Vehicle accidents of a major nature involving on-duty police personnel; and
5. Complaints that require extensive investigation and/or out of town travel.

The Internal Affairs Unit will immediately notify the Chief of Police of any complaint involving the above listed items.

Upon receipt of information constituting a complaint or inquiry against an employee of the Department, the Citizen Complaint Form will be completed and distributed as follows:

1. Original - Employee's Unit/Section Commanding Officer;
2. Copy - Employee's Region/Division Commanding Officer; and
3. Copy - Internal Affairs Unit.

It shall be the responsibility of the Region/Division Commanders and/or Region Executive Officer to investigate all other complaints or inquiries against subordinates under their command. The Region/Division Commanders and/or Region Executive Officer may request assistance in the investigation from the Internal Affairs Unit. Upon completion of the investigation, all reports and findings will be forwarded to the Internal Affairs Unit for review and records maintenance.

4.1 Receiving Complaints

Employees of the Department who are contacted by any citizen for the purpose of filing a complaint or inquiry against Departmental personnel will refer the matter to the accused employee's supervisor, if on duty, or an on duty supervisor if the accused employee's supervisor is either unknown or off duty. This action will permit the complainant to be interviewed and appropriate action taken or initiated.

Complaints received by mail by the Office of the Chief or Internal Affairs will be handled as any other

complaint.

4.2 Investigative Procedures

The investigative process will be handled on the basis of determining whether or not the allegation constitutes misconduct on the part of the personnel involved. Based on the findings of the investigation as it progresses, the matter may be handled in one of the following two (2) ways:

1. Handled as a complaint investigation, whereby the allegation would constitute a violation of law, misconduct, breach of Departmental directives, policies or procedures.
2. Handled as an inquiry, whereby the allegation would not constitute a violation of law, misconduct, breach of Departmental directives, policies, procedures, but may be a result of a lack of understanding of directive, procedure or judicial process. Under these circumstances the following dispositions would be appropriate:
 - a. Resolution through discussion or explanation and/or no further investigation deemed necessary.
 - b. Referral to the judicial process.

If a Region Executive Officer conducts the investigation, he will ensure that a complaint control number is obtained from the Internal Affairs Unit and assigned to the complaint or inquiry.

If the complaint is of a nature that requires an investigation to be conducted by the Internal Affairs Unit, notification of the accused employee's Region/Division Commander will be made if it is appropriate and practical to do so.

Regardless of the procedure selected for resolving the matter, the Internal Affairs Unit will contact the complainant in writing within five (5) working days, acknowledging receipt of the complaint or inquiry.

As a general rule, all investigations will be completed within seven (7) days. If necessary, an extension of time for completing the investigation may be granted by the Region/Division Commander or the Chief of Police. If an extension is granted, the Internal Affairs Unit shall be notified in writing and will receive investigative updates every seven (7) days. The complainant will also be kept informed regarding the status of the investigation. Regardless of the type of complaint, all investigations shall be completed within thirty (30) working days, unless extenuating circumstances exists and only then with the approval of the Chief of Police.

4.3 Investigative Methods

Upon approval by the Chief of Police, certain investigative methods may be used during complaint investigations or other administrative investigations. These methods will only be used when they are specifically directed and narrowly related to a particular internal investigation being conducted by the Department. Employees may be required to submit to the following for administrative purposes only:

1. Breathalyzer or other medical analysis;
2. Polygraph examinations;
3. Employee line-ups;

4. Produce financial disclosure statements
5. Employee photographs.

5.0 SPECIAL EVENTS AND OFF-DUTY EMPLOYMENT

Citizen complaints or inquiries arising from and reported during a special event will be assigned to the event commander. The event commander will be responsible for ensuring the matter is processed pursuant to established procedures.

If a complaint or inquiry originates from a special event but is reported after the event is concluded, then the matter will be handled as described in this directive.

Citizen complaints or inquiries arising from, and reported during, non-duty status employment activity will be assigned to an on-duty supervisor in the geographical area where the employment occurred. If the complaint or inquiry is reported after the employment has concluded, then the matter will be handled as described in this directive.

6.0 FINDINGS

If the allegation of wrongdoing is resolved utilizing the procedure for complaint investigations, then the complaint will be classified as one of the following:

1. Unfounded - the allegation is false or there is insufficient evidence to support the allegation.
2. Not Sustained - there is insufficient evidence to prove or disprove the allegation.
3. Exonerated - the incident occurred but was lawful and proper.
4. Sustained - the allegation is supported by sufficient evidence to indicate that the allegation is true.

Sustained complaints may be appropriately handled as performance matters in accordance with established departmental disciplinary procedures.

If the investigation reveals that the complaint originated as a result of an inappropriate or ambiguous departmental directive, procedure, rule or regulation, then the investigating officer will forward a copy of his report and his recommendation regarding the matter to the Chief of Police. The Chief of Police will then determine if there is a need to change the existing directive, procedure, rule or regulation or if there is a need to expand training on the matter.

Once the complaint has been resolved, the Internal Affairs Unit or appropriate Region/Division Commander or Region Executive Officer shall ensure that the complainant is notified regarding the findings of the investigation.

7.0 PUBLISHED REPORTS

The Internal Affairs Unit will publish annually a report, which outlines the nature of complaints received and the statistical outcomes of these complaints. These reports will be of a general statistical nature and shall not contain any specific information on individual complaints or employees.

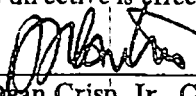
7.1 Internal Distribution

The Internal Affairs Unit Annual report will be distributed to all Police Department units for the general information of all employees. Supervisors will discuss the report with their employees, pointing out problem areas and underscoring the importance of the complaint process.

7.2 Public Distribution

The Internal affairs Unit will make a copy of the Annual Report available to any member of the Public who requests it.

This directive is effective upon receipt.



H. Dean Crisp, Jr., Chief of Police
City of Columbia, SC Police Department

GARRITY V. NEW JERSEY

GARRITY V. NEW JERSEY, 385 U.S. 483 87 S.CT.616 (1967)

INTERNAL INVESTIGATION WARNING

NAME OF EMPLOYEE

RANK EMPLOYEE #

ASSIGNMENT

I wish to advise you that you are being questioned as part of an official investigation of the City of Columbia. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges that could result in your dismissal from the police department. If you do answer, neither your statements nor any information or evidence that is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.

SIGNATURE _____

DATE AND TIME _____

WITNESS _____

ATTACHMENT B

[Home](#)
[Command Staff](#)
[Crime Brochures](#)
[Fallen Officers](#)
[F.A.Q](#)
[History of the CPD](#)
[Officers in Action](#)
[Telephone / E-Mail Contacts](#)



Your complaint is important. The Columbia Police Department is committed to receiving and accepting complaints about the actions and performance of all personnel. As an organization, we try very hard to provide the highest level of quality law enforcement service to all citizens. Policing is a very difficult and complex job in today's society, and we realize that mistakes can be made, and the actions of our personnel may fall short of your expectations.

Members of the Columbia Police Department are aware of the important responsibilities and duties they have as public servants. The Columbia Police Department operates under the constitutional guarantees afforded to everyone under the laws that govern us. Therefore, the courteous receipt of complaints, a thorough and impartial investigation, and just dispositions are important in maintaining the confidence of our citizens.

Understanding the Process

A complaint is defined as:

An allegation of circumstance(s) amounting to a specific act or omission which, if proven true, would amount to employee misconduct; or An expression of dissatisfaction with a policy, procedure, practice, philosophy, service or legal standard of the agency.

Misconduct is an act or omission by an employee, which, if proven true, would normally result in some form of discipline or sanction. This would include:

- Commission of an unlawful act
- Neglect of duty
- Violation of any department policy, procedure, rule or regulation or training procedure; or
- Conduct that may unfavorably reflect upon the employee or agency.

Procedure

A complaint may be made with the Columbia Police Department by following one of these procedures:

- Go to the Columbia Police Department at #1 Justice Square, Columbia, S.C., and ask to speak with an Internal Affairs Investigator or on-duty supervisor.
- Call the Internal Affairs Office at (803) 545-3583 or (803)545-3936.
- Write a letter to either the Chief of Police or the Internal Affairs Division, addressed to:

Attention: Chief of Police or Internal Affairs
 #1 Justice Square
 Columbia, S.C. 29201

File an online complaint: [Click Here](#)

The Interview

A representative from the Internal Affairs Division will discuss the complaint with you. Perhaps the problem is a breakdown in communication, or inexperience with the Police Department and its regulations. The Internal Affairs representative will meet with you at a location where you feel comfortable, if necessary. Information that you will be required to provide may include:

- Date, time, and location of the incident
- Names of members involved
- Names, addresses, and phone numbers of any witnesses
- A written or recorded statement(s) of the alleged act.

A record of your complaint will be forwarded to the Chief of Police for evaluation and assignment. At this time it will be decided whether the complaint should be handled by the involved member's supervisor or whether to initiate an internal affairs investigation.

If the complaint is serious, you may be asked to talk to members assigned to conduct the internal affairs investigation. Depending on the facts, the complaint may be referred to another agency to investigate.

Accepting complaints

The Columbia Police Department accepts complaints against any of its employees and will investigate all these complaints to the appropriate disposition. A complaint can come from either an external or internal source, and can be accepted from:

- Individual aggrieved people
- A third party
- A governmental agency
- An anonymous person
- Employing agencies
- Human rights complaints

What happens after the complaint?

The results of each investigation will be discussed with the Chief of Police and appropriate staff. If evidence supports a violation of agency rules only, it will be handled internally. If the matter is criminal in nature, it will be reported to the appropriate jurisdiction.

Policy

It is the policy of this department to ensure that integrity is maintained through an internal system whereby objectivity, fairness, and justice are assured by intensive and impartial investigation and review to clear the innocent, establish guilt of wrongdoers, and to facilitate fair, suitable and consistent disciplinary action.

You will be informed of only the final disposition of the complaint. If the case is to be found sustained in your nature, you will not be told of the action(s) taken against the employee. This information is not public.

ATTACHMENT C

COLUMBIA POLICE DEPARTMENT COMPLAINT/INQUIRY FORM

This section to be completed by Police Department

Name of Complainant	Complaint Number
Address	Date of Incident
City/State/Zip	Time of Day

This section to be completed by citizen making complaint (please print legibly)

Complainant's Full Name:			
Home Address:		City/State	Zip Code
Business Address:		City/State	Zip Code
Home Phone Number:		Business Phone Number:	
Age:	Date of Birth:	Race: (Optional) Other	Sex: ☐ M ☐ F
Witness:		Address:	
Witness:		Address:	
Name(s) of Employees Complained Against (If Known)			
Location of Incident:		Date of Incident:	Time of Day:
Describe what happened in detail:			

(If additional space is required, please continue below)

I do hereby affirm that I wish to file a complaint against an employee of the Columbia Police Department. I further affirm that the information provided by me is true and complete to the best of my knowledge. I understand that any false, misleading or untrue statement(s), accusation(s) or allegation(s) made by me may subject me to CRIMINAL and/or CIVIL prosecution. I further understand that in the course of an investigation of my complaint, I may be required to meet with a member(s) of the Columbia Police Department to discuss this complaint further, or submit to a polygraph examination.

By pressing the E-Mail Button below, I am agreeing to the above statement.



Summary of Incident (cont.)

[illegible]

The completed form may be mailed or delivered to the Columbia Police Department, Internal Affairs Unit, #1 Justice Square, Columbia, SC 29201

ATTACHMENT D

Citizen Complaint Process

Your complaint is important. The Columbia Police Department is committed to receiving and accepting complaints about the actions and performance of all personnel. As an organization, we try very hard to provide the highest level of quality law enforcement service to all citizens. Policing is a very difficult and complex job in today's society, and we realize that mistakes can be made, and the actions of our personnel may fall short of your expectations. Citizen input, both positive and negative, is vital to our organizational goals.

How do I file a complaint?

You may file your complaint in several ways.

By telephone: (803) 545-3936 or (803) 545-3583.

The Internal Affairs Unit is available Monday through Friday 8:00am – 5:00pm. You can contact any Region office and request to speak to a supervisor. On evenings, weekends, and holidays, you may request to have the Staff Duty Officer contact you (803) 545-3500.

In Person:

You may request to speak to the employee's supervisor at the time of the event. You may also file your complaint at CPD Headquarters #1 Justice Square, Columbia, SC 29201. You can also go by any district or region office and request to speak to a supervisor.

By US Mail:

Columbia Police Department
Internal Affairs Unit
1 Justice Square
Columbia, SC 29201

Online:

Visit our website at www.columbiapd.net and click on the link "How to File a Complaint." Follow the directions for the online complaint form and your complaint will be emailed to the Internal Affairs Unit. You can also download the complaint form, fill out the information and return it to the Department at the above address.

Please note that the Internal Affairs unit can only investigate allegations of misconduct by employees of the Columbia Police Department. If you have a complaint concerning an employee of another agency, you must contact that agency directly.

Instructions for Completion of Complaint/Inquiry Form

Complete the information for complainant. It is important to include your telephone number in order that an investigator may contact you for additional information or clarification if needed.

List any witnesses to the alleged misconduct. Indicate the name of the employee(s) if known. If the name is unknown, provide as much physical description about the employee(s) as possible. List the employee's vehicle number if known.

Describe the event in detail including date, time and location of incident. If additional space is required, continue on the back of the Complaint/Inquiry Form.

Prior to submitting the form, sign the bottom portion.

Return the form to Columbia Police Department, Internal Affairs Unit, #1 Justice Square, Columbia, SC 29201.

Policy

It is the policy of this department to ensure that integrity is maintained through an internal system whereby objectivity, fairness, and justice are assured by intensive and impartial investigation and review to clear the innocent, establish guilt of wrongdoers, and to facilitate fair, suitable and consistent disciplinary action.

You will be informed of only the final disposition of the complaint. If the case is to be found sustained in your nature, you will not be told of the action(s) taken against the employee. This information is not public.

What is a complaint?

A complaint is defined as:

An allegation of circumstance(s) amounting to a specific act or omission which, if proven true, would amount to employee misconduct; or

An expression of dissatisfaction with a policy, procedure, practice, philosophy, service or legal standard of the agency.

Misconduct is an act or omission by an employee, which, if proven true, would normally result in some form of discipline or sanction. This would include:

Commission of an unlawful act

Neglect of duty

Violation of any department policy, procedure, rule or regulation or training procedure; or

Conduct that may reflect unfavorably upon the employee or agency.

What types of complaints does the Columbia Police Department recognize?

Both "informal" and "formal" complaints are recognized. An "informal" complaint is a minor issue that may be handled by the employee's supervisor with no other action. A "formal" complaint is any complaint that is not an informal complaint, and is handled through official channels and documentation.

Who can make a complaint?

The Columbia Police Department accepts complaints against any of its employees and will investigate all these complaints to the appropriate disposition. A complaint can come from either an external or internal source, and can be accepted from:

Individual aggrieved people

A third party

A governmental agency

An anonymous person

Employing agencies

Human rights complaints

Who will investigate my complaint?

Your complaint will be taken by a Lieutenant or Sergeant. If the complaint is resolved, no other action will be taken. If further action is warranted, the complaint is processed through the Internal Affairs Unit for tracking purposes, and assigned to the employee's supervisor or the Internal Affairs Unit to investigate.

What to expect

Complaint investigations can be lengthy depending on the number of witnesses and the seriousness of the allegations. The Columbia Police Department makes every effort to complete investigations within 30 days. Additional time is then required for review and determining a disposition of the allegations of misconduct. You will be notified by letter of the outcome or "disposition" of your complaint within 30 days of the final findings.

Dispositions

After all evidence and testimony are obtained, the investigator files a report which is reviewed by command staff.

The Chief of Police reviews the completed investigation and then decides on one of the four dispositions.

Sustained: The employee has committed the act, or acts, of misconduct alleged in the complaint.

Not Sustained: There is insufficient evidence to clearly prove or disprove the allegations made.

Exonerated: The act occurred but the act was justified, lawful, and proper, or the complaint is satisfied with an explanation of the incident and requests no further action taken.

Unfounded: The allegations were without basis.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	C/A NUMBER: 2013-CP-40-03982
George S. Glassmeyer,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM IN
v.	)	OPPOSITION TO DEFENDANT'S
	)	MOTION TO ALTER OR AMEND
City of Columbia,	)	JUDGMENT
	)	
Defendant.	)	

Plaintiff George S. Glassmeyer ("Plaintiff"), by and through his undersigned counsel, submits this memorandum in opposition to Defendant City of Columbia's ("City") Motion to Alter or Amend requesting that this Court reconsider its July 23, 2014 Order granting Plaintiff's motion for summary judgment and denying Defendant's motion for summary judgment.¹ For the reasons set forth below, the Court properly granted Plaintiff's Motion for Summary Judgment and City presents no bases for reconsideration. Therefore, Plaintiff respectfully requests this Court deny Defendant's Motion to Alter or Amend this Court's July 23, 2014 Order, affirm its previous rulings, and entertain an affidavit of attorney's fees before rendering a final judgment.

STANDARD OF REVIEW

Rule 59(e) of the *South Carolina Rules of Civil Procedure* allows a party to move for an order altering or amending a judgment or order entered by the court. The decision to grant or deny a Rule 59(e), SCRCF, motion is within the sound discretion of the trial judge. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (App. 2012), *reh'g denied, cert dismissed*. A motion to alter or amend is typically only granted where the moving party shows that there is a clear factual error to be corrected. *See Doe v. Doe*, 324 S.C. 492, 478 S.E.2d 854

¹ The Court's Order also granted Plaintiff's Motion to Strike Defendant's Request for Attorneys' Fees. Defendant has not sought reconsideration of the Court's ruling as to this issue in its Motion.

(Ct. App. 1996); see also *Ruscavage v. Zuratt*, 831 F.Supp. 417 (E.D. Pa. 1993) (stating that the purpose of a motion to alter or amend is to correct “manifest errors of law or fact or to present newly discovered evidence”). As the federal courts have recognized, “reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396 (4th Cir. 1998).

A party’s mere disagreement with how the trial court applied the pertinent standard when making its decision does not support a motion to alter or amend. See *Hutchinson v. Staton*, 994 F.2d 1076, 1083 (4th Cir. 1993). Moreover, a party cannot use a motion to alter or amend a judgment to present to the trial court an issue that the party could have raised prior to judgment but did not. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002); *Mailsorce, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). Here, Defendant’s arguments amount to a mere disagreement with this Court’s application of the law to the facts of this case, while simultaneously presenting issues and factual assertions that were not presented previously, which are improper grounds for a motion to alter or amend. Defendant’s motion should be denied.

ARGUMENTS

I. CITY’S MOTION TO ALTER OR AMEND CONTAINS NEW LEGAL ARGUMENTS AND DOCUMENTARY EVIDENCE THAT IS NOT PROCEDURALLY APPROPRIATE.

This Court’s Order Granting Plaintiff’s Motion for Summary Judgment directed that City turn over all complaints filed by citizens against former Police Chief Randy Scott. The Court primarily held that despite whatever privacy interests Scott might have in the subject complaints, an overriding public interest exists where there is evidence that City did not follow its own directive to investigate all citizen complaints lodged against police officers and personnel. In its Motion to Alter or Amend, City for the first time raises the argument that because the requested

complaints were not filed by the complainants in accordance with the City's recommended procedures, City had no corresponding obligation to investigate those complaints. As a result, City argues, there were no complaints filed which prompted the City to act. Even if City's argument had merit, which it does not for the reasons outlined below, it must be summarily rejected because it was not previously presented to or considered by this Court.

"A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990) (citing *Natural Resources Defense Counsel v. U.S. E.P.A.*, 705 F.Supp. 698, 701 (D.D.C. 1989), *vacated on other grounds*, 707 F.Supp. 3 (D.D.C. 1989) ("Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier."); *Smith v. Stoner*, 594 F.Supp. 1091, 1118 (N.D. Ind. 1984) ("Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived."); *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D. Va. 1984) ("I do not conceive of Fed. R. Civ. P. 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment."). See also *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396, 404 (4th Cir. 1998).

The purpose behind Rule 59(e) is to allow a party to correct misapplications of law or fact or to preserve legal issues for appeal. *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). "[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the great importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." *Id.* at 779-780 (citation omitted).

Where a party does not raise an issue to the trial court prior to the Court's order or judgment, the party has waived its right to make that argument. Reserving such arguments until a motion to alter or amend defeat's the public policy of securing the just and speedy resolution of disputes and ensuring that all legal issues are presented to the lower court for its consideration. City's failure to argue previously that it is justified in failing to investigate complaints that do not come through recommended channels is procedurally inappropriate and should be summarily denied by this Court without any further inquiry.

Moreover, "a party may not seek to alter a previously-entered judgment by relying on new evidence, unless the party produces a legitimate justification for not presenting the evidence during the earlier proceeding." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 404 (quoting *Small v. Hunt*, 98 F.3d 789, 798 (4th Cir. 1996)); *In re Forest Grove, LLC*, 448 B.R. 379 (Bankr. D.S.C. 2011). In setting forth the grounds for a new trial or amendment of judgment, Rule 59(a), SCRCP, contemplates that in order for a party to present "new evidence," such evidence must have been newly discovered. *See also* Rule 60(b), SCRCP. In *Mozingo ex rel. Estate of Stewart v. Ford Motor Co.*, No. 2009-UP-282, 2009 WL 9528979 (Ct. App. June 4, 2009) (unpublished), the South Carolina Court of Appeals stated that "a party cannot use Rule 59(e) to present new evidence to the court." *Id.* at *1 (citing *Brailsford v. Brailsford*, 380 S.C. 443, 448, 669 S.E.2d 342, 345 (Ct. App. 2008)).

City inappropriately attempts to present additional evidence to this Court in support of its Motion to Alter or Amend the Judgment. City attached additional exhibits to its motion, including the Columbia Police Department's webpage for internal affairs, Complaint/Inquiry Form, and "Citizen Complaint Process" instructions. *See* Motion to Alter or Amend Judgment at Exhibits B, C and D. These documents constitute evidence that has never before been presented to the Court in this case and therefore should be disregarded. These documents do not constitute

“newly discovered evidence” and were available to City prior to this Court’s issuance of the July 23, 2014 Order Granting Plaintiff’s Motion for Summary Judgment. City failed to present these additional exhibits and evidence to the Court in support of its motion for summary judgment and failed to present these exhibits to the court during oral argument. Such evidence should not be considered by this Court. Even if the timeliness of City’s submission of purported evidence were not problematic, City’s failure to properly identify the documents by affidavit likewise renders them of no use to the Court. *See* Rule 901, SCRE; Rule 56(e), SCRCP.

II. NEITHER CITY’S POLICIES AND PROCEDURES NOR APPLICABLE CASE LAW PROVIDE A BASIS FOR VIOLATING CITY’S OWN DIRECTIVES.

Even if this Court were to consider City’s substantive argument, the Court should conclude that it has no merit. As a preliminary matter, there is no competent evidence before this Court as to the manner by which the City received the subject complaints. The only evidence regarding the subject complaints is that they take the form of anonymous emails referring to Scott’s alleged personal conduct; unsolicited, unverified complaints relating to Scott’s alleged personal conduct; and third-party, unverified allegations of misconduct by Scott.² *See* Glassmeyer Affidavit attached to Plaintiff’s Motion for Summary Judgment as **Exhibit 1** and City’s Response to Plaintiff’s FOIA Request, attached thereto as **Exhibit B**. There is no other evidence, by way of affidavit or testimony, which this Court could use to determine how the City received the subject complaints.

City’s bald assertion that it received the subject complaints through channels outside of City’s recommended procedure does not constitute competent evidence. *See* Motion to Alter or Amend at p. 4 (“all established procedures for reporting and investigating allegations of misconduct were bypassed”). In *State v. Hill*, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011), the

² Moreover, according to this Court’s order, at least some of the Complaints are from documents filed in the South Carolina Family Court. *See* Order Granting Plaintiff’s Motion for Summary Judgment at p. 4.

South Carolina Court of Appeals recognized that “a challenge is without merit where it consists solely of an attorney’s statements, unsworn and unsupported by any proof or offer of proof.” *Id.* at 288, 715 S.E.2d at 373. The South Carolina Supreme Court has stated that an unsworn statement can only be considered as true “on information and belief.” *Thevenot v. Commercial Travelers Mut. Acc. Ass’n of America*, 259 S.C. 235, 191 S.E.2d 251 (1972). The factual representations in City’s motion are unsworn and unsupported by any proof or offer of proof. Accordingly, City’s assertion that the subject complaints were received by it through channels outside of its recommended procedures is not before this Court as a matter of fact and should not be considered as evidence.³

City asserts that its Internal Affairs Policy “outlines the procedures the public will follow in lodging a complaint” and “places citizens on notice that reports of wrongdoing” may be made in certain, specified manners. *See* Motion to Alter or Amend Judgment at p. 4. City leaps to the conclusion that because there are recommended procedures for filing complaints, any complaints submitted to the City *outside* of the recommended method can simply be ignored without further investigation or inquiry. *See id.* at p. 5 (“There being no report, anonymous or otherwise, pursuant to **Department policies**, there is no legitimate basis for compelling disclosure of the information...”) (emphasis in original). City cites no provision in its Policy Manual that provides an exception to investigating citizen complaints that come through alternative channels but which are nevertheless actually known to City. City likewise cites no case law or legal precedent in support of its position.

City’s Policy Manual makes clear that it is “require[d] [to] investigate[] . . . all citizen complaints, including anonymous complaints.” *See* Glassmeyer Affidavit attached to Plaintiff’s

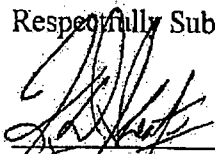
³ Additionally, even if this Court were to assume that the subject complaints were received through other methods than that those sanctioned by City, City has admitted that it in fact received the Complaints and does not deny that it had actual knowledge of the subject complaints prior to City’s receipt of Plaintiff’s FOIA request.

Motion for Summary Judgment as Exhibit 1 and the Department's Manual attached thereto as Exhibits E at Section 06, Chapter 02 § 1.0 (Directive). There is no stated exception to this rule and there is no authorized procedure for the City to ignore complaints that it receives outside of its own recommended means. In light of these well-established facts, City's new argument that it was justified in failing to investigate the subject complaints actually provides further support for the Court's decision in this case.⁴ This Court should reject City's argument and stand firm in its finding that an overarching public interest outweighs whatever privacy interests former Police Chief Scott may have in this case.

CONCLUSION

For the foregoing reasons, Defendant City of Columbia's Motion to Alter or Amend this Court's July 23, 2014 Order Granting Plaintiff's Motion for Summary Judgment should be denied. Additionally, Plaintiff asks that the record be left open to allow him to introduce evidence of his attorney's fees before the Court enters its final judgment in this matter.

Respectfully Submitted,



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August 4, 2014.

Attorneys for Plaintiff

⁴ Such a provision would enable City to blatantly ignore complaints brought to City's attention but which are not written on City's recommended form. See City's Motion to Alter or Amend Judgment at Exhibit C. Were the Court to countenance such an argument, it would give City a basis to reject otherwise valid complaints against City's officers and personnel by elevating form over substance.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

George S. Glassmeyer,

Plaintiff,

vs.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT

Civil Action File No.: 2013-CP-40-3982

**DEFENDANT'S REPLY MEMORANDUM
IN SUPPORT OF MOTION TO ALTER
OR AMEND JUDGMENT**

RICHLAND COUNTY
FILED
2014 AUG -5 AM 9:10
JEANNETTE W. LECROIX
C.C.P. & G.

By memorandum dated August 4, 2014, Plaintiff objects to the City's motion to alter or amend this Court's order issued July 23, 2014. In support of this objection, Plaintiff contends that the City attempts to raise new arguments in its motion and to present materials not addressed in the argument below. For the following reasons, these positions are without merit:

1. The City's motion to alter is responsive to information contained in the order that is not addressed in Plaintiff's complaint.
2. The policies and procedures provided for reporting alleged wrongdoing by City police officers are public documents available for independent verification and subject to consideration by way of judicial notice.
3. The representation that materials reviewed *in camera* were not presented through established and available means is subject to verification on the face of the documents.

LEGAL ARGUMENT

1. **The City's motion to alter is responsive to information contained in the order that is not addressed in Plaintiff's complaint.**

The order under review acknowledges that Plaintiff raised arguments outside of his

pleadings in seeking to obtain the withheld information. The order states: "Specifically, although the reasons were not given in the Complaint, Plaintiff claimed at the hearing and in its memorandum that the City violated its Manual by failing to investigate the allegations set forth in the various complaints against Scott." (Order, p. 6) The City properly objected to the Court's conclusion that the "failure to investigate," rather than the content of the materials requested, provides the basis for disclosure under the Freedom of Information Act (FOIA).

The City could not have anticipated the Court's ruling on this issue. Accordingly, the arguments and materials presented, demonstrating that no request for investigation was properly submitted under available procedures is appropriate and should be addressed. It is ironic that Plaintiff requests disclosure of information on a basis not asserted in his pleadings and seeks to bar the City from responding to this position. For these reasons, the Court should entertain the City's objection or withdraw consideration of Plaintiff's "failure to investigate" argument.

2. The policies and procedures provided for reporting alleged wrongdoing by City police officers are public documents available for independent verification and subject to consideration by way of judicial notice.

Plaintiff does not challenge the accuracy or validity of the policies published by the City for submitting claims of police misconduct. Moreover, these policies are published in police stations and on the City's website. Any citizen having a complaint about police conduct is on notice of the means available to request an investigation.

Judicial notice is available for any fact (1) "generally known within the territorial jurisdiction of the trial court" or (2) for facts "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Rule 201(b), SCRE. Judicial notice is discretionary, even if not requested, and may be taken at any stage of a

proceeding. Rule 201(c) and (f), SCRE. Judicial notice is **mandatory** if requested by a party and supplied with the necessary information. Rule 201(d), SCRE.

The policies and procedures provided by the City fall within the mandatory provisions of the rules of evidence. The materials were provided and Plaintiff has had an opportunity to object. Plaintiff does not challenge the accuracy or validity of these materials. Accordingly, the materials are available for review at this, or any other stage of the proceedings.

3. The representation that materials reviewed *in camera* were not presented through established and available means is subject to verification on the face of the documents.

The information provided for *in camera* review shows the source and recipient of each communication. While some sources are fictitious, the recipients are not members of the City's Police Department and the information was not presented in keeping with the published policies and procedures for investigation of police conduct. The Court can verify this deficiency independently by *in camera* review, without relying upon representation by counsel or other "unsworn and unsupported" offer of proof.

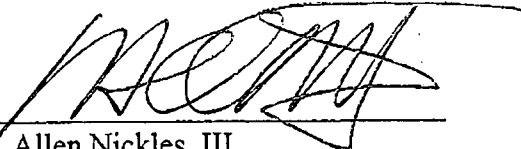
The information provided for *in camera* review was not submitted through published, available means for reporting police misconduct. This failure establishes that the Police Department was under no duty to investigate and there is no legitimate public interest in disclosing the content of these communications. For these reasons, reliance upon Burton v. York County Sheriff's Department, 358 S.C. 339, 494 S.E.2d 888 (Ct. App. 2004) and the other authorities cited in this Court's order that address evaluation or investigation of public officers is misplaced and the City reasonably withheld the identified documents from public view.

CONCLUSION

For the reasons stated above and in the City's memorandum in support of its motion alter or amend, the South Carolina Freedom of Information Act does not compel disclosure of the materials presented for *in camera* review. Accordingly, the order issued on July 23, 2014 should be withdrawn and judgment entered in favor of the City.

NICKLES LAW FIRM, LLC

By: _____


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ATTORNEY FOR DEFENDANT

August 5, 2014
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

OCT 15 2014

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Alison Renee Lee, Circuit Court Judge

Civil Action No.: 2013-CP-40-03982

City of Columbia.....Appellant.

v.

George S. Glassmeyer.....Respondent.

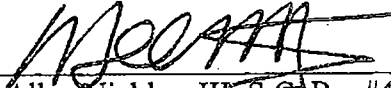
NOTICE OF APPEAL

The above-named Appellant, by and through its undersigned counsel, hereby appeals the orders of the Honorable Alison Renee Lee filed July 23, 2014 and September 18, 2014. The order filed September 18, 2014 is denial of reconsideration of the order filed July 23, 2014. A copy of the orders and judgments issued by the Court of Common Pleas are provided herewith as Attachments A and B. A copy of this Notice is being provided to the Clerk of Court of Richland County Court of Common Pleas and all counsel of record.

This appeal addresses specifically disclosure under the South Carolina Freedom of Information Act of anonymous emails referring to former Police Chief Randy Scott's alleged personal conduct; unsolicited, unverified complaints referring to Scott's alleged personal conduct and third-party, unverified allegations of misconduct by Scott.

Appellant reserves the right to appeal any award of attorney's fees and costs that may be issued as a result of the orders on appeal.

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October 15, 2014

THE STATE OF SOUTH CAROLINA
In the 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

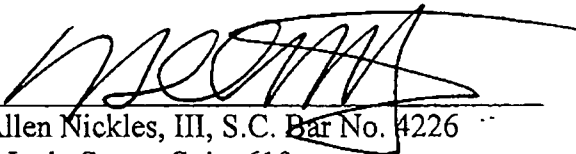
v.

City of Columbia.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other materials.

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THE STATE OF SOUTH CAROLINA
In the 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 FINAL BRIEF

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RECEIVED
MAR 16 2015
SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court erred in finding that FOIA compelled disclosure of anonymous emails, unsolicited unverified complaints, and third-party unverified allegations of misconduct.
2. Whether Appellant had an obligation to investigate complaints that were not filed in accordance with the Columbia Police Department's procedures.
3. Whether Appellant is entitled to challenge the trial court's ruling on the ground that the withheld documents do not qualify as public complaints under FOIA.

STATEMENT OF THE CASE

This is an appeal from the Court of Common Pleas for the Fifth Judicial Circuit. The issues on appeal are whether the South Carolina Freedom of Information Act (“FOIA”) compels the disclosure of anonymous emails, unsolicited unverified complaints, and third party allegations of misconduct relating to a former police chief, whether Appellant’s Police Department had an obligation to investigate complaints that were not filed in accordance with published procedures, and whether Appellant may challenge the trial court’s ruling on the ground that the requested documents refer to allegations that were not “public” and were not presented in accordance with published procedures.

STATEMENT OF THE FACTS

On April 3, 2013, Respondent George S. Glassmeyer (“Glassmeyer”) submitted a FOIA request to Appellant City of Columbia (“City”) requesting to inspect, among other items, “copies of any and all documents including, but not limited to statements, memoranda, emails, complaint, notes, and investigative reports relating to any alleged wrongdoing by [the former] police chief” and “copies of any and all documents relating to any and all disciplinary actions imposed upon [the former] police chief.” The City responded by providing all requested materials except: (a) anonymous emails referring to alleged personal conduct; (b) unsolicited, unverified complaints referring to alleged personal conduct; and (c) third-party, unverified allegations of misconduct.

On July 10, 2013, Glassmeyer filed a non-jury complaint seeking a declaration that the City unlawfully failed to respond to his April 3, 2014 FOIA request, an injunction compelling disclosure of documents or information responsive to his FOIA

request and an award of reasonable costs and attorney fees. (Complaint ¶¶ 14-16) The City filed an answer on July 16, 2013 denying any FOIA violation and requesting attorney's fees and costs incurred in defense. On October 17, 2013, the City filed a motion for summary judgment. On October 18, 2013, Glassmeyer filed a motion for summary judgment and a motion to strike the City's prayer for attorney fees.

The motions were heard on February 10, 2014 by the Honorable Alison Renee Lee. The City provided Judge Lee the withheld information for *in camera* review. Following submission of briefs, oral argument and review of withheld materials, by order issued July 23, 2014, Judge Lee entered the following findings:

- To withhold "public records under FOIA" an agency must prove that the information falls within one of fifteen exemptions in § 30-4-40; (R. p. 4)
- The materials withheld fall within the "broad definition of public records" set forth in § 30-4-40; (R. p. 5)
- Although the material withheld may relate to "off-duty" conduct, Glassmeyer has a legitimate interest in determining "whether the Department followed its own policies and investigated complaints, which is a matter of public interest" (R. p. 6)
- Glassmeyer "only seeks information regarding complaints of 'alleged wrongdoing' and 'disciplinary action.'" (R. p. 7)
- Although the reasons were not given in the complaint, Glassmeyer claimed at the hearing that the City violated its [Police Department]

manual by failing to investigate allegations set forth in various complaints against Scott. (R. p. 7)

- Glassmeyer bases this contention on the representation that “[t]he Internal Affairs Policy in the manual sets forth a requirement for the Department to conduct ‘an investigation of all citizen complaints including anonymous complaints.’” (R. p. 7)
- The Department policy “requiring an investigation militates in favor of the public’s interest in allegations and the reason why the Defendant chose not to investigate the allegations.” (R. p. 7)
- The focus of this case is not on the accusations themselves but the Department’s knowledge of the complaints and its response upon receipt. (R. p. 8)
- The case focuses not on the content of the allegations, but on what steps the Department took upon receipt of the information pursuant to its policies. (R. p. 8)

On July 29, 2014, the City filed a motion to alter or amend the above order on grounds that legitimate reasons were shown for withholding the information identified in its FOIA response and because the requested documents refer to allegations that were not presented in keeping with published procedures required for investigation of public complaints about police conduct. On August 4, 2014, Glassmeyer filed a memorandum in opposition to the motion to alter or amend and on August 5, 2014, the City filed a reply memorandum. On September 17, 2014, Judge Lee denied the motion to alter or amend. This appeal followed.

STANDARD OF REVIEW

Glassmeyer's complaint seeks declaratory and injunctive relief under FOIA. Both claims are non-jury. In an action tried at law without a jury, appellate review extends only to the correction of errors of law. An order awarding attorney fees is examined for abuse of discretion. Burton v. York County Sheriff's Dept., 358 S.C. 339, 346, 594 S.E.2d 888, 892 (Ct. App. 2004)

LEGAL ARGUMENT

I. FOIA does not compel disclosure of anonymous emails, unsolicited verified complaints, and third party allegations of misconduct relating to the former police chief.

FOIA was enacted to ensure public access to information regarding the "activities of their public officials." S.C. Code Ann. § 30-4-15. To serve this purpose, FOIA is liberally construed and exemptions to disclosure of public records narrowly applied. Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 161-62, 547 S.E.2d 862, 864-65 (2001) Where, as here, information is withheld from disclosure, the propriety of each exemption must be examined on a case by case basis. City of Columbia v. ACLU of South Carolina, 323 S.C. 384, 387, 475 S.E.2d 747, 749 (1996)

The information requested by Glassmeyer contains "personal information" subject to protection established by common law principles and designated by the General Assembly in the Family and Personal Identifying Information Privacy Protection Act. S.C. Code Ann. § 30-2-30.¹ Such information is exempt from disclosure by S.C. Code

¹ "Personal information" is defined by this Act to include "information that identifies or describes an individual including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number [and] medical or disability information ..."

Ann. § 30-4-40(2) and (4). These FOIA provisions exempt from mandatory disclosure “[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy” and “[m]atters specifically exempted from disclosure by statute or law.”

Our Supreme Court has defined the right to privacy as the right of a person to be left alone from unwarranted publicity. Holloman v. Life Inc. Co. of Virginia, 192 S.C. 454, 7 S.E.2d 169 (1940) When a privacy interest is asserted, a balancing test is used to determine whether the public’s need to know outweighs the individual’s interest in nondisclosure. Burton, *supra*, 358 S.C. at 352, 594 S.E.2d at 895 (affirming the trial court’s decision to disclose records relating to public duties and withhold information relating to private conduct). In this context, privacy interests existing at common law and designated by statute must be reconciled with the public’s interest in reasonable access to governmental activity served by FOIA. See, Seago v. Horry County, 378 S.C. 414, 663 S.E.2d 38 (2008) (harmonizing FOIA and copyright law).

Under federal law, once a legitimate privacy interest is implicated, the burden shifts to the FOIA requester to (1) “show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake,” and (2) “show the information is likely to advance that interest.” Casa de Maryland, Inc. v. U.S. Department of Homeland Sec., 409 Fed. Appx. 697, 700 (4th Cir. 2011) Like the federal system, our courts have recognized both statutory and common law privacy interests.

In our State, as in the federal system, statutes supplement constitutional and common law privacy interests. See, Burton, *supra* 338 at 352, 594 at 895. National

Archives and Records Admin v. Favish, 541 U.S. 157, 170 (2003) Indeed, our constitution goes beyond the federal model in providing specific protection against “unreasonable invasions of privacy ...” S.C. Const. art. I, § 10. The right to privacy recognized by common law, statutes, and the constitution should require a FOIA requester to articulate a public interest in obtaining “personal information” about other citizens from the government.² Moreover, as observed by the West Virginia courts, FOIA is not a proper vehicle for satisfying private curiosity. Child Protection Group v. Cline, *supra*, 350 S.E.2d at 544 (W. Va. 1986)

In this instance the City withheld anonymous emails as well as unsolicited, unverified allegations referring to the former police chief’s personal conduct and third-party, unverified allegations of misconduct. In his complaint, Glassmeyer contends that FOIA required the City to release this information. In argument to the trial court, however, Glassmeyer asserted that he wanted to make certain that the City’s Police Department did not provide favorable treatment to the former police chief and that the Police Department followed its published policies in responding to allegations of police misconduct.

As a preliminary matter, the information withheld from disclosure does not fall within the requirements of law and did not deprive Glassmeyer access to information regarding the “activities of their public officials.” S.C. Code Ann. § 30-4-15. Additionally, the material requested includes “personal information” exempt from

² State and federal FOIAs serve the same purpose of providing access to public information while protecting privacy interests. To date, no published opinion has been issued in this state regarding the obligation to demonstrate a public interest when privacy issues are implicated. Nevertheless, as addressed herein, it is established that FOIA only compels disclosure of information relating to public activity and public conduct. Accordingly, private “personal information” is exempt from disclosure under FOIA.

disclosure. See, S.C. Code Ann. § 30-4-40(2) (Information of personal nature where the public disclosure would constitute unreasonable invasion of personal privacy)

Glassmeyer has articulated no public interest that would compel disclosure of information regarding the alleged personal conduct of the former police chief and others.³ Examination of the withheld material, provided to the trial court as received and available for review under seal, confirms that the City appropriately exercised its obligation to protect privacy interests while offering Glassmeyer access to public information regarding the police chief's public activities, compensation and benefits. See generally, City of Columbia v. ACLU of South Carolina, 323 S.C. 384, 475 S.E.2d 747 (1996) (exemptions to disclosure under FOIA must be reviewed on a case by case basis) Moreover, the trial court did not expressly determine that the content of the material submitted for review justifies publication. Responding to Glassmeyer's hearing argument, the Court instead held that the public's interest is confined to the "steps the Department took upon receipt of the information **pursuant to its policies.**" (Emphasis added) (R. p. 8)

In reviewing the withheld materials, this Court should be guided by its opinion in Burton v. York County Sheriff's Department, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) In Burton, the trial judge was faced with a similar request to compel records relating to public and personal conduct of law enforcement officers. Following an *in camera* review, the judge determined that "allegations relating to off-duty sexual practices and activities of the deputies is personal and private ..." 358 S.C. at 345, 594 S.E.2d at 891. The plaintiffs in Burton did not appeal or otherwise contest this finding.

³ The material provided for *in camera* review and filed under seal makes reference to alleged conduct of individuals other than the former police chief, including a private citizen.

On review, this Court held that the manner in which law enforcement officers **prosecute their duties** to be a vital public interest that outweighs their desire to remain out of the public eye. The Court also acknowledged that the plaintiffs did not seek “information regarding **off-duty** sexual activities of the deputies involved.” 358 S.C. at 352, 594 S.E.2d at 895 (emphasis added) Instead, FOIA is available to access information only “of legitimate or public interest.” *Id.*

If upheld, the trial court’s order will undermine legitimate privacy interests recognized by state and federal law and expand this Court’s carefully crafted Burton decision. In addition, holding that such personal information must be disclosed upon request will expose those who wish to serve the public to unknowable mischief and perhaps manipulation by unscrupulous or misguided opponents. For all of these reasons, the order on appeal should be reversed and guidance provided on application of FOIA to allegations regarding private conduct by public employees.

II. The allegations sought by Glassmeyer were not filed in accordance with the published procedures for investigation of public complaints about police conduct.

In support of his FOIA request, Glassmeyer relied upon Section 06, Chapter 02 (Internal Affairs) of the City of Columbia Police Department Manual.⁴ This policy provides, in relevant part:

The Department requires an investigation of all citizen complaints, including anonymous complaints, against the Department or its personnel. (Paragraph 1.0)

⁴ This section is inadvertently identified as “Section 2, Chap. 6 of the Internal Affairs Policy” in the trial court order. (R. p. 7)

The Internal Affairs Unit will post a brochure in a public location in every police station or substation that outlines the procedures the public will follow in lodging a complaint against the Department or its employees. (Paragraph 3.0)

The Internal Affairs Unit shall be responsible for maintaining accurate records of all complaints against the Department or its personnel. (Paragraph 3.1)

Complaints received by mail by the Office of the Chief or Internal Affairs will be handled as any other complaint. (Paragraph 4.1)

The Internal Affairs policy places citizens on notice that reports of wrongdoing on the part of police officers may be made in person, by telephone, in writing, electronically, and anonymously. The procedures for making such reports are available to the public through various sources. For example, in addition to visiting, calling or writing the Department, citizens may use the web to access the complaint process and procedure. A complaint form is provided. The Department also offers a Citizen Complaint Process with instructions.

Individuals and organizations seeking to make allegations of impropriety involving members of the City's Police Department may do so. None of the requested materials were submitted to the Internal Affairs Unit. Instead, all established procedures for reporting and investigating allegations of misconduct were bypassed. There can be no public interest in determining why the Police Department did not investigate allegations that were never presented.

As noted above, the trial court held that the public's interest in this matter is confined to the "steps the Department took upon receipt of the information **pursuant to its policies.**" (Emphasis added) (R. p. 8) A journey must begin for one to question the steps taken. There being no report, anonymous or otherwise, **pursuant to Department**

policies, there is no legitimate basis for compelling disclosure of the information identified in the City's FOIA response and provided to the trial court for *in camera* review.⁵

The information withheld under FOIA was not submitted through published, available means for reporting police misconduct. This failure establishes that there was no effort to make a "public report" of alleged misconduct. For these reasons, reliance upon Burton and the other authorities cited in the trial court's order that address evaluation or investigation of public officers is misplaced and the City reasonably withheld the documents from public view.

III. The City is entitled to appeal the trial court's ruling on the ground that the withheld documents do not qualify as public complaints under FOIA.

In rejecting the City's motion to alter or amend, the trial court refused to consider the argument that the Police Department had no notice or obligation to investigate the allegations withheld from review. (September 17, 2013 Order p. 2, R. p. 3) The trial court's original order acknowledges, however, that Glassmeyer did not raise this argument in his pleadings, stating: "Specifically, although the reasons were not given in the Complaint, Plaintiff claimed at the hearing and in its memorandum that the City violated its Manual by failing to investigate the allegations set forth in the various complaints against Scott." (July 23, 2013 Order p. 6, R. p. 7) Thereafter, the City

⁵ The trial court noted that certain materials reviewed *in camera* appeared to derive from a family court proceeding and observed that such documents are public in nature. This Court may take judicial notice that family court proceedings are subject to seal. Neither the City nor the former police chief was a party to the referenced family court action. Furthermore, materials provided for review do not carry a family court stamp and are identified as attachments to a request for admission. Items of discovery are not normally filed. The City has provided Glassmeyer the civil action number of the proceedings in question.

properly objected to the trial court's conclusion that "failure to investigate," rather than the content of the materials requested, justifies disclosure under FOIA.

The City could not have anticipated the trial court's ruling on "failure to investigate." As acknowledged by the trial court, Glassmeyer's complaint makes no reference to any alleged obligation to investigate on the part of the City's Police Department. Instead, the complaint is limited to a request to review the content of documents including "investigative reports." (Complaint ¶ 6, R. p. 16) Accordingly, the arguments and materials presented demonstrating that no request for investigation was properly submitted under available procedures is appropriate and should be addressed.

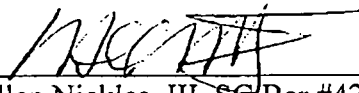
In argument before the trial court, Glassmeyer requested disclosure of information on grounds not asserted in his pleadings and sought to bar the City's objection to his attempt to expand FOIA beyond the confines of reviewing public documents. Contrary to Glassmeyer's position, the bench and the bar will be served by this Court addressing whether FOIA applies to Glassmeyer's "failure to investigate" argument. It is respectfully submitted that upon review of this issue, the Court must conclude that Glassmeyer's complaint does not support the relief provided by the trial court and that the documents withheld fall outside the "public record" as defined in FOIA.

CONCLUSION

In withholding the information requested by Glassmeyer, the City acted only to protect the privacy of its former employee and others and to confine investigative records to public complaints presented in keeping with established procedures. The City has taken no action to prevent unknown accusers from making public their complaints about any employee. Correspondingly, FOIA is not an appropriate vehicle for making

anonymous accusations public. Review of the records provided to Glassmeyer demonstrates that the City has acted within the requirements of FOIA in balancing privacy interests while offering access to public information regarding formal complaints about police conduct. See generally, City of Columbia v. ACLU of South Carolina, supra (exemptions to disclosure under FOIA reviewed on a case by case basis); Seago v. Horry County, supra (the purpose of FOIA is to protect citizens from secret government activity) For these reasons, the decision of the trial court should be reversed and the order of attorney fees vacated.

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March 4, 2015
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THE STATE OF SOUTH CAROLINA
In the 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

BRIEF OF RESPONDENT

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RESTATEMENT OF ISSUE ON APPEAL

Respondent would restate the issue on appeal as follows:

Whether the circuit court erred in finding that FOIA compelled disclosure of complaints relating to alleged wrongdoing by former Police Chief Randy Scott?

STATEMENT OF THE CASE

This is an action for declaratory judgment arising out of Respondent George S. Glassmeyer's ("Glassmeyer") request for production of public records from Appellant City of Columbia ("City") pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.* (Rev. ed. 2007, as amended) ("FOIA"). Glassmeyer filed a summons and complaint for declaratory judgment on July 10, 2013, seeking an order declaring that he was entitled to documents from City, an injunction prohibiting City from withholding the requested documents, and an order awarding his attorney's fees and costs pursuant to S.C. Code Ann. § 30-4-100(b) (Rev. ed. 2007). (R. pp. 15-23.)

City filed its answer on or about July 16, 2013, denying any FOIA violation. (R. pp. 24-26.) City also requested an award of attorneys' fees and costs incurred in its defense. (*Id.* at p. 26.) On October 17, 2013, City filed a motion for summary judgment. (R. pp. 53-57.) Glassmeyer filed a cross motion for summary judgment and a motion to strike City's prayer for attorneys' fees on October 18, 2013. (R. pp. 59-103; pp. 117-118.)

On February 10, 2014, the Honorable Alison Renee Lee heard oral argument on both parties' motions. (*See* R. pp. 27-52.) At that time, City provided the lower court with all materials in its possession that would have been responsive to Glassmeyer's

FOIA request for an *in camera* review. (R. p. 58; Sealed Materials Provided to Court.) On July 23, 2014, Judge Lee granted both of Glassmeyer's motions, leaving open the question of how much to award Glassmeyer for attorney's fees and costs. (R. pp. 1-9.)

City filed a motion to alter or amend judgment on July 29, 2014 (R. pp. 128-149), which was denied on September 18, 2014. (R. p. 10.) On October 15, 2014, City filed its notice of appeal. (R. pp. 161-162.)

FACTS

On April 3, 2013, Glassmeyer submitted a written request to City pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.* (Rev. ed. 207, as amended) ("FOIA"), seeking documents concerning former City of Columbia Police Chief Randy Scott ("Scott"). (R. p. 70 at ¶ 3; p. 73.) Glassmeyer sought information related to Scott's request for a personal leave of absence that was submitted to the City on or about April 22, 2013, and Scott's subsequent resignation, effective May 1, 2013. (*Id.*; R. p. 104 at Nos. 1 and 2.)

With regard to Scott's request for a personal leave of absence and subsequent resignation, Glassmeyer requested the following documents:

- a. A copy of the written request for a leave of absence submitted on or about April 2, 2013 by police chief Scott;
- b. Copies of any and all documents including, but not limited to, statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott; and
- c. Copies of any and all documents relating to any and all disciplinary actions imposed upon police chief Randy Scott.

(R. p. 70 at ¶ 3; p. 73.)

Within fifteen days of Glassmeyer's FOIA request, on April 5, 2013, City furnished Glassmeyer with a disk including some, but not all, responsive documents in its possession. (R. p. 71 at ¶ 4; pp. 74-75.) City stated that it had redacted alleged personal information from Scott's personnel file, citing FOIA's personal privacy exemption, S.C. Code Ann. § 30-4-30(c) (Rev. ed. 2007). (*Id.*)

City reported there were no documents that would have been responsive to several requests, including: (1) contract of employment; (2) internal affairs investigation(s); and (3) disciplinary action(s). (R. p. 71 at ¶ 5; pp. 74-75.)

On April 19, 2013, City supplemented its response to Glassmeyer's FOIA request. (R. p. 71 at ¶ 6; pp. 76-77.) Although City produced a significant number of additional responsive documents, it refused to produce certain requested documents which were in its possession, including:

- (1) anonymous emails referring to Chief Scott's alleged personal conduct;
- (2) unsolicited, unverified complaints referring to Chief Scott's alleged personal conduct; and
- (3) third party, unverified allegations of misconduct by Chief Scott.

(R. p. 71 at ¶ 7; pp. 76-77.) City asserted that it was not producing these documents because they did "not qualify as public documents relating to the performance of public officials" and/or they contained "information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy." (R. pp. 76-77 (*citing* S.C. Code Ann. §§ 30-4-15 and 30-4-40(2)).)

On or about May 14, 2013, Glassmeyer submitted a second FOIA request for public records, requesting a "copy of the Columbia Police Department Policy and

Procedure manual as it existed on July 1, 2012 and a copy of any and all subsequent amendments, additions, and deletions.” (R. p. 71 at ¶ 8; pp. 78.) In response, City provided a copy of its police department’s Directives and Procedures Manual as well as certain updates to the Directives and Procedures Manual, effective January 2013. (R. p. 72 at ¶ 9; pp. 79-103.)

ARGUMENT

Standard of Review

In *Burton v. York County Sheriff’s Dept.*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), this Court held that “[t]he standard of review for a declaratory judgment action is . . . determined by the nature of the underlying issue.” Where a plaintiff seeks a declaratory judgment under FOIA to determine whether certain information should be disclosed, the action is one at law. *Id.*; see also *South Carolina Tax Comm’n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994); *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165 (Ct. App. 2003).

“In an action at law, on appeal of a case tried without a jury, the appellate court’s standard of review extends only to the correction of errors of law.” *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 270, 705 S.E.2d 73, 76 (Ct. App. 2010) (quoting *Electrolab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). “The trial judge’s findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge’s findings.” *Id.*; *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

I. FOIA COMPELS DISCLOSURE OF THE REQUESTED DOCUMENTS.

FOIA codified the legislative intent that gave rise to its enactment:

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 formation of public policy. Toward this end, provisions of this chapter **must be construed so as to make it possible for citizens . . . 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 (Rev. ed. 2007) (emphasis added). “The essential purpose of the FOIA is to protect the public from secret government activity.” *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219, 221 (1991). “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 281, 580 S.E.2d 163, 166 (Ct. App. 2003) (citing *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001)).

A public body cannot withhold information sought by a citizen under FOIA unless the information falls into one of the fifteen exemption categories contained within § 30-4-40, or is otherwise exempt from disclosure under various other FOIA provisions. S.C. Code Ann. § 30-4-40 (Rev. ed. 2007). The presumption is for disclosure: “The burden of proving that an exemption to disclose exists under [FOIA] lies with the government.” *Evening Post Pub. Co. v. Berkeley County School Dist.*, 392 S.C. 76, 708 S.E.2d 745 (2011). FOIA exemptions must be construed narrowly to conform to the public purposes of the Act. *Evening Post Pub. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005). If a document does not fall within one of the enumerated exemptions, then the document and/or information cannot be withheld by a public body.

Id. Whether an exemption applies is necessarily a case-by-case determination. *Id.*; *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996).

City violated FOIA by failing to provide the requested “statements, memoranda, emails, complaints, notes, and investigative reports relating to . . . alleged wrongdoing” by Scott. The documents constitute “public records” subject to disclosure under FOIA, S.C. Code Ann. § 30-4-20(c) (Rev. ed. 2007). Neither the personal privacy exemption, S.C. Code Ann. § 30-4-40(a)(2), nor the exemption for matters otherwise exempt from disclosure by statute or law, S.C. Code Ann. § 30-4-40(a)(4), apply.

Even if Scott had a legitimate privacy interest in the requested documents, Glassmeyer has shown that there is a significant public interest that outweighs such privacy concerns in this case. *See Burton v. York County Sheriff's Dep't*, 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004). The lower court's order compelling production of these documents should be affirmed.

A. The requested documents constitute “public records” and are subject to disclosure under FOIA.

The FOIA is clear that “[a]ny person has a right to inspect or copy any public record of a public body” S.C. Code Ann. § 30-4-30(a). City has raised the threshold issue of whether the requested documents constitute “public records” subject to mandatory disclosure under FOIA. (*See* Appellant's Brief at p. 6.) “[P]ublic record” is defined in FOIA as

All books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.

S.C. Code Ann. § 30-4-20(c) (emphasis added). The broad definition of “public record” clearly encompasses the complaints received by City regarding misconduct by former

police chief Scott.

Exceptions to the “public record” definition are also set forth in Section 30-4-20(c) and include:

Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act

S.C. Code Ann. § 30-4-20(c) (Rev. ed. 2007). City has no basis under Section 30-4-20(c) to claim that the information Glassmeyer seeks does not fit within the definition of “public record” such that it may be properly withheld. The requested complaints of alleged wrongdoing do not fall within any of the specifically articulated exclusions from the “public record” definition and City does not make any claim that these specific exceptions apply.

City asserts that the complaints against Scott “do not qualify as public documents” because they “literally happened to fall into [City’s] hands.” (R. p. 36, lines 23-25.) City argued to the lower court that there is a “very serious distinction” between “documents that [are] gathered by or generated by the government” and documents that are merely provided to the government without any affirmative governmental action. (*Id.* at p. 36, line 21 – p. 37, line 2.) City cites no statutory exception or case law that supports its position that documents merely given to a public body do not constitute “public records.” Any such distinction is unavailing and contradicts the plain language of

S.C. Code Ann. § 30-4-20(c).

The definition of “public record” includes within its scope “all” documents, “regardless of physical form or characteristics.” S.C. Code Ann. § 30-4-20(c) (Rev. ed. 2007). This definition includes those documents that are affirmatively created or manipulated by a public body (“prepared, owned, used”) as well as those documents that are passively “in the possession of, or retained by” a public body. *Id.* The requested documents were undisputedly provided to City, in City’s possession at the time of Glassmeyer’s FOIA request, and are still being retained by City. (R. p. 48, line 18 – p. 49, line 20.) There is no statutory distinction upon which to base a conclusion that the requested documents do not constitute “public records” subject to disclosure under FOIA.

City states as a secondary basis for withholding the subject complaints that the documents do “not qualify as public documents” because they do not “relat[e] to the performance of public officials.” (R. p. 71 at ¶ 7; pp. 76-77.) In support of its position, City cites FOIA’s “findings and purpose” section, S.C. Code Ann. § 30-4-15 (Rev. ed. 2007). (*See* Brief of Appellant at p. 6.)

South Carolina law is clear that a public body cannot withhold information sought by a citizen under FOIA unless the information falls into one of the fifteen exemption categories contained within § 30-4-40, or is otherwise exempt from disclosure under various other FOIA provisions. S.C. Code Ann. § 30-4-40 (Rev. ed. 2007). *See also Evening Post Pub. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005) (if a document does not fall within one of the enumerated exemptions, then it cannot be withheld). Nothing in FOIA permits a public body to withhold documents based on its subjective view that the documents do not “regard the activities of their public

officials.’”

In addition to lacking any foundation in FOIA, City’s argument that the requested documents do not “regard the ‘activities of . . . public officials’” is substantively meritless. (*See* Appellant’s Brief at p. 6 (citation omitted).) The very essence of Glassmeyer’s request was to copy or inspect complaints received by City regarding alleged wrongdoing of its public officials. (R. pp. 65-68.) Alleged wrongful conduct or violations of the law by former police chief Scott unquestionably pertains to “activities” of a “public official.”

The definition of “public record” in the FOIA is expansive and encompasses the requested documents. The information Glassmeyer requested includes complaints of wrongdoing which were admittedly in City’s “possession.” Regardless of whether City “used” the documents or merely “retained” them, FOIA compels their production pursuant to S.C. Code Ann. §§ 30-4-20(c) and 30-4-30(a). City has no basis under FOIA to claim that the items it holds “do not qualify as public documents” such that they may be properly withheld, and the lower court should be affirmed on this issue.

B. The personal privacy exemption does not provide City with grounds to withhold the requested information, because its disclosure would not constitute an unreasonable invasion of Scott’s personal privacy.

City asserts that the information Glassmeyer requests may be withheld under the personal privacy exemption, S.C. Code Ann. § 30-4-40(a)(2) (Rev. ed. 2007): (*See* Appellant’s Brief at p. 4.) The lower court rejected City’s argument, holding Scott does not have a reasonable expectation of privacy with regard to the information requested, and this Court should affirm. (R. p. 5.)

The personal privacy exemption provides that “[i]nformation of a personal nature

where the public disclosure thereof would constitute unreasonable invasion of personal privacy” may be withheld from production. S.C. Code Ann. § 30-4-40(a)(2) (Rev. ed. 2007). The exemption specifically identifies categories of information that constitutes personal information *per se*, disclosure of which would result in an “unreasonable invasion of privacy” (for example, gross receipts contained in an application for business license). *Id.* It is undisputed that none of these categories of *per se* private information are at issue in this case.

None of the information contained in the complaints filed with City regarding Scott’s alleged misconduct is properly withheld under the personal privacy exemption. *See* S.C. Code Ann. § 30-4-40(a)(2) (Rev. ed. 2007). Complaints of improper action made by third parties should not be considered “[i]nformation of a personal nature where public disclosure thereof would constitute unreasonable invasion of personal privacy.” *Id.* Rather, such complaints are mere representations or allegations made by others, whether true or untrue, regarding violations of the law or City policy by City employees. These documents, and the information they contain, are not properly considered “personal,” “private,” or otherwise subject to protection. *See also Perkins v. Freedom of Information Commission*, 635 A.2d 783, 785 (Conn. 1993) (“the [personal privacy exemption] was not intended to shield the misconduct of public officials from public knowledge”).

City conceded during the hearing on the parties’ motions for summary judgment that some of the complaints are publicly available documents, including court records. (R. p. 33, line 15 – p. 34, line 25; p. 36, lines 5-15; *see also* Appellant’s Brief at p. 10, n. 5.) The lower court noted in its Summary Judgment Order that “copies of records from

family court proceedings . . . are available to the public unless sealed.” (R. p. 5 (*citing Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006)).) “Therefore, there can be no level of privacy expected in those specific documents.” (*Id.*)

City states in footnote 5 in its Initial Brief that it “provided [Glassmeyer] the civil action number of the [family court] proceedings in question.” (*See* Appellant’s Brief at p. 10, n. 5.) City implies that providing the family court action number should be deemed the equivalent of fulfilling its mandate to provide public records to Glassmeyer. This implication is patently false. While providing such information might allow Glassmeyer to verify whether documents in City’s possession were indeed filed in court, FOIA does not allow a public body to meet its obligations to the public merely by pointing a citizen to another repository where the records may be found.

For the reasons stated above, Scott did not and does not have a reasonable expectation of privacy in the complaints sought to be produced by City. The lower court held that “[w]hile complaints by third parties of improper actions against Scott *may be of a personal* nature, public disclosure of the complaints would not constitute an unreasonable invasion of personal privacy. Such complaints are mere representations or allegations made by others, whether true or untrue” (R. p. 5.) This Court should affirm on these grounds that the requested documents are not protected by the personal privacy exception under the FOIA.

C. No other statute or law provides a separate ground for City to withhold the requested information.

Section 30-4-40(a)(4) of FOIA also provides an exemption for “matters **specifically exempted from disclosure** by statute or law.” *Id.* (emphasis added). City submits that The Family and Personal Identifying Information Privacy Act (“Privacy

Act”), S.C. Code Ann. § 30-2-30 (Rev. ed. 2007), shields the requested documentation from production. (See Appellant’s Brief at p. 4, n. 1.) It does not.

City fails to cite any provision of the Privacy Act allowing or otherwise authorizing it to withhold the information at issue in this case. The Privacy Act merely proscribes the obtaining of personal information from a state agency for *commercial solicitation purposes*. See S.C. Code Ann. § 30-2-50 (Rev. ed. 2007). City’s gratuitous reference to the “personal” information definition under the Privacy Act is not an applicable basis for withholding the documents requested by Glassmeyer. That definition exempts from disclosure “information that identifies or describes an individual, including, but not limited to, an individual’s photograph or digitized image, social security number, date of birth, driver’s identification number, name, home address, home telephone number [and] medical or disability information” S.C. Code Ann. § 30-2-30. None of this information is at issue in this case and does not provide City with a basis for failing to provide the complaints of alleged wrongdoing against Scott.

D. Even if the requested documents contained information of a “private nature,” the balancing test of *Burton* compels production because there is a substantial public interest in the documents and City’s response to receiving them.¹

Our Supreme Court has recognized that “one of the primary limitations placed on the right of privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest.” *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) (quoting *Meetze v. Assoc. Press*, 230 S.C. 330, 95

¹ City baldly asserts that Glassmeyer “has articulated no public interest that would compel disclosure.” However, Glassmeyer has demonstrated in exhibits to his Motion for Summary Judgment that a discrepancy exists between the City’s Police Department’s Policies and Directives Manual and the actions City took with respect to the allegations against former Police Chief Scott that it received. The public has a right to know why.

S.E.2d 606, 609 (1956)). In *Burton v. York County Sheriff's Dep't*, 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004), the South Carolina Court of Appeals noted that in considering whether FOIA compels documents involving private information, “[w]e must . . . resort to general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public’s need to know on the other.” *Id.*

In *City of Columbia v. American Civil Liberties Union of South Carolina, Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996), the South Carolina Supreme Court stated:

We disagree with [the City’s] contention that the internal investigation reports of law enforcement agencies are *per se* exempt because they contain personal information as a matter of course. The determination of whether documents or portions thereof are exempt from the FOIA must be made on a case-by-case basis.

Id. at 387, 475 S.E.2d at 749 (citations omitted). In the case at bar, this Court should conclude that based on the facts of this case, the public’s interest outweighs any alleged privacy interests which form the predicate for City’s attempt to withhold the complaints against former Police Chief Scott from public view.

The federal balancing test articulated by City is not applicable in this state. (See Appellant’s Initial Brief at pp. 5-6 (citing *Casa de Maryland, Inc. v. U.S. Department of Homeland Sec.*, 409 Fed. Appx. 697, 700 (4th Cir. 2011).) The South Carolina Supreme Court has held that federal case law interpreting the US FOIA is not binding on state courts interpreting the South Carolina Freedom of Information Act. Specifically, in *Newberry Pub. Co., Inc. v. Newberry County Comm’n on Alcohol & Drug Abuse*, 308 S.C. 352, 417 S.E.2d 870 (1992), the Supreme Court noted: “In support of its argument, [the public body] relies on various federal cases. However, [the public body]’s reliance

on these cases is misplaced; the exemptions contained in the federal FOIA are more expansive than those contained in South Carolina's FOIA." *Id.* at 354 n. 4, 417 S.E.2d at 872 n.4. City's attempt to apply a Fourth Circuit and United States Supreme Court "burden shifting" analysis with regard to the personal privacy exemption is inconsistent with binding South Carolina precedent.

Even if the complaints filed with City implicated Scott's legitimate privacy interests, such interests are outweighed by the public interest where, as here, City fails to follow its own directive to investigate complaints and generate investigative reports. City admitted in its responses to Glassmeyer's FOIA request that it was in possession of various complaints of wrongdoing by Scott. (R. p. 71 at ¶¶ 4-6; pp. 74-77.) These complaints included allegations that Scott violated City's policies and directives, and possibly also violated the law of this State. (*See id.*) Despite its admission that such complaints were in its possession, City conceded that there were no corresponding internal affairs investigations or disciplinary actions involving Scott. (*Id.*)

The City of Columbia Police Department's Directives and Procedures Manual ("Manual") lays out City's policies regarding internal affairs and disciplinary procedures. (R. p. 72 at ¶ 9; pp. 79-103.) The Manual states:

All members of the Department . . . are responsible for conforming to departmental policies and procedures and are subject to discipline under the provisions of this chapter. Any member who violates the oath of office or trust, the laws of the United States, the State of South Carolina, or the City of Columbia or who violates any provisions of departmental policies and procedures . . . is subject to disciplinary action.

(*Id.*, R. p. 83 at § 3.0.) Under the Manual, all sworn officers of the City are required to comply with both the employee code of ethics and the law enforcement code of ethics, both of which address personal conduct. (*See e.g.*, R. pp. 86-97 at § 8.0 (Code of

Conduct) and §§ 8.4(20), 8.4 (26) (providing that officers are “always on duty” and provides discipline for “Conduct Unbecoming a Law Enforcement Officer”).)

The Manual sets forth in Section 2, Chap. 6 the Internal Affairs Policy for the Department. This Chapter specifically states:

The Department **requires an investigation of all citizen complaints, including anonymous complaints** against the Department or Departmental personnel. It will also address citizen inquiries concerning Departmental regulations, policies, and procedures, actions taken by Departmental personnel in the performance of their duties and other issues that involve the Department and its personnel. Adherence to this directive will help ensure the integrity of the Department, while protecting the rights and interests of private citizens and Departmental personnel.

(R. p. 72 at ¶ 9; p. 100 at § 1.0 (“Directive”) (emphasis added).) The Manual provides a list of “Types of Formal Discipline” in Section 3, Chap. 3 at § 5.0. (R. pp. 83-84.) The types of action subject to formal discipline include any improper action taken by Departmental staff in both their official and personal capacities. Section 7.0 provides: “When disciplinary action is taken or recommended by a supervisor, a ‘Report of Disciplinary Action and/or Termination form will be completed.’” (R. p. 72 at ¶ 9; pp. 79-103.)

Section 3, Chapter 3 § 1.0 (“Directive”) states that “The Columbia Police Department will exercise disciplinary action, when required, in a consistent and impartial manner.” (R. p. 72 at ¶ 9; p. 100 at § 1.0.) Subsection 3.0 further provides: “In those cases where the Department’s guidelines are violated, there must be a uniform system of discipline.” (R. p. 83 at § 3.0.) The Department’s own Manual contemplates that the purpose of uniform investigative and disciplinary action is to protect the rights and interests of private citizens. (*Id.*) This is true for not only those citizens who make complaints against City or its personnel, but also citizens who have a vested interest in

ensuring that City follows its stated policies and procedures. Section 2, Chapter Six (“Internal Affairs”) of the Manual confirms: “Adherence to this directive will help ensure the integrity of the [City] while protecting the rights and interests of private citizens and [City] personnel.” (R. p. 72 at ¶ 9; pp. 100 § 1.0.)

City characterized the complaints it received as “bile from third parties” which did “not arise to the level of a public act” and which were not required to be investigated. (R. p. 33, lines 20-23; p. 34, lines 16-21.) City’s characterization of the allegations in these complaints as the basis for its reason for failing to investigate is contradicted by its own Manual, which mandates investigation of *all* allegations, even those submitted anonymously, and even those involving personal conduct. City argued that “in its deliberations about this, [it] determined that they weren’t” going to respond to the complaints because “they weren’t going to do [the complainant’s] bidding.” (R. p. 36, lines 10-12.) “[City] felt that it was – [the complainants’] allegations were relating to private conduct, and they didn’t warrant any investigation.” (R. p. 36, lines 13-15.) City’s “deliberations” and “determinations” regarding the complaints it received were documented nowhere and are not capable of independent verification by the public.

Moreover, City’s characterization of the complaints in its possession as “anonymous and unsubstantiated” begs the question of why it did not take any action to verify the complainants’ identities and/or explore the merits of the claims through an investigation. City’s attempt to withhold the complaints by characterizing them as “anonymous and unsubstantiated,” despite its admitted failure to investigate them, and then argue that because the complaints are unsubstantiated, City is not required to produce them, is exactly the type of “activities of public officials” that FOIA was

intended to subject to public disclosure.

“The essential purpose of the FOIA is to protect the public from secret government activity.” *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219, 221 (1991). Section 30-4-30(a) states: “Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access.” S.C. Code Ann. § 30-4-30(a). This statutory “right” ensures that governmental business is performed in an open and public manner, that citizens are informed of the activities of their public officials, and government officials cannot easily hide or avoid scrutiny where appropriate. *See* S.C. Code Ann. § 30-4-15.

Pursuant to its own policies and procedures, City had an express obligation to investigate *any* complaint it received. (R. p. 72 at ¶ 9; p. 100 at § 1.0 (“Directive”).) City’s pronouncement to the lower court that it “deliberat[ed]” regarding the complaints and “determined” not to undertake any official investigation into the allegations (R. p. 36, lines 10-15) is in violation its own directives. That City ignored its own policy and conducted no formal investigation into the accuracy of the allegations provides Glassmeyer and the public with a legitimate interest in discovering why City chose to flatly ignore them without further inquiry.

The public has an interest in ensuring that the City investigates complaints of wrongdoing made by citizens. City’s own directives recognize this public interest. (R. p. 72 at ¶ 9; p. 100 at § 1.0.) Where City expressly acknowledges that it has citizen complaints in its possession, there is no excuse for its failure to take action. Whether anonymous emails referred to former police chief Scott’s alleged personal conduct;

unsolicited and unverified complaints referred to Scott's alleged personal conduct; or third-party, unverified allegations described misconduct by Scott, City's failure to investigate is indefensible. According to explicit City policy, *all* complaints must be investigated, without exception, yet in this case City admits that no investigation occurred. (R. p. 71 at ¶¶ 4-6; pp. 74-75; pp. 107 at Nos. 13 and 14.)

This Court's decision in *Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), is instructive. In *Burton*, a reporter for a local paper requested information from the York County Sheriff's Department concerning a suspension of four of its officers following an internal investigation stemming from a citizen complaint. *Id.* at 344, 594 S.E.2d at 891. The Department denied portions of the plaintiff's request on the basis that the information was "personal" and disclosing it would result in an alleged "invasion of privacy." *Id.* at 345, 594 S.E.2d at 891.

On appeal this Court disagreed with the Department, determining that the plaintiff's request for the complaints and investigative reports was not subject to FOIA's personal privacy exemption and affirming the lower court's mandate that documents be produced. *Id.* at 352, 594 S.E.2d at 895. This Court weighed the officers' right to privacy against the public nature of their position and the public's interest in the manner in which the officers discharged their duties. *Id.* at 352, 594 S.E.2d at 895. Because the documents requested by the plaintiff focused on the performance of the officers' duties and allegations of misconduct, this Court determined that the public interest substantially outweighed the officers' right to privacy and held that the documents should have been disclosed. *Id.*

City's attempt to analogize *Burton's* failure to appeal or otherwise contest the

lower court's finding that "allegations relating to off-duty sexual practices and activities of the deputies [are] personal and private . . ." is not convincing. (See Brief of Appellant at pp. 7-8 (citing *Burton* at 345, 594 S.E.2d at 891).) Glassmeyer is not attempting to uncover Scott's "off-duty sexual practices and activities," but rather is attempting to investigate why City failed to take investigative or disciplinary action in response to numerous complaints alleging violations of City policy and/or applicable law.

The disparity between City's receipt of various complaints against Scott and its failure to investigate the allegations despite express policy directives requiring an investigation militates in favor of the public's interest in the allegations and the reason why City chose not to investigate them. See S.C. Code Ann. § 30-4-15 (Rev. ed. 2007) ("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").

City's stated concern that "holding that such personal information [in anonymous or other complaints] must be disclosed upon request will only expose those who wish to serve the public to unknowable mischief" is a red herring. (See Appellant's Brief at p. 8.) City states as a hypothetical example that "unscrupulous or misguided opponents" could "manipulate[e]" the system by filing complaints containing meritless allegations with City anonymously and then turn around and submit a FOIA request for such complaints, opening City and its employees up to "unknowable mischief." (*Id.* at p. 8.) Such a result could only be obtained, where, as here, City fails to independently investigate allegations against its employees. Had City taken the complaints at issue, investigated them pursuant to its Directives, and generated an investigative report concluding that the allegations

were meritless, there would be no resulting problem of unsubstantiated allegations being released to the public. City's failure to investigate or produce an investigative report cannot be used by City as a shield from mandated production of public records.

The lower court should be affirmed on the basis that even if Scott's privacy interests were implicated by Glassmeyer's FOIA request, there exists a significant public interest in exposing why City failed to take any required responsive action following its receipt of complaints against its employees.

E. City's argument that the complaints sought by Glassmeyer were not filed in accordance with the published procedures for investigation is not preserved for appeal.

In its motion to alter or amend City argued for the first time that none of the requested complaints were submitted to City pursuant to its recommended procedures. (R. pp. 132-133.) City contended that because the requested complaints were not provided to City by complainants in accordance with its recommended procedures, it had no corresponding obligation to investigate the allegations. (R. p. 133 ("A journey must begin for one to question the steps taken.")) It further argued that because it had no obligation to investigate the complaints since they were not provided to it through proper channels, Glassmeyer's "public interest" argument failed. (*Id.*)

The lower court recognized that City's arguments had not been previously presented to the court and were therefore waived. (R. pp. 12-13.) It is well established that "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990) (citation omitted); *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D. Va. 1984) ("I do not conceive of Fed. R. Civ. P. 59(e) as serving the office of

providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.”). *See also Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396, 404 (4th Cir. 1998).

The purpose behind Rule 59(e) is to allow a party to correct misapplications of law or fact or to preserve legal issues for appeal. *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). “[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the great importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.” *Id.* at 779-780 (citation omitted). Issue preservation rules are designed to give the lower court a fair opportunity to rule on the issues, and thus provide the appellate courts with a platform for meaningful review. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quotation omitted).

Where a party does not raise an issue to the trial court prior to the lower court’s order or judgment, the party has waived its right to make that argument. *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693 (2014) (citation omitted). In *Stevens & Wilkinson*, the Supreme Court held that it was error for the Court of Appeals to have considered an argument made by City that was improperly raised for the first time in a Rule 59(e), SCRCF motion. *Id.* at 567, 762 S.E.2d at 695. “The circuit court, relying on well-settled precedent, declined to reach this issue because it was improperly raised for the first time in the Rule 59(e) motion. The court of appeals should have refused to entertain that theory as well for the same

reasons.” *Id.* Similarly, here, this Court should refuse to entertain City’s argument which was not timely presented to the lower court.

Reserving arguments until a motion to alter or amend defeats the public policy of securing the just and speedy resolution of disputes and ensuring that all legal issues are presented to the lower court for its consideration. *Herron*, 395 S.C. at 470, 719 S.E.2d at 645 (issue preservation rules are designed to prevent a party from “keeping an ace card up his sleeve”). City failed to bring to the lower court’s attention its recommended procedure for receiving complaints against its employees and accordingly failed to preserve this issue for appeal.

Even if City’s arguments were properly preserved, they should be rejected. City’s contention that because none of the requested materials were submitted via recommended procedures, City had no corresponding duty to investigate (Appellant’s Brief at pp. 8-10) is without any foundation in the record. There is no competent evidence before this Court describing the manner by which City received the subject complaints. The only evidence is that they take the form of anonymous emails referring to Scott’s alleged personal conduct; unsolicited, unverified complaints relating to Scott’s alleged personal conduct; and third-party, unverified allegations of misconduct by Scott. (R. p. 71 at ¶¶ 4-6; R. pp. 74-77.)

City’s naked assertion that it received the subject complaints through channels outside of City’s recommended procedures does not constitute competent evidence. (See Appellant’s Brief at p. 4 (“all established procedures for reporting and investigating allegations of misconduct were bypassed”); p. 132 (same).) In *State v. Hill*, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011), this Court recognized that “a challenge is without

merit where it consists solely of an attorney's statements, unsworn and unsupported by any proof or offer of proof." *Id.* at 288, 715 S.E.2d at 373. Our Supreme Court has stated that an unsworn statement can only be considered as true "on information and belief." *Thevenot v. Commercial Travelers Mut. Acc. Ass'n of America*, 259 S.C. 235, 191 S.E.2d 251 (1972). The factual representations made by City are unsworn and unsupported by any proof or offer of proof.

City leaps to the conclusion that because there are recommended procedures for filing complaints, any complaints submitted to the City *outside* of the recommended method can simply be ignored without further investigation or inquiry. (See Appellant's Brief at p. 5 ("There being no report, anonymous or otherwise, **pursuant to Department policies**, there is no legitimate basis for compelling disclosure of the information....") (emphasis in original).)

City's own Manual makes clear that it is "require[d] [to] investigate[] . . . all citizen complaints, including anonymous complaints." (R. p. 72 at ¶ 9; R. p. 100 at § 1.0 ("Directive").) There is no stated exception to this rule and there is no authorized procedure for City to ignore complaints that it receives outside of its own recommended avenues.²

City's argument that it was justified in failing to investigate the subject complaints actually provides further support for affirmation of the lower court's decision

² The creation of an exception enabling City to blatantly ignore complaints brought to its attention but which are not provided on its recommended form (R. pp. 144-146) or submitted pursuant to recommended channels would be contrary to public policy. Were the Court to countenance such an argument, it would give City and countless other governmental entities a basis to reject otherwise valid complaints against government officers and personnel and give public bodies a basis to refuse to investigate or discipline their employees for wrongful conduct. Such a result elevates form over substance and should be rejected. *Cf. Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011) ("equity looks to substance rather than form") (quoting *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)). This maxim applies by "dispensing with pure formalities which would otherwise defeat the equity." *Id.* at 253, 715 S.E.2d at 354.

in this case. This Court should reject City's argument and find that an overarching public interest outweighs whatever privacy interests former Police Chief Scott may have in this case.

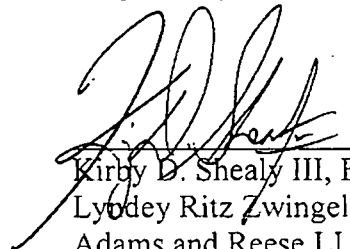
CONCLUSION

FOIA protects citizens from secret government activity. The lower court's order mandating that City provide unrestricted access to the information contained in the complaints against former police chief Scott was supported by evidence in the record and should be affirmed. These complaints constitute "public record[s]" under FOIA.

Disclosure of these documents does not constitute an unreasonable invasion of privacy, and there is no other statute or law that prohibits such information from being disclosed. Alternatively, even if there is a privacy interest in the requested information, such interest is outweighed by the public's interest in ensuring City complies with its own policies and directives, mandating an investigation and, if necessary, disciplinary action, against its personnel where there is evidence of violations of the law or established policy.

For these reasons, the lower court's order mandating City provide unrestricted access to the requested documents should be affirmed.

Respectfully submitted,



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**THE STATE OF SOUTH CAROLINA
In the 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 FINAL REPLY BRIEF

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LEGAL ARGUMENT ON REPLY

Appellant, City of Columbia ("City"), offers this reply to Respondent's argument on appeal. Throughout his brief, Respondent, George S. Glassmeyer ("Glassmeyer"), argues that the public policy articulated in the South Carolina Freedom of Information Act ("FOIA") compels the disclosure of documents including: (a) anonymous emails referring to Former Police Chief Randy Scott's ("Scott") alleged personal conduct; (b) unsolicited, unverified complaints referring to Scott's alleged personal conduct; and (c) third party, unverified allegations of misconduct by Scott. Examination of the record (including documents for *in camera* review) does not support this argument.

As addressed in Appellant's brief, the material requested by Glassmeyer includes "personal information" subject to protection established by common law, statute and constitution. Specifically, any application of FOIA must comply with the right of a person to be left alone from unwarranted publicity. Sloan v. South Carolina Dep't. of Pub. Safety, 355 S.C. 321, 586 S.E.2d 108 (2003); Holloman v. Life Inc. Co. of Virginia, 192 S.C. 454, 7 S.E.2d 169 (1940). Accordingly, this court has recognized that when privacy interests are presented, a balancing test must be used to determine whether the public's need to know outweighs the individual's interest in nondisclosure. Burton v. York County Sherriff's Dept., 338 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004). In this context, privacy interests existing at common law and designated by statute must be reconciled with the public's interest in reasonable access to governmental activity served by FOIA. See, Seago v. Horry County, 378 S.C. 414, 663 S.E.2d 38 (2008). Thus, all "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy" and "[m]atters specifically

exempted from disclosure by statute or law,” as outlined by FOIA’s personal information exception, are not subject to mandatory disclosure. S.C. Code Ann. §§ 30-4-40 (2) and (4)

Glassmeyer would insert the absent phrase “received regardless of source” into the statutory definition of “public record” so that even “those documents that are **passively** ‘in the possession of or retained by’ a public body” are subject to review on request. (Respondent’s Initial Brief, p. 16) (Emphasis added) Having expanded the definition of “public record,” Glassmeyer would eliminate case by case review on ground that no “complaints of improper action made by third parties” should be protected from public view. (Respondent’s Initial Brief, p. 10) He further asserts that the information sought is “public record” in which citizens have a “vested interest.” (Respondent’s Initial Brief, p. 16) Glassmeyer describes his objective as obtaining “representations or allegations made by others regarding violations of the law or City policy by City employees.” (Respondent’s Initial Brief, p. 11) A review of the withheld information reveals, however, that it includes unverified allegations of personal activity conducted outside the scope of Scott’s public duties (personal relationships and off-duty conduct) and involves private citizens.

To circumvent privacy interests, Glassmeyer contends disclosure will expose dereliction on the part of the City’s police department in failing to independently investigate allegations against Scott. This claim is not contained in any FOIA request submitted by Glassmeyer or in his complaint. Had this position been presented, the City could have informed Glassmeyer that no complaints about Scott, anonymous or otherwise, had been presented to its police department for investigation. Having no notice

of this claim, however, the City was not obligated to issue a denial in its FOIA response or answer.

Glassmeyer first revealed his purported objective of bringing to public light perceived favoritism or irregularities in police investigations at summary judgment. (September 17, 2013 Order, p. 6) The City promptly responded to this new assertion by informing Glassmeyer and the lower court that no complaints were submitted to the Police Department. Contrary to Glassmeyer's argument, adopted by the lower court, providing this information did not raise a "new issue." Instead, the published procedures for an investigation of police conduct were presented in support of the City's original defense and provided by way of judicial notice, available at **any stage** of proceedings, including appeal. Rule 201, SCRE; see also, McCoy v. Town of York, 193 S.C. 390, 8 S.E.2d 905 (1940); State v. Squires, 311 S.C. 11, 426 S.E.2d 738 (1992) (judicial notice taken by the Supreme Court) The withheld documents were not directed to the police department and do not qualify as "citizen complaints" for purposes of investigating police conduct.¹ Accordingly, compelling disclosure cannot serve the "public interest" of determining favoritism in police investigations identified by the lower court.

Glassmeyer argues that the Police Department's Directives and Procedures Manual ("Manual") makes clear that it is "[r]equired [to] investigate] ... all citizen complaints, including anonymous complaints." (Respondent's Initial Brief, p. 16) In support of this argument, Glassmeyer identifies no Manual provision that converts private to public information or expands the scope of FOIA. More importantly, Glassmeyer

¹ Glassmeyer contends that there is no proof of this deficiency apart from the City's unverifiable representation. This argument ignores the opportunity presented below and on appeal to examine the withheld documents. This examination confirms that none of the withheld information was directed to the police department or submitted through published procedures for requesting a police investigation.

ignores published procedures for making “citizen complaints” and seeks to eliminate these procedures from the Court’s consideration. (Attachments A-D to Defendant’s Motion to Alter or Amend; R. pp. 134-149) This effort is particularly troubling in view of the lower court finding that investigation of police misconduct, rather than the content of the withheld material, is the “public interest” served by Glassmeyer’s FOIA request. (July 23, 2013 Order, pp. 6-7; R. pp. 7-8)

On appeal, Glassmeyer contends that allowing the City to “disregard” complaints which are not provided through its established channels would “give the City and countless other governmental entities a basis to refuse to investigate or discipline their employees for wrongful conduct.” (Respondent’s Initial Brief, p. 24 fn. 2) As a preliminary matter, this appeal does not involve “countless other governmental entities.” Likewise, a duty to investigate does not appear anywhere in FOIA. Requiring the City or any other public employer to investigate every third party communication alleging wrongdoing or personal peccadillos would waste public resources and foster a moral police state unintended by FOIA.

The trial court held that the public interest in this case is confined to “the steps the Department took upon receipt of the information pursuant to its policies.” (July 23, 2013 Order, p. 7, R. p. 8) This is the ruling on appeal. The record (specifically the sealed documents provided for *in camera* review) establishes that no request for investigation was directed to the police department, despite published means of making such requests. Complaints made “privately” and outside the scope of published means for requesting action are not converted into matters of public interest compelling disclosure under FOIA merely because the recipient of the complaint is a public officer or employee. Instead, as

observed by the West Virginia courts, FOIA is not a proper vehicle for satisfying private curiosity. Child Protection Group v. Cline, 350 S.E.2d 541, 544 (W. Va. 1986) (identifying factors for evaluating privacy interests, including the extent of public interest, objective of disclosure, alternative sources, and expectation of confidentiality), See also, SCAG Op. No. 87-69 (July 16, 1987), at p. 176. Here, each communication could have been made publicly or through alternative means. Accordingly, FOIA is not a necessary or proper instrument for obtaining access to the requested information.

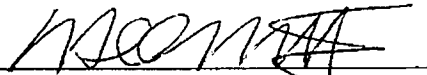
CONCLUSION

Glassmeyer argues that **any** communication concerning the alleged behavior of a public employee must be made available to the public on request unless there is a specific statute carving out an exemption. This expands the concept of "public interest" significantly beyond the scope of any statute or published opinion and ignores the obligation to examine each FOIA request on an individualized basis. City of Columbia v. ACLU of South Carolina, 323 S.C. 384, 387, 485 S.E.2d 747, 749 (1996) Moreover, Glassmeyer's stated objective for challenging the City's FOIA response is to determine why there was no police department investigation. That objective has been satisfied and any legitimate public interest may be served by confirmation that the withheld information was not presented for departmental investigation.

An order compelling disclosure of the withheld information will exceed the legislative purpose expressed in FOIA and expose public employees to potential embarrassment upon submission of personal invective. Such disclosure will render meaningless the "public purpose" aspect of FOIA and expose personal information to private curiosity in a manner unsupported by statutory guidance or judicial precedent.

For these reasons and those set forth in Appellant's brief, Glassmeyer is not entitled to review or publish the information submitted for *in camera* review.

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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**

George S. Glassmeyer, Respondent,

v.

City of Columbia, Appellant.

Appellate Case No. 2014-002221

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2016-UP-404
Heard March 9, 2016 – Filed August 24, 2016

AFFIRMED AS MODIFIED

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for Appellant.

Lyndey Ritz Zwingelberg and Kirby Darr Shealy, III,
both of Adams and Reese LLP, of Columbia, for
Respondent.

PER CURIAM: The City of Columbia (the City) appeals the trial court's declaration the City violated the Freedom of Information Act (FOIA) by failing to disclose to George Glassmeyer certain emails and other complaints made against the former police chief. We affirm as modified.

1. We disagree with the City's argument the FOIA does not apply because the withheld documents did not deprive Glassmeyer of access to information regarding the "activities of their public officials."¹ See *Perry v. Bullock*, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014) ("[T]he FOIA's essential purpose is to protect the public from secret government activity."); *New York Times Co. v. Spartanburg Cty. Sch. Dist. No. 7*, 374 S.C. 307, 311, 649 S.E.2d 28, 30 (2007) ("FOIA must be construed so as to make it possible for citizens to learn and report fully the activities of public officials."). The documents contain allegations against the former City of Columbia Police Chief during his time in that office and, thus, regard the activities of a public official.

2. We agree with the trial court the City failed to present in a timely manner its argument the withheld documents were not submitted to the City of Columbia Police Department (the Department) according to its established procedures and, therefore, were not "complaints" as provided in the Department's Directives and Procedures Manual (the Manual). The City did not raise this issue until its motion to alter or amend. See *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (stating an issue raised for first time in a motion to alter or amend is not preserved for review). The complaint alleged the City violated the FOIA by failing to disclose the documents, and Glassmeyer elaborated in his motion for summary judgment, in his memorandum opposing the City's motion for summary judgment, and at the summary judgment hearing the public's interest in knowing why the

¹ In enacting the FOIA, the General Assembly stated its findings and purpose as follows:

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 (2007).

Department failed to investigate the allegations against, and/or discipline, the former police chief. The City had the opportunity to respond against the argument prior to the trial court's order granting summary judgment. Thus, the City's argument is not properly before this court.

3. We find the City abandoned its argument concerning disclosure of the family court documents. The City only challenges the trial court's ruling in a footnote and cites to no authority. See *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal).

4. We find the remaining documents are not exempt from disclosure due to the privacy exemption. See S.C. Code Ann. § 30-4-40(a)(2) (2007) (exempting from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy."); *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004) (noting section 30-4-40(a)(2) does not specifically list or define the types of records, reports, or other information that should be classified as personal or private information exempt from disclosure and explaining we must "resort to general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public's need to know on the other."); *Evening Post Publ'g. Co. v. City of N. Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (stating the exemptions in section 30-4-40 are to be narrowly construed so as to fulfill the purpose of the FOIA); *id.* ("To further advance this purpose, the government has the burden of proving that an exemption applies."). We find no merit to the City's contention it should not have to disclose the documents because they were anonymous emails, "unsolicited, unverified allegations referring to the former police chief's personal conduct, and third-party, unverified allegations of misconduct." Although some of the emails were from pseudonyms, the Manual provides the Department will investigate all citizen complaints, including anonymous ones. The allegations in the emails are "complaints" according to the Department's Citizen Complaint Process Policy's definition, which provides a complaint is "[a]n allegation of circumstance(s) mounting to a specific act or omission which, if proven true, would amount to employee misconduct." The policy defines misconduct as "an act or omission by an employee, which, if proven true, would normally result in some form of discipline or sanction." This includes: "Commission of an unlawful act[;] Neglect of duty[;] Violation of any department policy, procedure, rule or regulation or training procedure; or Conduct that may

reflect unfavorably upon the employee or agency." *See Burton*, 358 S.C. at 352, 594 S.E.2d at 895 (["W]e find the manner in which the employees of the Sheriff's Department prosecute their duties to be a large and vital public interest that outweighs their desire to remain out of the public eye.").

5. Although we find the trial court correctly ruled the documents were not exempt from disclosure, we hold the City should redact the names of third parties who are not governmental officials, as well as personal identifying information such as personal telephone numbers and email addresses. *See* S.C. Code Ann. § 30-4-40(b) (2007) ("If any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter."); *Glassmeyer v. City of Columbia*, 414 S.C. 213, 223, 777 S.E.2d 835, 841 (Ct. App. 2015) (holding the home addresses, personal telephone numbers, and personal email addresses of applicants for city manager are exempt from disclosure under section 30-4-40(a)(2)), *cert. denied*, (June 16, 2016).

AFFIRMED AS MODIFIED.

HUFF, KONDUROS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2014-002221

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SEP 01 2016
SC Court of Appeals

George S. Glassmeyer.....Respondent

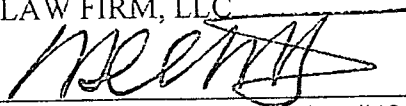
v.

City of Columbia.....Appellant.

APPELLANT'S PETITION FOR REHEARING

Appellant hereby petitions this Court for rehearing of each holding as issued in its *per curium* opinion filed August 24, 2016. This Petition is submitted pursuant to Rule 221(a), SCACR. For the reasons set forth in the memorandum in support filed herewith, it is respectfully submitted that each holding overlooks material facts and misapplies the law of this State.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2014-002221

George S. Glassmeyer.....Respondent

v.

City of Columbia.....Appellant.

APPELLANT'S MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING

PROCEDURAL POSTURE

In an unpublished *per curiam* opinion filed August 24, 2016, this Court affirmed and modified in part the decision of the Honorable Alison Renee Lee, Circuit Court Judge. For the following reasons, the opinion reflects a misapplication of controlling principles of law and in misconstruction of the record on appeal.

FACTUAL BACKGROUND

On April 3, 2013, Respondent George S. Glassmeyer ("Glassmeyer") submitted a FOIA request to Appellant City of Columbia ("City") requesting to inspect, among other items, "copies of any and all documents including, but not limited to statements, memoranda, emails, complaint, notes, and investigative reports relating to any alleged wrongdoing by [the former] police chief" and "copies of any and all documents relating to any and all disciplinary actions

imposed upon [the former] police chief.” The City responded by providing all requested materials except: (a) anonymous emails referring to alleged personal conduct; (b) unsolicited, unverified complaints referring to alleged personal conduct; and (c) third-party, unverified allegations of misconduct.

On July 10, 2013, Glassmeyer filed a non-jury complaint seeking a declaration that the City unlawfully failed to respond to his April 3, 2014 FOIA request, an injunction compelling disclosure of documents or information responsive to his FOIA request and an award of reasonable costs and attorney fees. The City filed an answer on July 16, 2013 denying any FOIA violation and requesting attorney’s fees and costs incurred in defense. On October 17, 2013, the City filed a motion for summary judgment. On October 18, 2013, Glassmeyer filed a motion for summary judgment and a motion to strike the City’s prayer for attorney fees.

The motions were heard on February 10, 2014 by the Honorable Alison Renee Lee. The City provided Judge Lee the withheld information for *in camera* review. Following submission of briefs, oral argument and review of withheld materials, by order issued July 23, 2014, Judge Lee entered the following findings:

- To withhold “public records under FOIA” an agency must prove that the information falls within one of fifteen exemptions in § 30-4-40; (R. p. 4)
- The materials withheld fall within the “broad definition of public records” set forth in § 30-4-40; (R. p. 5)
- Although the material withheld may relate to “off-duty” conduct, Glassmeyer has a legitimate interest in determining “whether the Department followed its own policies and investigated complaints, which is a matter of public interest” (R. p. 6)

- Glassmeyer “only seeks information regarding complaints of ‘alleged wrongdoing’ and ‘disciplinary action.’” (R. p. 7)
- Although the reasons were not given in the complaint, Glassmeyer claimed at the hearing that the City violated its [Police Department] manual by failing to investigate allegations set forth in various complaints against Scott. (R. p. 7)
- Glassmeyer bases this contention on the representation that “[t]he Internal Affairs Policy in the manual sets forth a requirement for the Department to conduct ‘an investigation of all citizen complaints including anonymous complaints.’” (R. p. 7)
- The Department policy “requiring an investigation militates in favor of the public’s interest in allegations and the reason why the Defendant chose not to investigate the allegations.” (R. p. 7)
- The focus of this case is not on the accusations themselves but the Department’s knowledge of the complaints and its response upon receipt. (R. p. 8)
- The case focuses not on the content of the allegations, but on what steps the Department took upon receipt of the information pursuant to its policies. (R. p. 8)

The City sought reconsideration of these findings and filed a timely appeal. The unpublished *per curiam* opinion issued on August 24, 2016 contains five holdings. As outlined below, these holdings erroneously apply Police Manual criteria to privately brought “complaints” and expand the scope of FOIA to include allegations of private conduct unrelated to public duties. Specifically:

Holding (1) “disagrees” with the City’s argument that FOIA does not apply because withheld documents refer to “the activities of a public official.” This holding ignores the

controlling law of this State that not all “activities” of public officials relate to their public office or duties.

Holding (2) “agrees” with the trial court that the City did not timely raise an argument that withheld documents were not submitted to the Police Department in keeping with established procedures. This holding ignores the trial court specifying that the documents presented for *in camera* review were not presented through the City’s Police Department.

Holding (3) “finds” that the City abandoned its argument concerning disclosure of Family Court documents. This finding ignores argument presented by City regarding disclosure of information relating to “off-duty sexual activities.”

Holding (4) “finds” documents not exempt from disclosure due to the privacy exemption based upon a determination that the allegations fall within the definition of “complaints” in the City’s Police Manual. This finding ignores evidence in the record that no “complaints” were presented to the Police Department.

Holding (5) “holds” that the City should redact only the names of “third parties who are not governmental officials” as well as “personal identifying information such as personal telephone numbers and email addresses” without defining “third parties” or “governmental officials.” This holding compels disclosure of information beyond the scope of Glassmeyer’s FOIA request and could expose allegations regarding City employees other than the former police chief to public view.

As set forth below, each of these holdings requires reconsideration as provided by Rule 221(a), SCACR.

LEGAL ARGUMENT

1. **FOIA does not require disclosure of records relating to the personal off-duty conduct of public employees. (Holding 1)**

In rejecting the City's argument that the withheld documents did not deprive Glassmeyer information relating to "activities of their public officials" Holding (1) notably omits any reference to Burton v. York County Sheriff's Department, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) In Burton, the trial judge was faced with a similar request to compel records relating to public and personal conduct of law enforcement officers. Following an *in camera* review, the judge determined that "allegations relating to off-duty sexual practices and activities of the deputies is personal and private ..." 358 S.C. at 345, 594 S.E.2d at 891.

Finding only that the withheld documents "contain allegations against the former City of Columbia police chief during his time in that office and, thus regard the activities of a public official," this Court made no distinction between alleged off-duty, personal activity and claims that the former police chief was derelict in his public duties. This failure alone warrants reconsideration of Holding (1).

The manner in which law enforcement officers **prosecute their duties** may give rise to public interests that outweigh individual privacy. As recognized in Burton, however, FOIA is available to access information only "of legitimate or public interest." 358 S.C. at 532, 594 S.E.2d at 895. Simply stated, FOIA requires a link between the action complained of and the officers' law enforcement activities. No published decision by this Court or our Supreme Court informed the City that mere unsolicited allegations regarding an employee presented outside established channels for submitting complaints rendered the allegations matters for public concern sufficient to compel disclosure under FOIA. To the contrary, records subject to

disclosure prior to the *per curiam* opinion were contained in personnel files and investigative “reports.” Burton, supra; See also, City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1966) (internal investigation report subject to redaction) This limitation affords the employee notice and allows the public body an opportunity to investigate before accusations are made public.¹

Unless reconsidered, Holding (1) will undermine legitimate privacy interests and expand this Court’s carefully crafted Burton decision. In addition, holding that personal information regardless of source or purpose must be disclosed upon request will expose those who wish to serve the public to unknowable mischief and perhaps manipulation by unscrupulous or misguided opponents. For all of these reasons, Holding (1) should be reconsidered and guidance provided concerning application of FOIA to “complaints” sent to public officials and employees.

2. The City timely argued that no proper complaint was brought to the Police Department. (Holding 2)

In argument to the trial court, the City repeatedly invited the judge to examine the material presented for *in camera* review. As this Court is aware, the documents withheld identify both the source and the recipient. While the sources of emails are fictitious, the recipients are identified by name. None of the identified recipients are members of the City of Columbia Police Department and none of the documents were delivered to the Police Department. (R. pp. 33-39)

Before the trial judge, the City addressed argument that the Police Department should have opened an internal affairs investigation over anonymous allegations and threats of a

¹ Glassmeyer’s FOIA request is dated April 3, 2013. (R. p. 19) Emails submitted for *in camera* review are dated March 15, 24, 26, 27 and April 6, 2013. The former police chief went on leave April 1, 2013. (R. p. 110). He did not return to active duty and resigned from employment effective May 1, 2013. (R. p. 114)

disgruntled husband and that it “should have created records so that [Glassmeyer] could get his hands on them.” The City specifically noted that FOIA does not require “the City of Columbia or any other agency of government to create records.” (R. p. 34, lines 8-17) The City further argued that documents “delivered either to the city manager or to the mayor with a threat that if action was taken against the police chief, that the person involved . . . would make the information available to the media . . .” neither compelled an investigation nor supported disclosure under FOIA. (R. p. 36, lines 5-15)

In summary, both the trial court and this Court were made aware that the allegations relating to the former police chief were not directed to the Police Department. Moreover, the records provided to the trial court and this Court indicating the variety of sources available for submitting complaints to the Police Department were and are subject to review by way of judicial notice. (R. pp. 135-149; 158-159; Appellant’s Final Reply Brief pp. 3-5) Accordingly, the City preserved its objections relating to “failure to investigate” both at the trial and appellate levels. (R. p. 39, line 1- p. 40, line 7; p. 47, line 6- p. 48, line 25) The policies and procedures offered by way of judicial notice were additional facts properly presented in support of an argument to the trial court and preserved for appellate review rather than a “new argument” advanced for the first time on motion for reconsideration. (R. pp. 131-160) For this reason, Holding (2) should be reconsidered.

3. The City’s argument concerning “off-duty sexual activities” includes *in camera* documents reportedly submitted to the Family Court. (Holding 3)

Throughout argument to the trial court and on appeal, the City addressed the “domestic records” contained in the withheld documents. See, for example (R. p.33, line 19; p. 36, lines 5-15; Appellant’s Final Brief, p. 8 addressing “off-duty sexual activities and p. 10, fn. 5, referring

to family court records; Appellant's Final Reply Brief, p. 2, referring to personal relationships and off-duty conduct) A finding that the City "abandoned" its objection to the disclosure of allegations contained in domestic proceedings is neither supported by review of the whole record nor consistent with Holding (5).

Glassmeyer, the trial court and this Court were on notice of concerns expressed by the City regarding disclosure of documents involving a domestic dispute between non-employees. The City correctly determined that it should not be a party to blackmail in disclosing this information to the public. Although the *per curium* opinion calls for redaction of references to third parties, there is no rationale offered in Holding (3) or elsewhere for making public alleged off-duty personal conduct of any employee or officer where no dereliction of duty is involved. For these reasons, the Court should reconsider Holding (3).

4. Like the trial court order, the *per curium* opinion improperly applied Police Manual criteria to "complaints" not submitted to the Police Department. (Holding 4)

In support of his FOIA request, Glassmeyer relied upon Section 03, Chapter 06 (Internal Affairs) of the City of Columbia Police Department Manual. (R. pp. 100-103) This policy provides, in relevant part:

The Department requires an investigation of all citizen complaints, including anonymous complaints, against the Department or its personnel.
(Paragraph 1.0)

The Internal Affairs Unit will post a brochure in a public location in every police station or substation that outlines the procedures the public will follow in lodging a complaint against the Department or its employees.
(Paragraph 3.0)

The Internal Affairs Unit shall be responsible for maintaining accurate records of all complaints against the Department or its personnel.
(Paragraph 3.1)

Complaints received by mail by the Office of the Chief or Internal Affairs will be handled as any other complaint. (Paragraph 4.1)

The Internal Affairs policy places citizens on notice that reports of wrongdoing on the part of police officers may be made in person, by telephone, in writing, electronically, and anonymously. The procedures for making such reports are available to the public through various sources identified at trial and on appeal. (R. pp. 135-149)

Individuals and organizations seeking to make allegations of impropriety involving members of the City's Police Department may do so. As established in the record, none of the requested materials were submitted to the Internal Affairs Unit. Instead, all established procedures for reporting and investigating allegations of misconduct were bypassed. FOIA is limited to production of records. The City's response to Glassmeyer's inquiry revealed that there were no records of "internal affairs investigation(s) or disciplinary action(s)." (R. p. 21)

As noted above, the trial court held that the public's interest in this matter is confined to the "steps the Department took upon receipt of the information **pursuant to its policies.**" (Emphasis added) (R. p. 8) There being no report, anonymous or otherwise, **pursuant to Department policies**, there is no legitimate basis for compelling disclosure of the information identified in the City's FOIA response and provided for *in camera* review.

Glassmeyer and others had the right to question whether the Department investigated alleged actions of the former police chief. This question was answered on April 5, 2013. (R. pp. 20-21) Applying the Police Manual to matters not presented to the Department constitutes error that requires reconsideration of Holding (4).

5. The *per curium* opinion fails to confine disclosure to the items identified in Glassmeyer's FOIA request and complaint and violates privacy interests of third parties. (Holding 5)

In Holding (5) the *per curium* opinion calls for redaction of "the names of third parties who are not governmental officials, as well as personal identifying information such as personal telephone numbers and email addresses." While this redaction is consistent with privacy interests protected in Glassmeyer v. City of Columbia, 414 S.C. 231, 223, 777 S.E.2d 835, 841 (Ct. App. 2015), it appears to require disclosure of nonresponsive information, thereby infringing privacy interests of third parties.

Glassmeyer's FOIA request and complaint seek documents identified as: "Copies of any and all documents including but not limited to, statements, memoranda, emails, complaints, notes, and investigative reports relating to any alleged wrongdoing by police chief Randy Scott." (R. p. 19, Complaint Exhibit A) No other City employee or official is named in the request or complaint. (R. pp. 15-23) Accordingly, any redaction must include references to all City employees or officials other than Mr. Scott. To require disclosure of reference to any other individual would exceed the scope of appellate review. Moreover, emails presented in unredacted form for *in camera* review refer to alleged conduct or present "complaints" about employees other than the former police chief. Exposure of allegations regarding these individuals exceeds the scope of this proceeding, infringes on the privacy interests of third parties and serves no legitimate public purpose. S.C. Code Ann. § 30-4-40(a)(2) For these reasons, Holding (5) should be reconsidered.

CONCLUSION

For the reasons stated above, Appellant requests that this Court reconsider its *per curiam* opinion filed August 24, 2016.

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September 1, 2016
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
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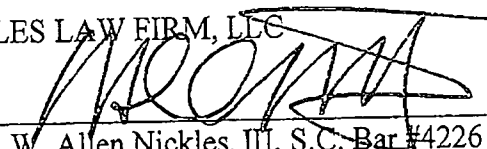
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing Appellant's Petition for Rehearing and 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
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This 1st day of September, 2016.

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THE STATE OF SOUTH CAROLINA
In the 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.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

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On August 24, 2016, this Court filed an unpublished opinion, 2016-UP-404 (“Opinion”), affirming the lower court’s decision dated July 23, 2014, mandating City of Columbia (“City”) provide access to certain documents requested by George S. Glassmeyer (“Glassmeyer”) pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.* (Rev. ed. 2007, as amended) (“FOIA”).¹

On September 1, 2016, City filed a Petition for Rehearing pursuant to Rule 221(a) of the *South Carolina Rules of Appellate Procedure*. For the following reasons, City’s Petition for Rehearing should be denied.

ARGUMENTS

A petition for rehearing must state with particularity the points the court supposedly overlooked or misapprehended. Rule 221(a), SCACR; *See Kennedy v. S.C. Ref. Sys.*, 349 S.C. 531, 564 S.E.2d 322 (2001). The purpose of a petition for rehearing is not to present points not presented to the court in its briefs nor is the purpose of a petition for rehearing to have the case tried in the appellate court a second time. *Id.* at 532, 564 S.E.2d at 322.

Although City purports to challenge all five this Court’s holdings, the thrust of its dissatisfaction with the Opinion is expressed in two principal assertions: (i) the allegations against former Police Chief Randy Scott (“Scott”) do not relate or refer to “the activities of a public official” because, according to City, the complaints only pertain

¹ The lower court also granted Glassmeyer’s request for attorney’s fees and costs pursuant to the FOIA but left the record open as to how much to award. (R. pp. 1-9.) The validity of the lower court’s award of Glassmeyer’s fees and costs is no longer disputed. *See Tench v. S.C. Dep’t of Educ.*, 347 S.C. 117, 553 S.E.2d 451 (2001) (holding that the failure to petition the Court of Appeals for rehearing effectively resulted in the abandonment of a party’s right to relitigate the issue on remand).

to Scott's "off-duty,"² "private" "sexual practices and activities,"³ rather than his official activity as police chief; and (ii) the complaints City received⁴ were not "presented through/to the City's Police Department"⁵ or pursuant to "established channels for submitting complaints."⁶

Because City has furnished the Court with no basis for rehearing this matter, the Petition for Rehearing should be denied.

I. THE COURT DID NOT MISAPPLY APPLICABLE LAW OR MISCONSTRUE FACTS IN THE RECORD BY HOLDING FOIA APPLIES TO THE DOCUMENTS IN CITY'S POSSESSION.

This Court held FOIA applies because the allegations in the complaints refer to Mr. Scott's activities during his time as City's police chief and, thus, "regard the activities of a public official." Implicit in this holding is the notion the documents Glassmeyer sought meet FOIA's definition of "public records,"⁷ which is not limited to documents regarding the activities of public officials. City claims the Opinion ignores controlling law of this state, including *Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), which, according to City, held not all activities of public officials relate to their public office or duties. (*See* Petition at pp. 4-6.)

Although not referenced by the Court in its first holding, the Court did expressly consider and apply *Burton* to the facts of this case. (*See* Opinion at ¶ 4.) The facts and legal analysis in the *Burton* case were fully briefed by both parties and this Court

² Petition for Rehearing at p. 5.

³ *Id.* at p. 5.

⁴ There is no dispute all complaints against Mr. Scott were actually received by City and were in City's possession at the time Glassmeyer submitted his FOIA request on April 3, 2013.

⁵ Petition for Rehearing at p. 5.

⁶ *Id.* at 5.

⁷ S.C. Code Ann. § 30-4-20(c) (Rev. ed. 2007).

questioned counsel about *Burton*'s application to this case during oral argument on March 9, 2016.

City argues *Burton* and the "FOIA require a link between the action complained of and the law officers' law enforcement activities." (Petition at p. 5.) However, City cites no FOIA provision supporting this proposition. To the contrary, the FOIA is clear that a public body cannot withhold information sought by a citizen *unless* the information falls into one of the fifteen exemption categories contained within § 30-4-40, or is otherwise exempt from disclosure under other FOIA provisions. S.C. Code Ann. § 30-4-40 (Rev. ed. 2007). The Supreme Court confirmed in *Evening Post Pub. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005), that if a document does not fall within one of the enumerated exemptions, it cannot be withheld. Nothing in the FOIA permits a public body to withhold documents based on its subjective view that the documents do not "regard the 'activities of their public officials,'" as City suggests.

Even though the Court's Opinion did not directly apply *Burton* to its first holding, the Court's holding was not in error. As City acknowledges, *Burton* does not even deal with the threshold issue of whether documents are "public records" within the meaning of the FOIA, but rather, whether documents meeting the FOIA's definition of "public records" contain "information of a personal nature where the public disclosure thereof would constitute an unreasonable invasions of personal privacy." S.C. Code Ann. § 30-4-40(a)(2) (2007). *Burton*, 358 S.C. at 352, 594 S.E.2d at 895. This Court appropriately applied *Burton* to its fourth holding, which affirmed the lower court's decision that the documents are not exempt from disclosure due to the FOIA's privacy exemption.

In addition to lacking any legal foundation, City's argument that the requested

documents do not “regard the ‘activities of . . . public officials’” is substantively meritless. (*See* Appellant’s Brief at p. 6 (citation omitted); Petition at p. 5.) The gravamen of Glassmeyer’s FOIA request was to copy or inspect complaints received by City regarding alleged wrongdoing of its public officials. (R. pp. 65-68.) Alleged wrongful conduct or violations of the law by former police chief Scott that were undisputedly in City’s possession unquestionably pertain to “activities” of a “public official,” as this Court concluded in its Opinion.

No distinction needed to be drawn by this Court “between alleged off-duty personal activity and claims that the former police chief was derelict in his public duties.” (*See* Petition at p. 5.) This Court appropriately considered, and rejected, City’s argument that its subjective review and analysis of the requested documents, based on its own interpretation of *Burton*, permitted it to withhold documents from Glassmeyer.

City’s suggestion that because the documents at issue were not “contained in [City’s] personnel files” or connected to any “investigative report” prepared by City the documents were not “public records,” is nonsensical and contrary to FOIA. (Petition at p. 6.); *see* S.C. Code Ann. § 30-4-20(c) (Rev. ed. 2007).) Pursuant to its own policies and procedures, City had an express obligation to investigate *any* complaint it received. (R. p. 72 at ¶ 9; p. 100 at Sect. 6, Chap. 2 ¶ 1.0 (“Directive”).) There is no dispute the documents were in City’s possession at the time of Glassmeyer’s FOIA request. (*See* Petition at FN 1.) That City failed or refused to file the documents in Scott’s personnel folder and ignored its own written policy by refusing to conduct a formal investigation provides City no legal protection. Furthermore, it ignores the fact that the documents plainly meet FOIA’s definition of “public records,” regardless of where City kept them.

S.C. Code Ann. § 30-4-20(c) (Rev. ed. 2007) (“‘public record’ includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body”).

Finally, City’s implication that no documents were or should have been provided to Glassmeyer because City did not have time or an opportunity to investigate is directly opposed by City’s own pronouncement to the lower court that it deliberated regarding the complaints and determined not to undertake any official investigation into the allegations (R. p. 36, lines 10-15).

II. THE COURT DID NOT MISAPPLY APPLICABLE LAW OR MISCONSTRUE FACTS IN THE RECORD BY HOLDING CITY FAILED TO TIMELY PRESENT ITS ARGUMENT THAT THE WITHHELD DOCUMENTS WERE NOT PRESENTED TO THE CITY THROUGH ESTABLISHED PROCEDURES.

This Court appropriately affirmed the lower court’s decision rejecting City’s argument that no proper complaint was brought to the Police Department sufficient to initiate a formal investigation. City’s argument was first raised to the lower court in its Motion to Alter or Amend. (R. pp. 132-133.) The lower court recognized City’s arguments had not been previously presented to it and were therefore waived. (R. pp. 12-13.) *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990) (“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.”) (citation omitted).

In its Petition for Rehearing, City implies the lower court could have inferred the complaints were not filed through the proper or recommended channels based on the “source and the recipient” of the documents submitted to the lower court for *in camera*

review. (Petition at p. 6.) However, South Carolina law is clear that to preserve an issue for appeal, a party must make an argument with “sufficient specificity to inform the trial court of the point being urged.” *Allegro, Inc. v. Scully*, 400 S.C. 33, 44, 733 S.E.2d 114, 120 (Ct. App. 2012) (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (internal quotations omitted)). A party cannot rely upon a Court to discern what arguments might be available to it that are not expressly raised. Moreover, the lower court must rule on the issue to be preserved. *State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003). “A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument that has been presented on that ground.” *Id.* at 142, 587 S.E.2d at 694 (citation omitted). City’s argument on this issue should be rejected.

The purpose behind Rule 59(e) is to allow a party to correct misapplications of law or fact or to preserve legal issues for appeal. *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). “[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the great importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.” *Id.* at 779-780 (citation omitted). Issue preservation rules are designed to give the lower court a fair opportunity to rule on the issues, and thus provide the appellate courts with a platform for meaningful review. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quotation omitted).

Even if there were some merit to City’s contention, the lower court had no ability

to discern the appropriate or recommended procedure for filing complaints until City filed its Motion to Alter or Amend the lower court's order granting summary judgment to Glassmeyer. Prior to City's Motion to Alter or Amend, the only documents in the record were the complaints which were submitted by the City for *in camera* review and the City's Directives and Procedures Manual, introduced by Glassmeyer. (R. p. 58; R. pp. 79-103.) As pointed out by City, the Directives and Procedures Manual stated: "The Internal Affairs Unit will post a brochure in a public location in every police station or substation that outlines the procedures the public will follow in lodging a complaint against the Department or its employees. Complaints may also be submitted on-line via the Police Department website." (R. p. 100 at Sect. 2, Chap. 6 ¶ 3.0.) The Directives and Procedures Manual also provided: "Complaints received by mail by the Office of the Chief or Internal Affairs will be handled as *any other complaint*." (R. p. 101 at Sect. 2, Chap. 6 ¶ 4.1 (emphasis added).) City did not submit any published instructions for submitting a complaint until filing its Motion to Alter or Amend. (R. p. 132 (referencing Attachment B at R. pp. 141-143).)⁸

Moreover, City's assertion that because there are recommended procedures for filing complaints, any complaints submitted to the City *outside* of the recommended method can simply be ignored without further investigation or inquiry should be rejected. City's own Directives and Procedures Manual makes clear it is "require[d] [to] investigate[] . . . all citizen complaints, including anonymous complaints." (R. p. 72 at ¶

⁸ Even more absurd, City's published instructions suggest a citizen intending to file a grievance should, but is not required to, "[w]rite a letter to either the Chief of Police or the Internal Affairs Division." (R. p. 132 (referencing Attachment B at R. pp. 141-143).) A citizen intending to complain about the police chief himself, as is the case here, should not be constrained to file a grievance with the subject or someone under his supervision.

9; R. p. 100 at § 1.0 (“Directive”).) There is no stated exception to this rule and there is no authorized procedure for City to ignore complaints that it receives outside of its own recommended avenues.

III. THE COURT DID NOT MISAPPLY APPLICABLE LAW OR MISCONSTRUE FACTS IN THE RECORD BY HOLDING CITY ABANDONED ITS ARGUMENT CONCERNING FAMILY COURT DOCUMENTS.

Throughout the case, City argued the documents requested by Glassmeyer were subject to the personal privacy exemption of the FOIA, S.C. Code Ann. § 30-4-40(a)(2) (Rev. ed. 2007). Glassmeyer argued complaints of impropriety made by third parties should not be considered “[i]nformation of a personal nature where public disclosure thereof would constitute unreasonable invasion of personal privacy.” *Id.* Rather, such complaints were mere representations or allegations made by others, whether true or untrue, regarding violations of the law or City policy by City employees.

During the hearing on the parties’ cross motions for summary judgment, City admitted some of the complaints were publicly available documents, including court records. (R. p. 33, line 15 – p. 34, line 25; p. 36, lines 5-15; Appellant’s Brief at p. 10, n. 5.) The lower court noted in its Summary Judgment Order that “copies of records from family court proceedings . . . are available to the public unless sealed.” (R. p. 5 (*citing Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006)).) “Therefore, there can be no level of privacy expected in those specific documents.” (*Id.*)

On appeal, City referenced in footnote 5 of its Brief that it “provided [Glassmeyer] the civil action number of the [family court] proceedings in question.” (*See* Appellant’s Brief at p. 10, n. 5.) In its Opinion, this Court concluded City abandoned its argument concerning disclosure of the family court documents because it failed to

provide any citation to legal authority. The Supreme Court has made clear that when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal. *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 555 (Ct. App. 2011) (“issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority”); *State v. Jones*, 344 S.C. 48, 58-59, 543 S.E.2d 541, 546 (2001) (stating an argument is deemed abandoned on appeal when conclusory and without supporting authority); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). City cited no case law or other authority for its argument (*see* Appellant’s Brief at note 5), and indeed, under this Court’s precedent, abandoned its argument.⁹

Even if City were not deemed to have abandoned its argument on appeal, the argument should nonetheless be rejected on its merits. City’s footnote implies that providing Glassmeyer with the family court action number is the equivalent of fulfilling the statutory mandate to provide public records. While furnishing such information might allow Glassmeyer to verify whether documents in City’s possession were indeed filed in court, Glassmeyer would have no ability to confirm which specific documents were in City’s possession and would be unable to confirm their veracity. Nothing in the FOIA allows a public body to meet its obligations to the public merely by pointing a citizen to another repository where the records may be found.

⁹ Furthermore, City cites no legal authority in its Petition for Rehearing on this issue.

IV. THE COURT DID NOT MISAPPLY APPLICABLE LAW OR MISCONSTRUE FACTS IN THE RECORD BY HOLDING THE DOCUMENTS ARE NOT EXEMPT FROM DISCLOSURE DUE TO THE FOIA'S PRIVACY EXEMPTION, S.C. CODE ANN. § 30-4-40(A)(2)(2007).

This Court did not err in holding the documents Glassmeyer requested are not exempt from disclosure under the FOIA's privacy exemption, S.C. Code Ann. § 30-4-40(a)(2) (Rev. ed. 2007) on the basis that (i) Scott did not have a reasonable expectation of privacy in the documents withheld, and (ii) even if he did, the interests of the public, including Glassmeyer, outweighed Scott's privacy interests where the City failed to investigate the allegations it received.

In its Petition for Rehearing, City does not contest this Court's holding that Scott did not have a reasonable privacy interest in the documents. Rather, City contests the Court's conclusion that the interests of the public outweighed any privacy interests in the requested materials. (Petition at pp. 8-9.) City repeats its argument that no citizen can have an interest in City's failure to investigate the allegations because City did not receive the complaints through recommended channels. (*Id.*) For the reasons stated above (*supra* at ¶ I), and in Respondent's Brief, City's position is untenable and should be disregarded.

V. THE COURT'S REQUIREMENT THAT CITY REDACT NAMES OF THIRD PARTIES, NOT GOVERNMENT OFFICIALS, AS WELL AS PERSONAL IDENTIFYING INFORMATION IS REASONABLE.

Although this Court's Opinion affirmed the lower court's ruling mandating that City provide access the documents requested by Glassmeyer, it modified the lower court's ruling by permitting City to "redact the names of third parties who are not governmental officials, as well as the personal identifying information such as personal telephone numbers and email addresses." (Opinion at ¶ 5 (citing S.C. Code Ann. § 30-4-

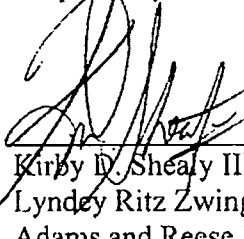
40(b)(2007); *Glassmeyer v. City of Columbia*, 414 S.C. 213, 223, 777 S.E.2d 835, 841 (Ct. App. 2015)).) In its Petition for Rehearing, City argues the Court erred by compelling disclosure of information beyond the scope of Glassmeyer's FOIA request which, City argues, "could expose allegations regarding City employees other than the former police chief to public view." (Petition at p. 4.)

This Court's ruling requiring City to produce the requested documents and redacting personal information, such as names of *private* third-parties and their identifying information, was reasonable and should be affirmed. For the same reasons the public has a legitimate interest in knowing why City failed to investigate former Police Chief Scott following City's receipt of allegations of wrongdoing, the public has an interest in knowing why City failed to investigate any other public officials named in the allegations. City's bald assertion that "[e]xposure of allegations regarding [other public] individuals . . . infringes on the[ir] privacy interests . . . and serves no legitimate public purpose," (Petition at p. 10) lacks any substantive support and should be ignored.

CONCLUSION

For these reasons, this Court should deny Appellant's Petition for Rehearing.

Respectfully submitted,



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Attorneys for Respondent

September 12, 2016.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2014-002221

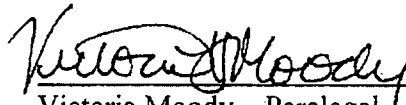
George S. Glassmeyer,.....Respondent,

v.

City of Columbia,.....Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellant's Petition for Rehearing on Appellant City of Columbia by depositing a copy in the United States Mail, postage prepaid, on September 12, 2016, addressed to its attorney of record, W. Allen Nickles, III, Esquire, at Nickles Law Firm, LLC, 1122 Lady Street, Suite 610, Columbia, South Carolina 29201.


Victoria Moody – Paralegal

September 12, 2016.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2014-002221

RECEIVED

SEP 14 2016

SC Court of Appeals

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)

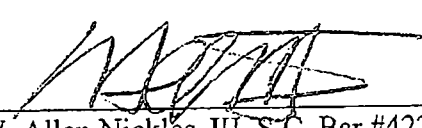
Nothing in the Police Department Manual offered by Glassmeyer or contained elsewhere in the record compels individual City employees or elected officials to forward for police investigation communications received from third parties, whether verbal, written or electronic. Accordingly, reliance upon police 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.

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September 14, 2016
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2014-002221

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SC Court of Appeals

George S. Glassmeyer.....Respondent

v.

City of Columbia.....Appellant.

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
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This 14th day of September, 2016.

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The South Carolina Court of Appeals

George S. Glassmeyer, Respondent,

v.

City of Columbia, Appellant.

Appellate Case No. 2014-002221

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.

Thomas C. Huff

J.

U. Ke

J.

John D. Neath

J.

Columbia, South Carolina

cc:

W. Allen Nickles, III, Esquire
Kirby Darr Shealy, III, Esquire
Lyndey Ritz Zwingelberg, Esquire
The Honorable Alison Renee Lee

FILED

September 20, 2016
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