

PLAINTIFF'S EXHIBIT-B

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
George Cleveland, )  
Plaintiff, )  
vs. )  
State of South Carolina, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
IN THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-08059

ORDER

RECEIVED

AUG 28 2017

SC Court of Appeals

RICHLAND COUNTY  
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This court convened a hearing concerning the State of South Carolina's Motion to Dismiss in the above captioned case on March 23, 2017. In that same hearing, the court heard a Motion to Dismiss filed on behalf of former Governor Nikki Haley and former Deputy Legal Counsel Rebecca Schimsa. Finally, the court heard a Motion for Sanctions against the Office of the Attorney General, filed by the Plaintiff in this action. Kevin Maroney appeared and presented arguments on behalf of the State and the former Governor and former Deputy Legal Counsel. Mr. Cleveland, a *pro se* litigant, was present at the hearing and presented arguments. For reasons that will be explained below, the court granted dismissal from the bench after hearing from both parties in this action. After the ruling from the bench, Mr. Cleveland withdrew his Motion for Sanctions.

I. Rule 12(b)(6)

The South Carolina Supreme Court has stated that the purpose of FOIA is "to protect the public from secret government activity."<sup>1</sup> FOIA fulfills its purpose by providing for the disclosure of information by public bodies. "FOIA creates an affirmative duty on the part of public bodies to produce information."<sup>2</sup> Notwithstanding, FOIA creates a public duty, which is owed to the public

<sup>1</sup> *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991).  
<sup>2</sup> *Id.*

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at large rather than to anyone individually.<sup>3</sup> To satisfy its public duty, a public body must either furnish requested records, or make them available for inspection or copying; FOIA only requires a public body to do one or the other.<sup>4</sup> Once a public body discloses the information in either of those two ways, there is no violation of FOIA upon which to premise a cause of action.<sup>5</sup>

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In this case, Mr. Cleveland requested "a copy of all the new laws that were signed by Gov. Haley, bills that became law by Gov. Haley's refusal to sign the bills, and all bills that became law due to the General Assembly over-riding her veto in the 2014 legislative session." The Governor's Office wrote Mr. Cleveland to tell him that the information he requested is available on the legislative website, [www.scstatehouse.gov](http://www.scstatehouse.gov). When a public body publishes documents on the internet, it is not possible to characterize them as "secret." Moreover, documents online are available for the public to inspect and copy, so a public body satisfies its duty under FOIA by publishing them.

Mr. Cleveland argued that prisoners housed within correctional facilities, prisoners like him, are not able to access the internet, except to perform legal research. Although the Court is sympathetic, whether some individuals are unable to access documents online, or have difficulty in accessing documents online does not mean the public body has failed to satisfy its duty to the public under FOIA. Again, public bodies have an affirmative duty to provide information, but they owe that duty to the public at large rather than anyone individually.<sup>6</sup> The public is protected from

<sup>3</sup> *Bellamy v. Brown*, 305 S.C. 291, 294, 408 S.E.2d 219, 220-21 (1991)

<sup>4</sup> *S.C. Code Ann.* §30-4-30(c) ("[I]f the [FOIA] request is granted, the record must be furnished or made available for inspection or copying.")

<sup>5</sup> *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 478 (2006).

<sup>6</sup> *Cf. Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28-9, 630 S.E.2d 474, 479 (2006) (citing *Fowler v. Beasley*, 322 S.C. 463, 466, 472 S.E.2d 630, 632 (1996) (FOIA does not require the information seeker to have a "personal stake in the outcome" because any citizen is statutorily granted standing to enforce the public right to disclosure of information)).

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secret government activity once records are published online because they are available for inspection or copying. Because records that are published online have already been disclosed to the public, a public body does not violate FOIA by declining to produce the records for a particular individual.

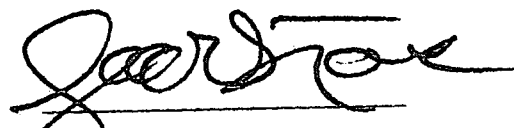
**II. Conclusion**

Because Mr. Cleveland requested documents that are already available to the public for inspection and copying, a public body has no affirmative duty to produce them for him. Thus, he has failed to state facts sufficient to constitute a cause of action under FOIA.

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**THEREFORE, THE COURT ORDERS THE FOLLOWING:**

The above captioned action is **DISMISSED** in its entirety under Rule 12(b) (6).



Jean H. Toal  
Presiding Judge  
Fifth Judicial Circuit

Apr. 9, 2017