

James C. Harrison, Jr.\*  
Andrew S. Radeker  
Taylor M. Smith IV

\* Mediator/Arbitrator

**HARRISON  
& RADEKER  
& SMITH** P.A.  
ATTORNEYS AT LAW

P.O. Box 50143  
Columbia, SC 29250

(803) 779-2211  
(803) 779-6700 (fax)  
www.harrisonfirm.com

September 6, 2018

**VIA HAND DELIVERY**

The Hon. Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals of South Carolina  
1220 Senate Street  
Columbia, South Carolina 29201

**RECEIVED**

SEP 06 2018

SC Court of Appeals

Re: S.C. Lottery Commn. v. George S. Glassmeyer  
Appellate Case No. 2016-001112

Dear Ms. Kitchings:

I represent the appellant in the above-referenced appeal, and I write pursuant to Rule 208(b)(7), SCACR, concerning a legislative change to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.* (hereinafter “FOIA”), that went into effect on May 19, 2017, after the briefing in this appeal was complete. This statutory change is relevant to argument set out in pages 19-25 of the appellant’s final brief concerning whether the respondent had standing to bring this action, as well as pages 12-14 of the appellant’s final reply brief, which deals with the same subject.

The specific change the appellant notes is a change to S.C. Code Ann. § 30-4-110. Before May 19, 2017, that section read as follows and dealt only with criminal penalties:

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

The 2017 amendment changed this FOIA section a great deal, so that S.C. Code Ann. § 30-4-110 now reads as follows:

(A) A public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

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- (B) If a request for disclosure may result in the release of records or information exempt from disclosure under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19), a person or entity with a specific interest in the underlying records or information shall have the right to request a hearing with the court or to intervene in an action previously filed.
- (C) If a person or entity seeking relief under this section prevails, the court may order:
  - (1) equitable relief as he considers appropriate;
  - (2) actual or compensatory damages; or
  - (3) reasonable attorney's fees and other costs of litigation specific to the request, unless there is a finding of good faith. The finding of good faith is a bar to the award of attorney's fees and costs.
- (D) If a court determines that records are not subject to disclosure, the determination constitutes a finding of good faith on the part of the public body or public official, and acts as a complete bar against the award of attorney's fees or other costs to the prevailing party should the court's determination be reversed on appeal.
- (E) If the person or entity prevails in part, he may be awarded reasonable attorney's fees or other costs of litigation specific to the request, or an appropriate portion thereof, unless otherwise barred.
- (F) If the court finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record, it may, in addition to actual or compensatory damages or equitable relief, impose a civil fine of five hundred dollars.

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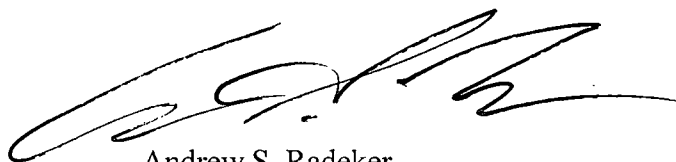
The reporter's notes on the change state that it "rewrote the section, removing criminal penalties, and providing rights and remedies of public bodies from whom requests are made and persons with specific interests in exempt information for which disclosure is sought."

"It will be presumed that the Legislature in adopting an amendment to a statute intended to make some change in the existing law." Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 157, 135 S.E.2d 841, 844 (1964). The 2017 change to this statute was the first time that the language of FOIA has stated that a public body has a right to seek relief under FOIA. This action was brought before the statutory change. "The rights and liabilities of the parties, that is, their rights to an action for judgment or relief, depend upon the facts as they existed at the time of the commencement of the action[.]" American Agricultural Chemical Co. v. Thomas, 206 S.C. 355, 360, 34 S.E.2d 592, 594 (1945).

Thank you for your attention in this matter. Of course, if you or other court personnel have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Very truly yours,  
**HARRISON, RADEKER & SMITH, P.A.**



Andrew S. Radeker

ASR/

cc: Karl S. Bowers, Jr., Esq.