

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate (Court of Appeals) Case No. 2016-001112

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Petitioner.

APPENDIX

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South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

South Carolina Lottery Commission, Respondent,

v.

George S. Glassmeyer, Appellant.

Appellate Case No. 2016-001112

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 5671
Submitted September 19, 2018 – Filed July 31, 2019

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Andrew Sims Radeker and Taylor Meriwether Smith, IV,
of Harrison, Radeker & Smith, P.A., of Columbia, both
for Appellant.

Karl Smith Bowers, Jr., of Columbia, for Respondent.

THOMAS, J.: George Glassmeyer appeals the circuit court's order granting declaratory and injunctive relief in this Freedom of Information Act (FOIA) case. On appeal, Glassmeyer argues the circuit court erred by (1) failing to address his counterclaims, (2) entering judgment on the pleadings, (3) finding the South

Carolina Lottery Commission (SCLC) had standing to bring the action, and (4) failing to grant his motion to dismiss. We affirm in part, reverse in part, and remand.

On March 31, 2014, Glassmeyer submitted a FOIA request to SCLC for information related to any claims for any South Carolina lottery prize equal to or greater than one million dollars in gross proceeds from March 1, 2013, to March 20, 2014. Specifically, Glassmeyer requested (1) the claimants' full names, (2) the claimants' complete addresses, (3) the claimants' telephone numbers, (4) the gross dollar amount of the claims, (5) the dates of the claims, and (6) a copy of any form of identification SCLC obtained from the claimants. On April 1, 2014, SCLC mailed letters to the claimants who were affected by the FOIA request. Many of the claimants objected to the release of their personal information and filed complaints against SCLC. On April 4, 2014, one of the claimants, "John Doe," requested the circuit court to grant a permanent injunction enjoining SCLC from disclosing Doe's name, address, telephone number, amount of claim, date of claim, and any forms of identification obtained for the claim.¹

SCLC then responded to Glassmeyer's request on April 16, 2014. In sum, SCLC informed Glassmeyer that (1) the request for the claimants' full names, complete addresses, telephone numbers, and forms of identification were exempted from disclosure by section 30-2-310 (A)(1)(e) of the South Carolina Code (Supp. 2018)² and, therefore, were exempted from disclosure under section 30-4-40(a)(4) of the South Carolina Code (2007)³; (2) the request for copies of the claimants' forms of identification, such as their driver's licenses, were not public records under FOIA; and (3) SCLC could not disclose an individual's personal identifying information

¹ The record only includes the full disposition of Doe's case, *John Doe v. South Carolina Lottery Commission*, Civil Action No. 2014-CP-40-2446. The record does not contain information regarding the outcomes of the other cases involving the claimants who filed complaints against SCLC.

² Section 30-2-310(A)(1)(e) provides, in pertinent part, that a public body may not "intentionally communicate or otherwise make available to the general public an individual's social security number or a portion of it containing six digits or more or other personal identifying information."

³ Section 30-4-40(a)(4) provides, "A public body may but is not required to exempt from disclosure . . . [m]atters specifically exempted from disclosure by statute or law."

because it would be an invasion of privacy. However, SCLC did disclose the following information to Glassmeyer: the gross dollar amount of the claims, dates of the claims, the hometowns and states of the claimants, and the games associated with the prizes won.

Glassmeyer submitted two more FOIA requests in letters dated April 16 and April 17, 2014. Glassmeyer stated that the response he received from SCLC on April 16 "**did not** satisfy my request." (emphasis in original). Again, Glassmeyer requested that SCLC provide him with the "claimants' full names."

Meanwhile, Doe's action against SCLC proceeded forward in the circuit court. The circuit court found that

[Doe] therefore is entitled to a declaratory judgment that the release of all or any part of [Doe's] personal identifying information, such as [claimant's] name, would result in an unreasonable invasion of [Doe's] personal privacy in accordance with Section 30-4-40(a)(2).⁴

Thus, on April 25, 2014, the court granted a permanent injunction and ordered that SCLC be "permanently restrained and enjoined from releasing any and all

⁴ Section 30-4-40(a)(2) of the South Carolina Code (Supp. 2018) provides, "A public body may but is not required to exempt from disclosure . . . [i]nformation 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 applications for business licenses, 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, and any audio recording of the final statements of a dying victim in a call to 911 emergency services. Any audio of the victim's statements must be redacted prior to the release of the recording unless the privacy interest is waived by the victim's next of kin. This provision must not be interpreted to restrict access by the public and press to information contained in public records."

information regarding [Doe] in response to the FOIA request of Mr. George Glassmeyer and any other FOIA request."⁵

Thereafter, in a letter dated May 7, 2014, SCLC responded to Glassmeyer's April 16 and April 17 requests. SCLC granted Glassmeyer's request pertaining to information that it determined was disclosable, but informed Glassmeyer that his request for the claimants' full names would constitute an unreasonable invasion of personal privacy and this information was exempt under section 30-4-40(a)(2). On that same day, SCLC filed a summons and complaint against Glassmeyer requesting the court grant declaratory judgment and injunctive relief "with respect to the release of personal information regarding claimants of lottery winnings," which resulted in the present appeal.

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "In equitable actions, the appellate court may find facts in accordance with its own view of the preponderance of the evidence." *Id.* "In law actions, the lower court must be affirmed where there is 'any evidence' to support its findings." *Id.* "An issue [that is] essentially one at law will not be transformed into one in equity simply because declaratory relief is sought." *Id.* "A declaratory judgment action under the FOIA to determine whether certain information should be disclosed is an action at law." *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 346, 594 S.E.2d 888, 892 (Ct. App. 2004). The appellate court reviews questions of law de novo. *See Glassmeyer v. City of Columbia*, 414 S.C. 213, 218, 777 S.E.2d 835, 838 (Ct. App. 2015).

STANDING

Glassmeyer argues SCLC did not have standing under FOIA to file this action because the statute indicates only citizens may apply to the circuit court for a declaratory judgment or injunction. We disagree.

⁵ This order only addressed Doe's rights and how releasing his personal information would affect him.

"To have standing, one must have a personal stake in the subject matter of the lawsuit. In other words, one must be a real party in interest." *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). "Standing may be acquired: (1) by statute; (2) through the rubric of 'constitutional standing;' or (3) under the 'public importance' exception." *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). The FOIA statute specifically "contains a civil enforcement provision granting standing to a South Carolina citizen to seek injunctive relief against a violation of any FOIA provision." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 327, 701 S.E.2d 39, 47 (Ct. App. 2010). Specifically, section 30-4-100(A) of the South Carolina Code (Supp. 2018) states:

A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later.

Although Glassmeyer argues SCLC is not a "citizen" and therefore lacked standing under section 30-4-100(A) to file for a declaratory judgment, SCLC did not bring an action under section 30-4-100(A). Instead, SCLC brought an action under the Declaratory Judgments Act seeking confirmation that the release of the information Glassmeyer requested would constitute an unreasonable invasion of the lottery winners' personal privacy in accordance with section 30-4-40(a)(2) and therefore may be withheld from disclosure. *See* S.C. Code Ann. §§ 15-53-10 to -140 (2005). The Declaratory Judgments Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20 (2005). As such,

[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations

S.C. Code Ann. § 15-53-30 (2005). The purpose of the Declaratory Judgments Act "is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." S.C. Code Ann. § 15-53-130 (2005); *see also Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) ("The basic purpose of the [Declaratory Judgments] Act is to provide for declaratory judgments without awaiting a breach of existing rights."). Further, "[t]he Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy." *Sunset Cay, LLC*, 357 S.C. at 423, 593 S.E.2d at 466. Moreover, the Act "is to be liberally construed and administered." § 15-53-130.

"To fall within the intended purpose and scope of the Declaratory Judgments Act, the parties must seek adjudication of a justiciable controversy." *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 373–74 (2013) (footnote omitted). "Questions of statutory interpretation, by themselves, do not rise to the level of actual controversy." *Id.* at 81, 742 S.E.2d at 374 (internal citations omitted). An adjudication that would not settle the legal rights of the parties would be "only advisory and, therefore, beyond the intended purpose and scope of a declaratory judgement." *Power v. McNair*, 255 S.C. 150, 154–55, 177 S.E.2d 551, 553 (1970) (holding action for declaratory judgment to determine whether simultaneous holding of office of city policeman and commission as state constable without compensation would constitute dual office holding prohibited by the South Carolina Constitution presented no justiciable controversy); *see also City of Columbia v. Sanders*, 231 S.C. 61, 68, 97 S.E.2d 210, 213 (1957) ("The Uniform Declaratory Judgment[s] Act . . . 'does not require the court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when the occasion might arise,' or 'license litigants to fish in judicial ponds for legal advice.'" (citations omitted)). Thus,

[w]here a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action.

Power, 255 S.C. at 153–54, 177 S.E.2d at 553 (quoting *Dantzler v. Callison*, 227 S.C. 317, 321, 88 S.E.2d 64, 66 (1955)).

Here, there was an on-going controversy affecting the duties and obligations of SCLC and the rights of Glassmeyer and all the claimants who were affected by his FOIA requests. The permanent injunction that was granted for Doe only resolved the matter as to that particular claimant, and it only prohibited the release of Doe's personal identifying information. Moreover, SCLC had already informed Glassmeyer that the personal identifying information he sought was exempted under FOIA. Glassmeyer made it clear that SCLC's reasoning for not disclosing the requested information "**did not**" satisfy his request, and he made another request for the exact same information. Consequently, as reflected in the minutes of the "Executive Committee of the South Carolina Education Lottery Board of Commissioners," SCLC experienced

an unusually strong negative reaction after the winners were notified [about Glassmeyer's request]. The number of calls and the concerns expressed over privacy and safety were greater than the last time similar information was requested. Several attorneys called to inquire about filing a lawsuit and to express concern over their client[s] bearing the costs associated with filing. Other winners asked if they could be put on "a list" as wishing to not have their information disclosed.

Thus, under these circumstances, it is understandable that SCLC would utilize the Declaratory Judgments Act to remove any uncertainty and insecurity with respect to its duties and obligations regarding disclosure under FOIA that would affect the rights of the remaining claimants and Glassmeyer. *See* § 15-53-130 ("[The Declaratory Judgments Act's] purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations."); *see also Sunset Cay, LLC*, 357 S.C. at 423, 593 S.E.2d at 466 ("The basic purpose of the [Declaratory Judgments] Act is to provide for declaratory judgments without awaiting a breach of existing rights."); *id.* ("The Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy."). Thus, we find SCLC was not constrained from seeking a declaratory judgment in the instant matter.

Additionally, it is important to note that the legislature amended section 30-4-110 of the FOIA statute in 2017. S.C. Code § 30-4-110 (Supp. 2018).⁶ Section 30-4-110 is now entitled, "Hearings regarding disclosure; appropriate relief; civil fine for violation." *Id.* Section 30-4-110(A) provides,

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.

Section 30-4-110(C) further provides that "[i]f a person or entity seeking relief under this section prevails, the court may order[] equitable relief as [it] considers appropriate[.]" *Id.* The FOIA statute now explicitly provides an avenue for agencies like SCLC to seek relief if presented with a similar factual scenario as the case at bar. However, SCLC did not have the benefit of this provision in 2014. Thus, the Declaratory Judgments Act was a viable means for SCLC to seek relief and to terminate the on-going controversy. *See City of Myrtle Beach*, 403 S.C. at 82, 742 S.E.2d at 374 ("The Declaratory Judgments Act may not be invoked to avoid or circumvent the legislature's exclusive method for challenging [a provision within an act]."). Moreover, given the gravity of the interests at stake—i.e., the potential invasion of personal privacy for the claimants, the risk of unlimited legal exposure for SCLC, the potential to diminish the number of lottery players because of fear of their identity being exposed, and balancing the equities of Glassmeyer's right to request information—prudence dictated the agency's decision to have the circuit court declare its obligations and to remove any doubt it may have had. *See Power*, 255 S.C. at 154–55, 177 S.E.2d at 553 ("Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action." (quoting *Dantzler*, 227

⁶ The legislative act adopting this amendment provided, "To amend section 30-4-110, relating to penalties for violations of the Freedom of Information Act, so as to remove criminal penalties, and *to provide rights and remedies of public bodies from whom requests are made and persons with specific interests in exempt information for which disclosure is sought*, among other things[.]" Act No. 67, 2017 S.C. Acts 3352 (emphases added).

S.C. at 321, 88 S.E.2d at 66)). Accordingly, we find SCLC had standing to file for a declaratory judgment.

DECLARATORY JUDGMENT

Glassmeyer argues the circuit court erred in issuing the declaratory judgment for SCLC because the balancing of the individual's privacy against the public's need to know weighs in his favor. Further, Glassmeyer contends the circuit court considered evidence outside of the pleadings and construed the pleadings in the light most favorable to SCLC. We disagree.

"FOIA is remedial in nature and should be liberally construed to carry out its purpose." *Evening Post Publ'g Co. v. Berkeley Cty. Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011). As the General Assembly stated,

[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.

S.C. Code Ann. § 30-4-15 (2007).

"FOIA's basic premise is [that] 'any person has a right to inspect or copy any public record of a public body.'" *Evening Post Publ'g Co.*, 392 S.C. at 82, 708 S.E.2d at 748 (quoting § 30-4-30(a)). However, this right is not absolute. "Information of a personal nature where the public disclosure thereof would constitute [an] unreasonable invasion of personal privacy" is exempt from disclosure under FOIA. § 30-4-40(a)(2). The exemption provision gives the public body the discretion to disclose such information, stating the public body "may but is not required to" disclose the information. § 30-4-40(a). "The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis, and the exempt and non-exempt material shall be separated and the non[-]exempt

material disclosed." *Evening Post Publ'g Co.*, 392 S.C. at 82, 708 S.E.2d at 748.

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. We must, therefore, 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.

Burton, 358 S.C. at 352, 594 S.E.2d at 895. "Our [s]upreme [c]ourt has defined the 'right to privacy' as the right of an individual to be let alone and to live a life free from unwarranted publicity." *Id.* A plaintiff must establish three elements in order to receive an injunction: "(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

In *Glassmeyer v. City of Columbia*, Glassmeyer sent a FOIA request to the City of Columbia, requesting all the application materials for the final three applicants for city manager. 414 S.C. at 216–17, 777 S.E.2d at 837. The city provided the applicants' information but redacted the street name and number of the applicants' home addresses, some of their telephone numbers, their job references, their driver's license numbers, their driver's license restrictions, and some of the applicants' reasons for leaving their previous employment. *Id.* at 217, 777 S.E.2d at 837. Glassmeyer filed a declaratory judgment and injunction action against the city. *Id.* Prior to the circuit court issuing an order, Glassmeyer conceded that the driver's license information was exempt under state law. *Id.* at 217, 777 S.E.2d at 838. The circuit court granted Glassmeyer's request for summary judgment. *Id.* at 218, 777 S.E.2d at 838. This court reversed the circuit court, holding disclosure of the applicants' home addresses, telephone numbers, and personal email addresses would constitute an unreasonable invasion of personal privacy. *Id.* at 223, 777 S.E.2d at 840–41. This court applied the balancing test, considering what information the city provided and noted it "fail[ed] to see how disclosure of the limited information . . . would serve to establish the veracity of the applicants more than the information [the city] already provided." *Id.* at 223, 777 S.E.2d at 841.

We find the instant case is similar to *Glassmeyer v. City of Columbia*. Here, SCLC provided Glassmeyer with the amount of the lottery winnings, the lottery game, and the claimants' home towns and states. Although Glassmeyer argues the test of balancing the individual's privacy against the public's need to know is in his favor, we disagree. Glassmeyer has not provided any reason that the public needs to know the information he requested or any reason as to why the information SCLC provided was not adequate. *See Burton*, 358 S.C. at 352, 594 S.E.2d at 895 ("We must, therefore, 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."). When asked to explain why he needed the information, Glassmeyer indicated it had the potential for exposing government corruption. However, without more, we are unable to fathom how disclosure of the rest of the information would benefit the public more than what was already provided. We agree with the circuit court's determination that it would be an unreasonable invasion of privacy for SCLC to release the requested information. *See Burton*, 358 S.C. at 352, 594 S.E.2d at 895 ("Our [s]upreme [c]ourt has defined the 'right to privacy' as the right of an individual to be let alone and to live a life free from unwarranted publicity."). The lottery claimants' names are not public knowledge and the release of such information could lead to the discovery of other personal information. Thus, we find the balancing test weighs in favor of preventing the disclosure of the information in order to safeguard the claimants' personal privacy.

We disagree with Glassmeyer's argument that *Glassmeyer v. City of Columbia* is not controlling because the lottery claimants in the instant case filled out a claim form which stated the information may be subject to disclosure under FOIA. The claimants did not waive their right to privacy just by executing the form. The form merely indicated that *some* of the information included in the form *may* be subject to disclosure under FOIA. However, this warning does not mean the claimants waived any right they had to the privacy of the information on the form, such as their social security numbers. In fact, SCLC did disclose some of the information included on the form—the claimants' home towns and states. Just as *Glassmeyer v. City of Columbia* found "[a]n individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form," we find this same interest does not dissolve just because the claimants were warned that some of the

information may be subject to disclosure. 414 S.C. at 222, 777 S.E.2d at 840 (quoting *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994)).

As to Glassmeyer's argument that the circuit court considered evidence outside of the pleadings and construed the pleadings in a light more favorable to SCLC, we disagree. The question of whether the information Glassmeyer requested was exempt under FOIA is a question of law and does not require looking at any facts other than Glassmeyer's request. Although the circuit court cited to news articles that were included in SCLC's complaint as examples of harm that befell lottery winners around the country, we believe these citations were not necessary to the circuit court's order. Furthermore, Rule 12(c) of the South Carolina Rules of Civil Procedure indicates a motion for judgment on the pleadings can be construed as a motion for summary judgment if the circuit court considers facts outside of the pleadings, and therefore, granting the motion would be proper if there was no genuine issue of material fact. *See* Rule 12(c) ("If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the [c]ourt, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56[, SCRPC] . . ."); *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 628, 799 S.E.2d 318, 322 (Ct. App. 2017) ("The circuit court should grant a motion for summary judgment when the evidence shows 'there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" (quoting Rule 56(c))). Thus, we find the circuit court did not err in issuing the declaratory judgment.

COUNTERCLAIM

Glassmeyer argues the circuit court erred in not addressing his counterclaim for willful abuse of process.⁷ We agree. The circuit court's order did not address Glassmeyer's counterclaim but indicated it "conclude[d] the . . . matter." After the circuit court issued its order, Glassmeyer filed a motion for reconsideration and asked the circuit court to rule on his counterclaim. However, the circuit court did not mention the counterclaim in its order denying Glassmeyer's motion for

⁷ Glassmeyer also argues the circuit court erred in not addressing his counterclaim for a declaratory judgment. However, we find the circuit court implicitly resolved Glassmeyer's counterclaim for declaratory judgment and affirm the circuit court's declaratory judgment.

reconsideration. Thus, we remand to the circuit court to address Glassmeyer's willful abuse of process counterclaim.

CONCLUSION

We find SCLC had standing under the Declaratory Judgments Act to bring this declaratory judgment and injunction action. Thus, we affirm the circuit court's grant of injunctive relief. We affirm the circuit court's declaratory judgment that the information Glassmeyer requested was exempt from FOIA. We remand to the circuit court to address Glassmeyer's counterclaim for willful abuse of process.⁸

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.⁹

LOCKEMY, C.J., and GEATHERS, J., concur.

⁸ Glassmeyer also appealed the circuit court's denial of his motion to dismiss. We decline to address this issue because it is not appealable. *See Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 382, 762 S.E.2d 44, 48 (Ct. App. 2014) ("[T]he denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable" (quoting *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994))).

⁹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

RECEIVED

AUG 14 2019

SC Court of Appeals

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

CONSENT MOTION
FOR EXTENSION OF TIME TO SERVE AND FILE
PETITION FOR REHEARING

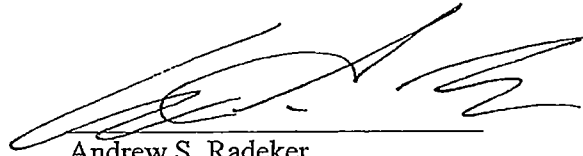
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Appellant hereby moves pursuant to Rule 263(b), SCACR, for a 30-day extension of the time in which to serve and file Appellant's petition for rehearing in this case. The grounds for this motion are that there is good cause to grant the requested extension, as the following shows:

1. The deadline for service and filing of Appellant's petition for rehearing in this case is currently tomorrow, August 15, 2019.
2. Appellant's counsel who is writing this petition has come down with some sort of cold or similar illness that has slowed him down today with writing the petition and is likely to interfere with this ability to get this petition done on time. Given that he already has two hearings to attend tomorrow, probably still under the weather, he fears that he will be unable to get a well-drafted petition for rehearing completed by tomorrow.
3. Opposing counsel has graciously consented to the requested extension, as the attached email exchange shows.
4. Appellant's counsel believe there is good cause to grant the requested extension.

WHEREFORE Appellant prays for an order extending the time in which to serve and file Appellant's petition for rehearing by 15 days.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew S. Radeker', is written over a horizontal line.

Andrew S. Radeker
S.C. Bar No. 73743
Taylor M. Smith IV
S.C. Bar No. 101584
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorneys for Appellant

August 14, 2019

Drew Radeker

From: Butch Bowers <Butch@ButchBowers.com>
Sent: Wednesday, August 14, 2019 4:19 PM
To: Drew Radeker
Cc: Taylor Smith; Rhonda Schaub
Subject: Re: S.C. Lottery Commn. v, Glassmeyer

Drew - sorry for the delayed response. Yes of course, I consent to a 15 day extension. Hope you feel better soon. Take care,

Butch

On Aug 14, 2019, at 11:10 AM, Drew Radeker <Drew@harrisonfirm.com> wrote:

Butch:

Congratulations on your win in this case, even though we are going to go about trying to get that undone. I write because I'm pretty sure that I'm coming down with a cold or something, and our petition for rehearing is due tomorrow. If I keep feeling like I am now, I ought to be fine to get it finished and in by tomorrow, but, in case I really start to go downhill over here and need an extension of the time, would you consent to a 15-day extension of the time for us to serve and file the petition for rehearing? I'd just like to have that consent in case I need to make the extension motion.

Thanks.

Drew Radeker

<image001.png>

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803) 779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.) Thank you.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

RECEIVED
AUG 14 2019
SC Court of Appeals

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

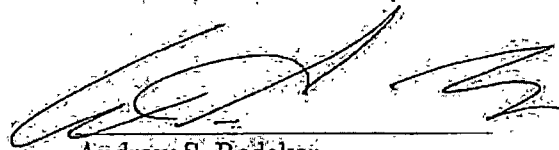
PROOF OF SERVICE

I, the undersigned, certify that I served the motion for extension by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Karl S. Bowers, Jr., Esq.
Bowers Law Office
P.O. Box 50549
Columbia, SC 29250

August 14, 2019

Respectfully submitted,



Andrew S. Radeker
S.C. Bar No. 73743
Taylor M. Smith IV
S.C. Bar No. 101584
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Post Office Box 50143
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(803) 779-2211
Attorneys for Appellant

The South Carolina Court of Appeals

South Carolina Lottery Commission, Respondent,

v.

George S. Glassmeyer, Appellant.

Appellate Case No. 2016-001112

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2014CP4002926

ORDER

The time for serving and filing the petition for rehearing is hereby extended until August 30, 2019.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Andrew Sims Radeker, Esquire
Taylor Meriwether Smith, IV, Esquire
Karl Smith Bowers, Jr., Esquire
Jeanette W. McBride

FILED

August 19, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001142

RECEIVED

AUG 30 2019

SC Court of Appeals

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

PETITION FOR REHEARING OR REHEARING *EN BANC*

Andrew S. Radeker
S.C. Bar No. 73743
Taylor M. Smith IV
S.C. Bar No. 101584
Harrison, Radeker & Smith, P.A.
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(803) 779-2211
Attorneys for Appellant

The Appellant, George S. Glassmeyer (hereinafter “Glassmeyer”), hereby respectfully moves and petitions, pursuant to Rules 219 and 221(a), SCACR, as well as all other applicable law, for an order granting rehearing or rehearing *en banc* in this case and submits the memorandum below in support of the same. Glassmeyer, in an effort to keep this petition succinct, incorporates herein by reference his previously submitted briefs, motion to argue against precedent, and September 6, 2018, letter submitting supplemental citations in this appeal, making by reference those same arguments here.

The identity of those who receive individual payouts of a million dollars or more of public funds from the State of South Carolina is not a private matter. It is a public matter. Respectfully, the opinion issued by this court erodes the public’s right to know how its money is spent and has great potential to shield any corruption there may be at the Lottery Commission, now or in the future, from discovery.

Further, the trampling of Glassmeyer’s procedural rights by the circuit court and, now, this court has been, with all due respect, flagrant. Of what use are procedural safeguards if courts ignore them? Why enshrine the sanctity of the right to a fair trial in the law if this court will allow lower courts to make evidentiary decisions where no evidentiary record is ever made?

In both its substance and its process, this court’s opinion cries out for a second look to correct these errors – if need be, by this court as a whole, *en banc*. See S.C. Code Ann. §§ 14-8-80 & -90.

- I. **This court has used the wrong standard of review and treated this case as though it had been tried. The lower court’s decision was to grant the Lottery Commission’s motion for judgment on the pleadings, but the decision was based on factual conclusions that**

were neither admitted nor pled in Glassmeyer's pleading. Accordingly, that alone would require the reversal of the lower court's decision.

When considering this petition for rehearing, *do not treat this appeal as though it were an appeal from the decision of a tried case. That is not what it is. Do not treat this appeal as though it were an appeal from an order granting summary judgment. That is not what it is.* This court's opinion states the following: "Glassmeyer contends the circuit court considered evidence outside of the pleadings and construed the pleadings in the light most favorable to SCLC. We disagree." Respectfully, this court must have misunderstood the nature of the proceedings that occurred below. Glassmeyer doesn't contend that the circuit court considered evidence outside the pleadings. The circuit court didn't consider any evidence at all. No evidentiary record was ever made.¹ There was no trial. There was no transformation of the Lottery Commission's motion for judgment on the pleadings into a summary judgment motion.² The circuit court just took the Lottery Commission's unadmitted allegations and transformed them into an order ruling for the Lottery Commission.

The Lottery Commission acknowledges in its brief that this case was not tried and that "only pre-trial motions were heard" on the day that had been set for trial. (Final Brief of Respondent p. x.) The Lottery Commission's motion was for judgment on the pleadings. The circuit court's decision was a decision to grant that motion. There are

¹ What may look like "exhibits" in the record are exhibits to the Lottery Commission's complaint. (R. pp. 29-147.)

² No notice of such conversion or opportunity for Glassmeyer to introduce evidence to oppose a summary judgment motion was ever provided, either, so any conversion into a summary judgment motion would have been improper, anyway. Charleston Cnty. Sch. Dist. v. Harrell, 393 S.C. 552, 559 n. 4, 713 S.E.2d 604, 608 n. 4 (2011); Baird v. Charleston Cnty., 333 S.C. 519, 527-28, 511 S.E.2d 69 (1999); Brown v. Leverette, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987).

no two ways about it. Glassmeyer was entitled to a trial, but he never got one, so, please, do not treat him as though he lost one.

The standard of review applicable to this case is that for the review of a judgment on the pleadings, not, as stated by this court, that for the analysis of whether a declaratory judgment action is legal or equitable. As that analysis is usually used in determining what standard of review to use in assessing a court's factual findings made at trial, Glassmeyer cannot see how it is relevant here, where there was no trial.

The standard of whether a motion for judgment on the pleadings should be granted is the same as for a motion under Rule 12(b)(6), SCRCF, and the appellate court is required to apply the same standard to the review of an order granting such a motion. See Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000); Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990). In deciding a motion for judgment on the pleadings, the trial court may not consider matters outside the content of the non-moving party's pleadings, and the appellate court is limited to the content of the pleadings in just same way. See Falk, 341 S.C. at 281; Firemen's Ins. Co., 302 S.C. at 234. An appellate court must reverse the grant of a motion for judgment on the pleadings if, when viewed in the light most favorable to the non-moving party, "the facts alleged [in the non-moving party's pleadings] and inferences reasonably deducible therefrom would entitle the [non-moving party] to any relief on any theory of the case." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995).

In deciding a motion for judgment on the pleadings made by Glassmeyer's opponent, the circuit court was not permitted to look outside what Glassmeyer pled.

See Russell, 305 S.C. 86; Falk, 341 S.C. 281; Fireman's Ins., 302 S.C. 234. The circuit court's order, however, is shot through with factual findings that are statements of things that Glassmeyer did not admit in response to the Lottery Commission's complaint and did not allege himself. (R. pp. 1-12.)

Of the allegations made in the Lottery Commission's complaint, here are the ones that Glassmeyer admitted (with explanations where Glassmeyer responded with something other than an unqualified admission):

- "Plaintiff South Carolina Lottery Commission (SCLC) is an "instrumentality of the State and public body, corporate and politic, . . . [with] powers as generally exercised by commissions engaged in entrepreneurial pursuits" and was created pursuant to Act 59 of 2001 (South Carolina Education Lottery Act), S.C. Code Ann. §§ 59-150-10 *et seq.*" Glassmeyer admitted this allegation to the extent it was consistent with law.
- "Defendant is a citizen and resident of Richland County, South Carolina."
- "Jurisdiction and venue are properly in this Court." Glassmeyer admitted this allegation to the extent it was consistent with law.
- "On or about March 31, 2014, Defendant submitted his first in a series of FOIA requests to SCLC, seeking certain information relating to 'all bona fide claims' for any SCLC prize equal to or exceeding One Million Dollars (\$1,000,000) in gross proceeds from March 1, 2013 to March

20, 2014.” Glassmeyer admitted this allegation to the extent it accurately stated the content of his FOIA request.

- “Specifically, for all such claims Defendant requested the claimant’s full name, address, and telephone number; the date and gross amount of the claim; and a copy of any and all forms of identification obtained from the claimants.” Glassmeyer admitted this allegation to the extent it accurately stated the content of his FOIA request.
- “. . . on or about April 16, 2014, SCLC provided a written response to Defendant’s request (Exhibit B), wherein Plaintiff provided the following information: (1) gross dollar amounts of all such claims; (2) the dates of all such claims; (3) the home town and state of residence for all such claimants; and (4) the game associated with the prize won.” Glassmeyer admitted that the Lottery Commission sent the response.
- “In addition, in its April 16, 2014 response SCLC notified Defendant that the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all such claimants are specifically exempted from disclosure by S.C. Code Ann. : 30-2-310(A)(1)(e), which in turn made this information exempt from disclosure under S.C. Code Ann. § 30-4-40(a)(4). Moreover, SCLC notified Defendant that it had determined that all such information is also exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40(a)(2) because it is of a personal nature and its public disclosure would constitute an unreasonable invasion of personal privacy.” Glassmeyer admitted that the Lottery

Commission's referenced response stated what is stated, but Glassmeyer denied that the content of that response has or had the legal effect or effects claimed by the Lottery Commission and denied that the information requested is exempt from disclosure under FOIA.

- "On or about April 17, 2014, Defendant notified SCLC that he believed the response of April 16, 2014 did not satisfy his March 31, 2014 FOIA request." Glassmeyer admitted that the correspondence he sent stated what it stated.
- "Defendant also submitted an additional request seeking only claimant's full name for all claims for any SCLC prize equal to or exceeding One Million Dollars (\$1,000,000) in gross proceeds from March 1, 2013 to March 20, 2104." Glassmeyer admitted that the correspondence he sent stated what it stated.
- "On April 16, 2014, the Defendant sent a FOIA request seeking a copy of the letter SCLC sent to winners after his initial request, copies of any and all 'legal documents' received from any source, and copies of any and all documents from 'any lawyer, law firm, or winners of any SCEL prize' relating to his initial FOIA request. Mr. Glassmeyer's requests of April 16, 2014, April 17, 2014, and SCLC's response are presented in Exhibit C." Glassmeyer admitted that the correspondence he sent stated what it stated.
- "On April 25, 2014, in the Court of Common Pleas for the Fifth Judicial Circuit of South Carolina, The Honorable L. Casey Manning entered an

order granting declaratory judgment to a recent lottery winner confirming that the release of the winner's personal identifying information would constitute an unreasonable invasion of personal privacy within the meaning of S.C. Code Ann. § 30-4-40(a)(2) (Exhibit D). The Court further entered a permanent injunction restraining the SCLC from releasing any and all information regarding that lottery winner in response to any FOIA request." Glassmeyer's qualifications as to this allegation are several and substantial. Glassmeyer admitted that the referenced order states what it states, but he denied that the order has any effect on his rights to receive the information he has requested from the Lottery Commission. Further, Glassmeyer pled that the order in the Doe suit was the product of the Lottery Commission and Doe colluding to gin up the order.

- "SCLC now seeks a Declaratory Judgment pursuant to Rule 57, SCRCP, and the South Carolina Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*, confirming that the release of a lottery winner's name, complete address, telephone numbers(s), and/or forms of identification submitted to SCLC would constitute an unreasonable invasion of their privacy in accordance with S.C. Code Ann. § 30-4-40(a)(2) and therefore may be withheld from disclosure in response to any FOIA request." Glassmeyer admitted the Lottery Commission sought what it sought but denied that the Lottery Commission was entitled to what it sought.

- “SCLC therefore requests that the Court declare that the release of a lottery winner’s name, complete address, telephone numbers(s), and/or forms of identification submitted to SCLC would constitute an unreasonable invasion of their privacy in accordance with S.C. Code Ann. § 30-4-40(a)(2) and therefore may be withheld from disclosure in response to any FOIA request.” Glassmeyer admitted the Lottery Commission requested what it requested but denied that the Lottery Commission was entitled to what it requested.
- “The purpose of FOIA is not to expose individuals to unwarranted and unnecessary invasions of privacy, but instead it is designed to ‘prevent the government from acting in secret.’” Glassmeyer admitted that a purpose of FOIA is to prevent the government from acting in secret and that exposing individuals to unwarranted invasions of privacy is not a purpose of FOIA.

(R. pp. 20-27, 148-52.)

To the extent admitted and only to that extent, the above allegations Glassmeyer admitted, along with the allegations in his answer and counterclaim in support of his affirmative defenses and counterclaims, constituted the entire factual universe available to the circuit court to use in deciding the Lottery Commission’s motion for judgment on the pleadings. See Russell, 305 S.C. 86; Falk, 341 S.C. 281; Fireman’s Ins., 302 S.C. 234.

The circuit court, however, decided to grant judgment on the pleadings by accepting the unadmitted allegations of the Lottery Commission’s complaint, treating

the things the Lottery Commission alleged as though they had been proven. As this court has just recently reminded us, though, “[a]llegations in a [c]omplaint denied in [an] answer are evidence of nothing.” Curry v. Carolina Ins. Group of SC, Inc., Op. No. 5679 (S.C. Ct. App. filed Aug. 21, 2019) (Shearouse Adv. Sh. No. 33 at 42, 47) (quoting Griffin v. Van Norman, 302 S.C. 520, 522, 397 S.E.2d 378, 379 (Ct. App. 1990) (brackets added by court in Curry opinion); accord Bowers v. Bowers, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) “[m]ere allegations, denied by the other party, are not evidence”).

This court was not permitted to look outside what Glassmeyer pled in reviewing the decision below. See Russell, 305 S.C. 86; Falk, 341 S.C. 281; Fireman’s Ins., 302 S.C. 234. But this court did look outside what Glassmeyer pled (e.g., finding that what was stated in the Lottery Commission’s committee meeting minutes was true and that disclosing lottery claimants’ identities exposes them to significant safety risks).

With the proper standard of review applied, in order for this court to affirm the lower court’s findings and conclusions that were outside the scope of what Glassmeyer pled, this court would have had to determine that those things were true as a matter of law – since they could not have been determined as matter of fact. See Russell, 305 S.C. 86; Curry, (Shearouse Adv. Sh. No. 33 at 42, 47) (quoting Griffin, 302 S.C. at 522); Falk, 341 S.C. 281; Fireman’s Ins., 302 S.C. 234. As discussed below and in Glassmeyer’s briefs, the court could not have made such a determination consistently with existing law.

Respectfully, this court must have misapprehended or overlooked that it was finding support for its conclusions in “[a]llegations in a [c]omplaint denied in [an]

answer [that were] evidence of nothing.” Curry, (Shearouse Adv. Sh. No. 33 at 42, 47) (quoting Griffin, 302 S.C. at 522). It is deeply important that the substantive conclusions that a court reaches be right; however, it is just as important that the process used to reach those conclusions be right. See LaSalle Bank Natl. Assn. v. Davidson, 386 S.C. 276, 279, 688 S.E.2d 121, 122-23 (2009). There are many substantive problems with the circuit court’s order and this with this court’s opinion affirming it, but, on this point of procedural error, even without regard to any other issues, reversal is required. See Russell, 305 S.C. 86; Curry, (Shearouse Adv. Sh. No. 33 at 42, 47) (quoting Griffin, 302 S.C. at 522); Falk, 341 S.C. 281; Fireman’s Ins., 302 S.C. 234.

II. This court’s opinion is inconsistent with the government’s burden to prove the applicability of a FOIA exemption and the case-by-case approach required under FOIA by our Supreme Court and as held by this court in Pope v. Wilson this June.

Our Supreme Court has held that the “determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis.” Evening Post Publishing Co. v. Berkeley Cnty. Sch. Dist., 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011). Interpreting this directive, this court reversed the grant of a motion for judgment on the pleadings in a FOIA case this June, concluding “that when a citizen in litigation with a governmental agency directs a FOIA request to that agency, the agency must *show* the applicability of a specific FOIA exemption to *each* requested public record.” Pope v. Wilson, Op. No. 5657 (S.C. Ct. App. filed June 19, 2019) (Shearouse Adv. Sh. No. 25 at 35, 43) (emphasis added). This court in Pope noted that “[t]he seriousness with which our appellate courts have viewed FOIA rights in the past is an additional reason for our appellate courts to continue requiring the government to *show* an exemption.” Id. at 43 n. 9 (emphasis added). This court observed that

affirming the circuit court's judgment on the pleadings, which addressed the information sought categorically, rather than specifically, "could possibly encourage circuit courts to gloss over what should be a case-specific analysis" and that the circuit court's "vague" and categorical determination that the records sought were exempt from FOIA "comes close to the 'blanket prohibition' that our supreme court has cautioned against." Id. at 44 (quoting Evening Post, 392 S.C. at 83 ("the exemptions should be narrowly construed to not provide a blanket prohibition of disclosure in order to 'guarantee the public reasonable access to certain activities of the government'")).

In Pope, this court rejected the circuit court's determination that the applicability of a FOIA exemption could be determined on the pleadings as a matter of law. Id. Rejection of that notion is entirely consistent with the Supreme Court's statement that "[t]he burden of proving that an exemption exists lies with the government." Evening Post, 392 S.C. at 83 (emphasis added). In City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996), the city invoked the unreasonable invasion of personal privacy exemption under S.C. Code Ann. § 30-4-40(a)(2), but the Supreme Court disagreed with the "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. Thus, it remains to be seen whether the report qualifies for an exception under FOIA." City of Columbia, 323 S.C. at 387.

This court stated in its opinion in the instant case that "[t]he question of whether the information Glassmeyer requested was exempt under FOIA is a question of law and

does not require looking at any facts other than Glassmeyer's request." That is wrong. Evening Post, 392 S.C. at 83; City of Columbia, 323 S.C. at 387; Pope, (Shearouse Adv. Sh. No. 25 at 43). The burden is on the government to prove, with evidence, on a case-by-case basis, that a FOIA exemption applies with regard to each record for which an exemption is claimed. See Evening Post, 392 S.C. at 83; Pope, (Shearouse Adv. Sh. No. 25 at 43). This especially true with regard to the FOIA exemption at issue in this case, since "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." Burton v. York County Sheriff's Dept., 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004). The Supreme Court has already rejected the matter-of-law approach to this FOIA exemption in City of Columbia v. ACLU. 323 S.C. at 387. Accordingly, the government entity claiming this exemption is tasked with proving a factual record that shows both that 1) the information sought is of a personal nature and 2) that disclosure of the information would necessarily constitute an unreasonable invasion of personal privacy. Id.; Burton, 358 S.C. at 352.

The court's opinion in this case, however, has contravened precedent authored by this court and by the Supreme Court. Similarly to the lower court in Pope, the lower court in this case issued a judgment on the pleadings that, regardless of its many other problems, took a categorical, rather than a case-by-case, record-by-record approach to the question of whether the information sought by Glassmeyer fell within the rather narrow and factually specific confines of a FOIA exemption that allows a public body not to disclose "[i]nformation of a personal nature where the public disclosure thereof

would constitute unreasonable invasion of personal privacy.” S.C. Code Ann. § 30-4-40(a)(2). In affirming the lower court, this court ran afoul of precedent.

Respectfully, this court misapprehended or overlooked that it violated precedent by affirming the grant of a motion for judgment on the pleadings that decided this FOIA exemption was applicable on a categorical basis.

III. This court’s decision that the Lottery Commission could seek a declaratory judgment about a question arising under FOIA runs counter to established legal principles.

As this court noted in the opinion subject of this petition, “it is important to note that the legislature amended section 30-4-110 of the FOIA statute in 2017” to provide grounds for a public body to bring proceedings to have a question under FOIA determined, in the limited circumstances given in that section – but it is not important for the reason that the opinion gives.

That statutory change went into effect on May 19, 2017, after the briefing in this appeal was complete and, thus, long after the events and lower court proceedings subject of this case. The reporter’s notes on the change state that it “rewrote the section, . . . providing rights and remedies of public bodies from whom requests are made[.]” Rptr’s notes, S.C. Code Ann. § 30-4-110.

“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.

Before the legislature changed S.C. Code Ann. § 30-4-110, the law about who could seek a declaratory judgment for a question arising under FOIA was that such relief could be sought by a “citizen of the State[,]” not by anyone else. S.C. Code Ann. § 30-4-100(a). Before FOIA was enacted, no one could seek declarations about whether certain information in public records was exempt from a requester’s right as a citizen to disclosure of that information, because that right did not exist. When FOIA was enacted, it gave such a right, but only to a “citizen of the State[.]” S.C. Code Ann. § 30-4-100(a). That was the law in effect during all material times in this case.

Between the Uniform Declaratory Judgments Act (a general statute) and FOIA, FOIA is the more specific statute. “Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce, 814 S.E.2d 513, 518 (S.C. 2018) (quoting Capco of Summerville, Inc. v. J.H. Gayle Const. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (citation omitted)). At all times material to this case, FOIA provided that the only entity that could seek a declaratory judgment *as to a question arising under FOIA* was a “citizen of the State[,]” which the Lottery Commission acknowledges it is not. (R. p. 20.)

This court’s opinion now provides a precedential springboard for government bodies to bring suits like this one – suits against someone merely for having made a FOIA request or requests, even if the grounds for the suit fall outside the scope of the suits government bodies are now authorized to bring under the new provisions of S.C.

Code Ann. § 30-4-110. Respectfully, this court must have misapprehended or overlooked that the opinion issued in this case has the effect of enlarging the terms of a statute the Legislature enacted to allow for government entities to seek relief under FOIA, but only in specified circumstances. Id.

IV. The court was incorrect to conclude that disclosure of million-dollar lottery claimants' names and addresses would constitute an unreasonable invasion of their personal privacy.

Respectfully, this court misapprehended the proper analysis of the substantive FOIA question about the applicability of the unreasonable-invasion-of-personal-privacy exemption of S.C. Code Ann. § 30-4-40(a)(2). The circuit court and, now, this court have determined that the information sought in Glassmeyer's FOIA requests falls within a FOIA exemption that applies only where what is sought under FOIA is "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." Id.

The identity of those who receive individual payouts of a million dollars or more of public funds from the State of South Carolina is not a private matter, but is, rather, a very public matter. "South Carolina FOIA mandates that the public be provided with information regarding the expenditure of public funds." Weston v. Carolina Research and Development Foundation, 303 S.C. 398, 402, 401 S.E.2d 161, 164 (1990). The public interest in knowing who was paid many millions of dollars by a South Carolina state entity is self-evident. Id. This court's statement that is "unable to fathom how disclosure of the rest of the information" – information that identifies the people who have been given these millions of public dollars – "would benefit the public more than what was already provided" does not make sense. Finding out who

received large sums of money from the public fisc is a quintessential matter of public interest. See id.

This court's analysis and the circuit court's simply assumes that providing a FOIA requester with the names of successful lottery claimants necessarily amounts to an infringement upon the private lives of the claimants – but that has never been shown to be true. “Our Supreme Court has defined the ‘right to privacy’ as the right of an individual to be let alone and to live a life free from *unwarranted* publicity. However, 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.” Burton, 358 S.C. at 352 (emphasis added, internal quotation marks omitted) (quoting Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 566, 324 S.E.2d 313, 315 (1984)). First of all, receiving large amounts of state funds barely rates as implicating privacy concerns at all. It does not concern matters of the bedroom, the family, one's fears, one's childhood, or one's personality traits. It does not concern whether one has suffered any trauma. It is not embarrassing. There is not, and should not be, anything especially private about receiving a million dollars or more in public funds from the state. Indeed, the State of South Carolina publishes the names and respective annual salaries of state employees, as well as the names of and amounts paid to vendors who conduct business with the state. Second, to the extent that disclosure of information that identifies who got these millions of dollars from the state translates into publicity at all, it is certainly *warranted* publicity. See Weston, 303 S.C. at 402. The public has a rather significant legitimate interest in knowing who got the public's money. See id.

What Glassmeyer wanted to know about these lottery claimants is the same sort of information that goes in a phone book: their names and addresses. In Burton, the Court of Appeals held that allegations concerning the sexual practices of off-duty deputy sheriffs constituted the sort of information that could fall within the unreasonable-invasion-of-personal-privacy exemption. 358 S.C. at 352. Names and addresses and whether someone received a large sum of money from the state are not that sort of information. Respectfully, this court failed to engage in any analysis of whether the information at issue is of such a deeply private character that it falls within this exception to the rule of mandatory disclosure.

This court, rather, concluded that S.C. Code Ann. § 30-4-40(a)(2) applied merely because “[t]he lottery claimants’ names are not public knowledge and the release of such information could lead to the discovery of other personal information.” But wouldn’t practically any information about a person have the potential to “lead to the discovery of other personal information[?]” This opinion, particularly in combination with its apparent interpretation of Glassmeyer v. City of Columbia, 414 S.C. 213, 777 S.E.2d 835 (Ct. App. 2015), comes dangerously close to announcing a rule that information that is about a person – i.e., literally, personal information – falls as a matter of law within the ambit of a FOIA exemption that, on its face, requires information to be *both* personal *and* the of sort that its disclosure to a FOIA requester necessarily would constitute an unreasonable invasion of personal privacy. S.C. Code Ann. § 30-4-40(a)(2). This opinion has effectively lopped off half of the inquiry, without any permission from the Legislature to change what its statute says.

Furthermore, this court gave rather short shrift to something that the circuit court ignored altogether: the fact that the lottery claimants gave this information, un compelled, to the Lottery Commission on a document that informed them that the Lottery Commission may well end up giving some FOIA requester the information they put on it, including their names and addresses. (R. pp. 155-56, 160.) Being informed of that, they chose to submit the information anyway. (R. pp. 155-56, 160.) That goes to the level of privacy a reasonable person ought to expect to have in that information, and that level is not a high one, if one should reasonably expect to have any at all. Burton, 358 S.C. at 352. How is it an unreasonable invasion of someone's privacy for a government agency to give out a person's identifying information when that person didn't have to give the agency the information, was told that the agency might have to give it out to anyone who asked for it, and, being so informed, gave the agency the information anyway? The answer is simple: it isn't. Id.

When the burden is placed, as the law requires it to be, on the public body to prove the applicability of an exemption to mandatory disclosure, one sees immediately that the Lottery Commission has a difficult time contending that release of this information infringes on the claimants' privacy, period, much less that it rises to the heightened level of an "unreasonable invasion" of it. S.C. Code Ann. § 30-4-40(a)(2).

In addition, this court's opinion engaged in a balancing analysis that is off base. This court looked at what *Glassmeyer* wanted the information for — but that's not the way the analysis works. The analysis of a case involving the potential application of FOIA's unreasonable-invasion-of-personal-privacy exemption involves balancing an individual's privacy interest against the need or desire *of the public generally* to have

access to *the type of information* in question. Burton, 358 S.C. at 352. The interest in the information that is subject of the inquiry is not that of the individual requester, it is the public's "general interest" in being able to access information of the type at issue. Id. The reason that the particular citizen who made the request wants the information is usually irrelevant. See id.; S.C. Code Ann. §§ 30-4-40, -50. It is incongruous with our Supreme Court's holding that "[t]he burden of proving that an exemption exists lies with the government" for a FOIA requester to have to make any showing at all of why he wants the information in question. Evening Post, 392 S.C. at 83.

The public interest in the information sought is palpable and inherent: the public has a right to know who receives its money. Weston, 303 S.C. at 402. Given the public nature of a person's receipt of a million dollars or more in state money, whatever invasion, if any, of that person's privacy is implicated by disclosing his name and address is minimal at best and is certainly reasonable. See id.

V. **Glassmeyer v. City of Columbia** needs to be overruled or distinguished.

Glassmeyer set out in his brief and in a motion to argue against precedent that Glassmeyer v. City of Columbia, 414 S.C. 213, 777 S.E.2d 835 (Ct. App. 2015), ought to be either overruled or distinguished, at least to the extent inconsistent with Glassmeyer's arguments on appeal. It should. As discussed above, between that opinion and this one, this court has come dangerously close to announcing a rule that information that tends to identify a person falls as a matter of law within the ambit of S.C. Code Ann. § 30-4-40(a)(2). If the government can withhold information in response to a FOIA request merely because it would tell a reader who someone is, this exception to the rule of mandatory disclosure will swallow FOIA nearly whole.

Glassmeyer v. City of Columbia involved a FOIA request to the City of Columbia that sought “all materials relating to not fewer than the final three applicants for the most recent vacancy announcement for the position of city manager.” Glassmeyer v. City of Columbia, 414 S.C. at 216-17. The request sought, among other items of information, the applicants’ home addresses, telephone numbers, and email addresses. Id. at 217. The case came before this court on the city’s argument that “the trial court erred in finding the FOIA compelled disclosure of home addresses, personal telephone numbers, and personal email addresses for applicants to the position of city manager.” Id. at 218. The court held “the applicants’ home addresses, personal telephone numbers, and personal email addresses are ‘[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy’ and are exempt from disclosure under section 30-4-40(a)(2).” Glassmeyer v. City of Columbia, 414 S.C. at 223.

The court’s analysis in that case was that it found “the home addresses, personal telephone numbers, and email addresses of the applicants are information in which the applicants have a privacy interest” and that “[i]n balancing the interests of protecting personal information against the public’s need to know the information, we find no evidence in the record demonstrates disclosure would further the FOIA’s purpose of protecting the public from secret government activity.” Id. at at 221, 223. The court then stated that, “[a]ccordingly, we hold the applicants’ home addresses, personal telephone numbers, and personal email addresses are ‘[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of

personal privacy’ and are exempt from disclosure under section 30-4-40(a)(2).” Glassmeyer v. City of Columbia, 414 S.C. at 223.

A citizen who has made a FOIA request does not carry a burden to “demonstrate[] disclosure would further the FOIA’s purpose of protecting the public from secret government activity.” Glassmeyer v. City of Columbia, 414 S.C. at 223. To the extent that Glassmeyer v. City of Columbia – or the opinion in this case – stands for the proposition that a FOIA requester has a burden of any kind to meet with regard to whether an exemption applies, it is wrong, is contrary to Supreme Court precedent, and should be overruled. See Evening Post, 392 S.C. at 83.

Just as troubling, or perhaps more, is what is *not* discussed in the analysis in Glassmeyer v. City of Columbia, 414 S.C. at 218-23. The opinion states that a person’s address and telephone number are items of information in which the person has a privacy interest, *id.*, but what the opinion does not do is take the next analytical step, a step required by the language of exemption. Having found a privacy interest was implicated, the analysis used in Glassmeyer v. City of Columbia did not then ask the necessary question to determining whether the unreasonable-invasion-of-personal-privacy exemption applies: Would public disclosure of the information not just implicate a privacy interest but actually “constitute *unreasonable* invasion of personal privacy[?]” S.C. Code Ann. § 30-4-40(a)(2) (emphasis added). Is the information sought of such a deeply private character that disclosing it pursuant to a FOIA request would unreasonably invade a person’s privacy? See id. To the extent that Glassmeyer v. City of Columbia condones an analysis that does not reckon whether the information

sought is of such a nature that its disclosure would necessarily be an *unreasonable* invasion of personal privacy, it should be overruled.

To the extent that Glassmeyer v. City of Columbia stands for the proposition that disclosing names and home addresses always does or even usually would fall within the unreasonable-invasion-of-personal-privacy exemption, it should be overruled. Taking a categorical approach to what falls within S.C. Code Ann. § 30-4-40(a)(2) is deeply problematic and inconsistent with existing precedent.

VI. The Lottery Commission plainly was not a proper party to seek the injunction it got, the lower court plainly erred in ordering the injunction it did, and this court erred in affirming it.

This court found that the Lottery Commission “had standing under the Declaratory Judgments Act to bring this declaratory judgment *and injunction* action. Thus, we affirm the circuit court’s grant of injunctive relief.” (Emphasis added.) Respectfully, Glassmeyer must note that this finding does not make any sense.

This court must have misapprehended or overlooked that the standing requirements for an action seeking a declaratory judgment and an action seeking injunctive relief are different. Declaratory relief, not injunctive relief, is what is available under the Declaratory Judgments Act. S.C. Code Ann. § 15-53-30. This court has conflated the very different requirements for standing to seek a declaratory judgment under the Declaratory Judgments Act with those for seeking an injunction. This court correctly quoted the Supreme Court regarding the elements a plaintiff must prove in order to receive an injunction: “(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law.” Compton v. S.C. Dept. of Corr., 392 S.C. 361, 366, 709

S.E.2d 639, 642 (2011). Those elements are very different from those for standing to seek a declaratory judgment. Id.; S.C. Code Ann. § 15-53-30. An actual application of the analysis of those elements to this case demonstrates quite readily that the Lottery Commission did not have standing to seek the injunction rendered here, much less that the record shows they were entitled to get it.

The Lottery Commission alleged that the Lottery Commission's *claimants* would suffer immediate and irreparable harm to their personal privacy without the entry of a permanent injunction. (R. p. 26.) No one involved in this case to date has articulated any legal authority to the effect that the Lottery Commission has standing to seek an injunction to prevent harm to someone else.

The scope of the injunction against Glassmeyer is frighteningly broad. The court did not enjoin him from obtaining certain information from the Lottery Commission. The court did not enjoin him from making FOIA requests of the Lottery Commission for certain information. No, the court "ORDERED that Defendant is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants." (R. p. 12.) Period. Of all lottery winners and claimants, whether their status as such is known to Glassmeyer or not. Whether that information is sought from *any source*. Forever. This is certainly not a proper case for an injunction against Glassmeyer, but, even if it were, *this* injunction would be impermissibly broad. An injunction should never be issued that is broader in scope than what is necessary to stop the harm it is designed to prevent. Goldberg v. Trakas, 206 F.Supp. 867 (E.D.S.C. 1962); see Gibbs v. Kimbrell, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993) (injunction

precluding violation of covenants should not extend beyond date that covenants would expire by their terms).

The circuit court further failed to connect the harm it envisioned in the absence of an injunction to how the issuance of this or any injunction is needed to prevent that harm. The lower court appears to have equated a perceived harm from *disclosure* of the information at issue with the very different activity of *asking for* the information. This supposed “harm” is something that the order in question relates to the Lottery Commission’s disclosure of the information, not to Glassmeyer seeking the information – yet the latter is what the court has enjoined. (R. p. 12.) Asking for the information, which is the enjoined activity, is not what causes or even could cause the ostensible “harm.” (R. pp. 1-12.)

This court perceived a “risk of unlimited legal exposure for SCLC,” presumably stemming from the Lottery Commission’s release of information that would identify the people to whom it paid a million dollars or more in state money. Not only has this court and the lower court failed to come up with any theory on which the Lottery Commission could be liable to someone for disclosing this information under FOIA, the form on which the lottery claimants submit this information to the Lottery Commission contains the following, in bold type, displayed prominently above the line for the claimant’s signature:

**INFORMATION FROM THIS FORM MAY BE
SUBJECT TO DISCLOSURE UNDER THE S.C.
FREEDOM OF INFORMATION ACT (FOIA). I
release SCEL from all liability or claims relating to
information provided to or used by a party obtaining
information pursuant to FOIA.**

(R. p. 160.)

It would appear to be impossible for the Lottery Commission to be exposed to any liability, under any theory, for giving out this information in response to a FOIA request. See Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 492, 649 S.E.2d 494, 498 (Ct. App. 2007) (discussing nature and effect of release). This court appears to have overlooked or misapprehended this point and, further, has overlooked or misapprehended that the injunction granted by the circuit court is manifestly improper.

VII. The denial of Glassmeyer's motion to dismiss was properly before the court, and it should have been reversed.

This court declined to address the lower court's failure to grant Glassmeyer's motion to dismiss the Lottery Commission's claims, stating that the denial of a motion to dismiss is not appealable. In a case in this posture, though, the denial of a motion to dismiss is appealable. Where an appealable issue is before an appellate court, a decision that is not appealable in itself may be appealed and addressed by the appellate court. Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 623 S.E.2d 387 (2005); Briggs v. Richardson, 273 S.C. 376, 379 n. 1, 256 S.E.2d 544, 546 n. 1 (1979); Southeastern Housing Found. v. Smith, 380 S.C. 621, 670 S.E.2d 680, 688 n. 14 (Ct. App. 2008); Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 338, 574 S.E.2d 502, 511-12 (Ct. App. 2002); Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001). For the reasons discussed above and in Glassmeyer's briefs, the court should have reversed and granted Glassmeyer's motion to dismiss. The Lottery Commission failed to plead facts that, if true, would have constituted a cause of action, even if taken in the light most favorable to the Lottery Commission. See Rule 12(b)(6), SCRCP.

VIII. The opinion issued in this case treats one of Glassmeyer's counterclaims as though it didn't exist.

Glassmeyer pled a counterclaim against the Lottery Commission for relief under FOIA. (R. pp. 156-57.) This court's opinion reads as though that counterclaim was never pled. Respectfully, this court must have overlooked that Glassmeyer had pled this counterclaim, which was not the subject of the Lottery Commission's motion for judgment on the pleadings and, accordingly, must be remanded to be adjudicated.

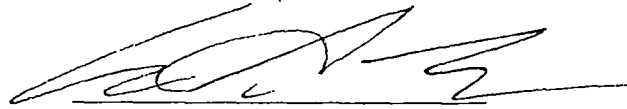
IX. Rehearing *en banc* would be proper.

"A hearing or rehearing *en banc* is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance." Rule 219(a), SCACR.

Consideration by the full court appears necessary to secure or maintain the uniformity of this court's decisions, as well as to ensure adherence to Supreme Court precedent. Further, the members of this court should be alarmed that a panel of this court affirmed a judgment on the pleadings that was based, not on the non-movant's pleading, but on the unadmitted allegations of the *movant's* pleading. That needs to be nipped in the bud before it grows out of control.

WHEREFORE, Appellant prays for an order granting rehearing or rehearing *en banc* in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew S. Radeker', written over a horizontal line.

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Attorneys for Appellant

August 30, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

RECEIVED

AUG 30 2019

SC Court of Appeals

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

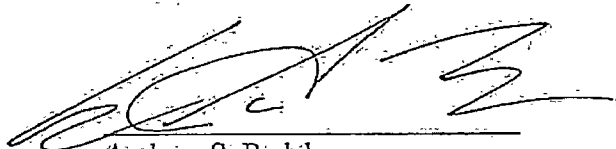
PROOF OF SERVICE

I, the undersigned, certify that I served the foregoing petition for rehearing or rehearing *en banc* by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Karl S. Bowers, Jr., Esq.
Bowers Law Office
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August 30, 2019

Respectfully submitted,



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The South Carolina Court of Appeals

South Carolina Lottery Commission, Respondent,

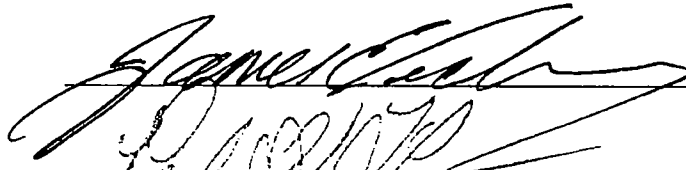
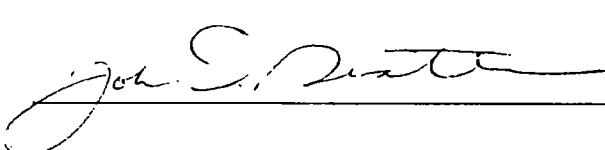
v.

George S. Glassmeyer, Appellant.

Appellate Case No. 2016-001112

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.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Andrew Sims Radeker, Esquire
Taylor Meriwether Smith, IV, Esquire
Karl Smith Bowers, Jr., Esquire
Jeanette W. McBride

FILED

December 16, 2019



The South Carolina Court of Appeals

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December 16, 2019

Mr. Andrew Sims Radeker, Esquire
PO Box 50143
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Mr. Taylor Meriwether Smith, IV, Esquire
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Re: SC Lottery Commission v. George Glassmeyer
Appellate Case No. 2016-001112

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Karl Smith Bowers, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

RECEIVED
AUG 28 2018
SC Court of Appeals

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

MOTION TO ARGUE AGAINST PRECEDENT

Andrew S. Radeker
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Appellant hereby moves pursuant to Rule 217, SCACR, to argue against precedent with regard to Glassmeyer¹ v. City of Columbia, 414 S.C. 213, 777 S.E.2d 835 (Ct. App. 2015). This motion is made out of an abundance of caution. There are several independent reasons Appellant is entitled to reversal in this case, some of which have nothing to do with anything discussed in the Glassmeyer v. City of Columbia opinion. Also, no reported opinion following Glassmeyer v. City of Columbia has yet provided insight into the proposition or propositions for which that opinion stands; thus, it is quite possible that this court views or will view that opinion's precedential effect as presenting no inconsistency with any of Appellant's arguments for reversal in this case. Since it is also possible, however, that this court may interpret Glassmeyer v. City of Columbia as inconsistent with at least some of what Appellant argues in this appeal, Appellant makes this motion so that his counsel, consistently with Rule 217, SCACR, may discuss Glassmeyer v. City of Columbia freely at oral argument and argue that, if that case is precedent for a proposition that is inconsistent with an argument by Appellant in this case, Glassmeyer v. City of Columbia ought to be overruled to that extent.

The grounds for this motion are as follows:

1. Glassmeyer v. City of Columbia involved a request to the City of Columbia under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, et seq., (hereinafter "FOIA") that sought "all materials relating to not fewer than the final three applicants for the most recent vacancy announcement for the position of city manager."

¹ In a remarkable coincidence, Appellant in this case is the same person who was the plaintiff and, later, the respondent, in that case.

Glassmeyer v. City of Columbia, 414 S.C. at 216-17. The request sought, among other items of information, the applicants' home addresses, telephone numbers, and email addresses. Id. at 217. While the City originally withheld more of the requested information, the case came before this court on the City's argument that "the trial court erred in finding the FOIA compelled disclosure of home addresses, personal telephone numbers, and personal email addresses for applicants to the position of city manager." Id. at 218. The court held "the applicants' home addresses, personal telephone numbers, and personal email addresses are '[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy' and are exempt from disclosure under section 30-4-40(a)(2)." Glassmeyer v. City of Columbia, 414 S.C. at 223. Accordingly, that case involved the same unreasonable-invasion-of-personal-privacy exemption from mandatory FOIA disclosure that is at issue in the instant case. S.C. Code Ann. § 30-4-40(a)(2).

2. The court stated as follows:

Glassmeyer contends the City's disclosure of the information would not result in a substantial invasion of privacy because the telephone numbers and addresses are publicly available information and email addresses are generally available through online research.

...

We find the home addresses, personal telephone numbers, and email addresses of the applicants are information in which the applicants have a privacy interest. However, we must balance the privacy interest of the applicants against the interest of the public's need to know this information.

...

Glassmeyer asserts the disclosure of the information would serve the public's interest by demonstrating whether the applicants were truthful in their applications. Other than the home addresses, telephone numbers, and email addresses, the City has disclosed the applicants' entire applications, including their educational backgrounds and employment histories. We fail to see how disclosure of the limited information the City seeks to protect would serve to establish the veracity of the applicants more than the information already provided.

In balancing the interests of protecting personal information against the public's need to know the information, we find no evidence in the record demonstrates disclosure would further the FOIA's purpose of protecting the public from secret government activity. Accordingly, we hold the applicants' home addresses, personal telephone numbers, and personal email addresses are "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy" and are exempt from disclosure under section 30-4-40(a)(2).

~ Glassmeyer v. City of Columbia, 414 S.C. at 221, 223.

3. A citizen requesting information under FOIA is entitled to all public records he requests unless an exemption to mandatory disclosure applies, and "[t]he burden of proving that an exemption exists lies with the government." Evening Post Publishing Co. v. Berkeley

Cnty. Sch. Dist., 392 S.C. 76, 83, 708 S.E.2d 745 (2011).

Respectfully, Appellant notes that language from the quoted passages from Glassmeyer v. City of Columbia above could be read as indicating that a FOIA requester must put forth some specific reason why the information is sought, which is not the law, and that the reason the information is sought has something to do with whether the unreasonable-invasion-of-personal-privacy exemption applies, which it does not.

4. The test for whether the unreasonable-invasion-of-personal-privacy exemption applies is whether the information sought is of such a character that “the public disclosure thereof would constitute unreasonable invasion of personal privacy.” S.C. Code Ann. § 30-4-40(a)(2). The burden is on the government to show that an exemption applies, not on the requesting citizen to show why he needs or wants the information. Evening Post, 392 S.C. at 83.
5. A citizen who has made a FOIA request does not carry a burden to “demonstrate[] disclosure would further the FOIA’s purpose of protecting the public from secret government activity.” Glassmeyer v. City of Columbia, 414 S.C. at 223. To the extent that Glassmeyer v. City of Columbia stands for the proposition that a FOIA requester has a burden of any kind to meet with regard to whether an exemption applies, it is wrong, is contrary to Supreme Court precedent, and should be overruled. See Evening Post, 392 S.C. at 83.

6. But perhaps more troubling is what is *not* discussed in the analysis in Glassmeyer v. City of Columbia, 414 S.C. at 218-23. The analysis discusses whether a person's address and telephone number are items of information in which the person has a privacy interest, *id.*, but what the analysis does not do is take the next step, a step required by the language of exemption. Having found a privacy interest was implicated, the analysis used in Glassmeyer v. City of Columbia did not then ask the necessary question to determining whether the unreasonable-invasion-of-personal-privacy exemption applies: Would public disclosure of the information not just implicate a privacy interest but actually "constitute *unreasonable* invasion of personal privacy[?]" S.C. Code Ann. § 30-4-40(a)(2) (emphasis added). Is the information sought of such a deeply private character that disclosing it pursuant to a FOIA request would unreasonably invade a person's privacy? See id.
7. Essentially, the proper inquiry under S.C. Code Ann. § 30-4-40(a)(2) is whether the information is of such a kind or is sought under such circumstances that disclosing it would amount to a violation of the South Carolina Constitution under S.C. Const. art. I, § 10, which provides the people of this state a right to be free from "unreasonable invasions of privacy[.]"
8. Practically every piece of information that concerns a person implicates at least a scintilla of a privacy interest. Merely because

information sought in a FOIA request implicates an interest in personal privacy does not trigger the exemption of S.C. Code Ann. § 30-4-40(a)(2). Merely because providing information sought in a FOIA request would amount to *an* invasion of personal privacy does not trigger the exemption. To the extent that Glassmeyer v. City of Columbia condones an analysis that does not reckon whether the information sought is of such a deeply private nature that its disclosure would necessarily be an *unreasonable* invasion of personal privacy, it should be overruled.

9. In City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996), the City of Columbia claimed the unreasonable invasion of personal privacy exemption under S.C. Code Ann. § 30-4-40(a)(2) applied, but the Supreme Court disagreed with the “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. Thus, it remains to be seen whether the report qualifies for an exception under FOIA.” City of Columbia, 323 S.C. at 387.
10. As discussed in Appellant’s briefs, names and addresses are not of such an intensely private character that they would, without something more, be that kind of information. They are too public,

not private enough. The government disclosing information to a FOIA requester that could be found in a telephone book is not an unreasonable invasion of personal privacy. A request for such information would have to be made under some unusual circumstances in order for such a request to come within the ambit of the exemption.

11. Further, the Glassmeyer v. City of Columbia decision relied on inapposite statutory schemes that have also been interpreted according to their own bodies of jurisprudence, different from the principles that underlie South Carolina's body of FOIA case law. These were the U.S. Freedom of Information Act, 5 U.S.C. § 552, et seq. ("US FOIA"), and the Michigan Freedom of Information Act, M.C.L.A. § 15.231, et seq. ("Michigan FOIA"). Both US FOIA and Michigan FOIA differ from South Carolina's FOIA in their wording and their interpretation. The Supreme Court of South Carolina has stated unambiguously that "federal case law interpreting the US FOIA is not binding in this state because the exemptions contained in [US FOIA] are more expansive than those contained in South Carolina's FOIA." Newberry Pub. Co., Inc. v. Newberry County Commn. on Alcohol & Drug Abuse, 308 S.C. 352, 354 n. 4, 417 S.E.2d 870, 872 n. 4 (1992). Cases interpreting US FOIA and Michigan FOIA should not be seen as persuasive authority in a case about South Carolina's FOIA. See id. To the extent that the

Glassmeyer v. City of Columbia decision is precedent for it being proper to rely on such authority, it contradicts Supreme Court precedent and should be overruled.

12. To the extent that Glassmeyer v. City of Columbia stands for the proposition that disclosing names and home addresses always or even usually would fall within the unreasonable-invasion-of-personal-privacy exemption, it should be overruled. As discussed in Appellant's brief, legislative intention as to what information does fall within this exemption can be seen by looking at FOIA as a whole. FOIA provides in a section regarding "matters declared public information" that "home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to [FOIA] may not be used *for commercial solicitation purposes*." S.C. Code Ann. § 30-4-50 (emphasis added). FOIA also deems as exempt from disclosure "information relating to public records which include the name, address, and telephone number . . . 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." S.C. Code Ann. § 30-4-40(a)(2). The natural interpretation to take from this is that the General Assembly intended that home addresses and telephone numbers are the sort of

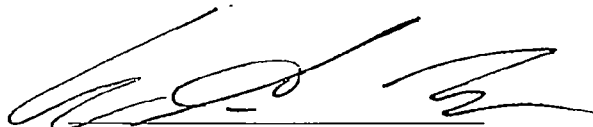
information that, under ordinary circumstances, is required to be disclosed in response to a FOIA request.

13. Taking a categorical approach to what falls within S.C. Code Ann. § 30-4-40(a)(2) would be deeply problematic and inconsistent with existing precedent. To the extent that Glassmeyer v. City of Columbia stands for the proposition that names and addresses are a category of information that fall within the exemption of S.C. Code Ann. § 30-4-40(a)(2), it should be overruled.
14. Appellant is not contending that names and address could never, under any circumstances, fall within the exemption of S.C. Code Ann. § 30-4-40(a)(2). If a FOIA requester were to ask for the names and addresses of child sex abuse victims, for example, that request would likely come within the ambit of S.C. Code Ann. § 30-4-40(a)(2), regardless of whether any other exemption would also apply. But that would be because the response to the request would identify people as having experienced an event that implicates their deepest privacy concerns. Receiving large amounts of state funds (as here) and applying for a job (as in Glassmeyer v. City of Columbia), by contrast, barely rate as implicating privacy concerns at all.
15. It may be that the court does not interpret Glassmeyer v. City of Columbia in a way that is at all inconsistent with Appellant's arguments. It may be that the court views Glassmeyer v. City of Columbia as distinguishable from this case. (After all, the claimants

who claim their lottery winnings from the Lottery Commission do so by completing a form that explicitly informs them that the information they submit may be subject to release under FOIA. (R. pp. 155-56, 160.) Nothing in the Glassmeyer v. City of Columbia opinion indicates that the job applicants filled out a similar form.) What Appellant asks in this motion is the freedom to discuss with the court at oral argument the ways that Glassmeyer v. City of Columbia could be interpreted as bad precedent, such that it ought to be addressed by this court.

WHEREFORE Appellant prays for an order permitting oral argument against precedent with regard to Glassmeyer v. City of Columbia, 414 S.C. 213, 777 S.E.2d 835 (Ct. App. 2015), to the extent that the court views that opinion as inconsistent with any of Appellant's arguments for reversal in this case.

Respectfully submitted,



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August 28, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Judge

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AUG 28 2018

Appellate Case No. 2016-001112 SC Court of Appeals

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

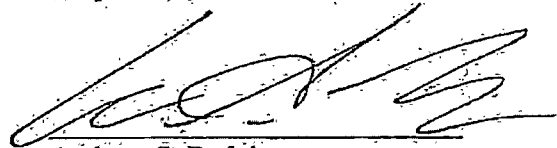
PROOF OF SERVICE

I, the undersigned, certify that I served the motion to argue against precedent by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Karl S. Bowers, Jr., Esq.
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August 28, 2018.

Respectfully submitted,



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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. Glassmower
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.

The Hon. Jenny Abbott Kitchings
Clerk of Court, Court of Appeals of South Carolina
Sept. 6, 2018
Page 2 of 3
Rule 208(b)(7) correspondence re: S.C. Lottery Commn. v. Glassmeyer

- (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.

The Hon. Jenny Abbott Kitchings
Clerk of Court, Court of Appeals of South Carolina
Sept. 6, 2018
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Rule 208(b)(7) correspondence re: S.C. Lottery Commn. v. Glassmeyer

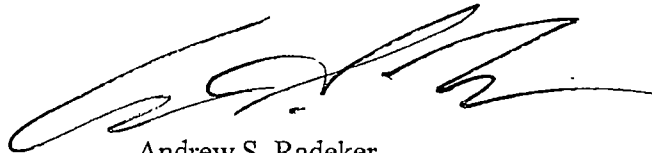
The reporter's notes on the change state that it "rewrote the section, removing criminal penalties, and providing rights and remedies of public bodies from whom requests are made and persons with specific interests in exempt information for which disclosure is sought."

"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.

A handwritten signature in black ink, appearing to read 'A. S. Radeker', with a stylized flourish at the end.

Andrew S. Radeker

ASR/

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

From: Kitchings, Jenny
To: "drew@harrisonfirm.com"; "taylor@harrisonfirm.com"; "butch@butchbowers.com"
Cc: "frontdesk@harrisonfirm.com"; "gwen@butchbowers.com"
Subject: 2016-001112 SC Lottery Commission v. George Glassmeyer
Date: Monday, September 10, 2018 1:09:00 PM

Dear Counsel:

Due to the need for hurricane preparation in advance of Hurricane Florence, the Court has cancelled oral argument scheduled for Wednesday, September 12, 2018, at 10:00 am. We will contact you regarding the next step in your appeal.

Please reply to this email to confirm receipt.

Thank you,

Jenny Abbott Kitchings

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The South Carolina Court of Appeals

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September 19, 2018

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Re: SC Lottery Commission v. George Glassmeyer
Appellate Case No. 2016-001112

Dear Counsel:

After careful consideration by the Court, this case will be submitted on the record on appeal and briefs during the September 2018 term without oral argument. Please notify the Clerk's office in writing within fifteen (15) days of the date of this letter if you would like any of the remaining bound copies of the record on appeal and briefs we may have. If you have not made arrangements to come pick up the extra copies within fifteen (15) days, we will dispose of the remaining copies of the record on appeal and briefs.

Very truly yours,

Jay A. Kitchings
CLERK

The South Carolina Court of Appeals

South Carolina Lottery Commission, Respondent,

v.

George S. Glassmeyer, Appellant.

Appellate Case No. 2016-001112

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2014CP4002926

OCT 01 2018

ORDER

Based on the vote of the panel, appellant's motion to argue against precedent is denied.

FOR THE COURT

BY

J. A. Kistner
CLERK

Columbia, South Carolina

FILED

cc:

Andrew Sims Radeker, Esquire
Taylor Meriwether Smith, IV, Esquire
Karl Smith Bowers, Jr., Esquire

September 27, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES

- I. Did the circuit court err in rendering a judgment that did away with Appellant's counterclaims without ever having had a trial on them or hearing any motion directed at them and without analysis of those claims?
- II. Did the circuit court err in entering judgment on the pleadings against Appellant on the basis of so-called facts that were neither admitted nor alleged by Appellant in his answer and counterclaim?
- III. Did the circuit court err in rendering judgment on the pleadings for the Respondent on its declaratory judgment claim about whether information is exempt from disclosure under the South Carolina Freedom of Information Act where the Respondent's own complaint showed the Respondent is a government public body, not a citizen, and has no standing to bring such a claim?
- IV. Did the circuit court err in rendering judgment on the pleadings for the Respondent on its claim seeking an injunction to prevent Appellant from seeking information where the Respondent's own complaint showed the Respondent has no standing to bring such a claim?
- V. Did the circuit court err in failing to dismiss the Respondent's declaratory judgment claim about whether information is exempt from disclosure under the South Carolina Freedom of Information Act where the Respondent's own complaint showed the Respondent is a government public body, not a citizen, and has no standing to bring such a claim?
- VI. Did the circuit court err in failing to dismiss the Respondent's claim seeking an injunction to prevent Appellant from seeking information where the Respondent's own complaint showed the Respondent has no standing to bring such a claim?

STATEMENT OF THE CASE

This is a case in which the Respondent, the South Carolina Lottery Commission (hereinafter “the Lottery Commission”), a public body, sued Appellant, George S. Glassmeyer (hereinafter “Glassmeyer”), a citizen of South Carolina, seeking a declaration that certain information Glassmeyer had sought through two requests made under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.*, (hereinafter “FOIA”) is exempt from mandatory disclosure under FOIA and requesting the issuance of a permanent injunction preventing Glassmeyer from seeking to obtain that information. (R. pp. 20-28.) The information concerned lottery winners who claimed prizes of or over a million dollars over a period of time, including their full names, addresses, telephone numbers, and forms of identification that they presented to the Lottery Commission to claim their lottery prizes. (R. pp. 21, 34.)

The Lottery Commission also sought an award of attorney’s fees against Glassmeyer. (R. p. 28.)

Glassmeyer answered, denying that the Lottery Commission was entitled to any relief and asserting various defenses, among them that he was entitled to the dismissal of the Lottery Commission’s claims for failure of the complaint to state facts sufficient to constitute a cause of action. (R. pp. 148-62.) Glassmeyer also pled counterclaims against the Lottery Commission, seeking a declaration that the Lottery Commission had violated FOIA, seeking an order directing the Lottery Commission to comply with FOIA with regard to his requests, and asserting a claim against the Lottery Commission for abuse of process. (R. pp. 156-58.) Glassmeyer’s answer and counterclaim attached “a copy of a South Carolina Education Lottery Winner Claim Form that was authored

by and is (or at least at times material to this case was) used by the Lottery Commission for lottery winners to submit claims to the Lottery Commission.” (R. pp. 155, 160-61.) The answer and counterclaim states that the “form specifically states that the information the lottery winner provides on the form may be subject to disclosure under FOIA[,]” and the form indeed states that. (R. pp. 156-60.) The information the form requires to be disclosed on it includes the information sought by Glassmeyer in his FOIA requests involved in this case. (R. p. 160.) The answer and counterclaim states that “if the information sought by the Defendant concerning the lottery winners at issue had at one time been private information exempt from disclosure under FOIA (which the Defendant denies), the lottery winners made that information not be in that category any more once they submitted the information on this form or one containing or accompanied by a similar disclosure.” (R. p. 156.) The answer and counterclaim states that the “lottery winners knowingly, intelligently, and voluntarily relinquished any ability they may have had to claim that the subject information about them was exempt from disclosure under FOIA.” (R. p. 156.) The attached Lottery Commission form states that a claimant who submits it releases the Lottery Commission from liability for disclosure of information about the claimant. (R. p. 160.)

Glassmeyer made written motions to dismiss and to strike the Lottery Commission’s prayer for attorneys’ fees. (R. pp. 165-70.) Those motions were denied by the Honorable Robert E. Hood. (R. p. 16.)

The case was set for a non-jury trial on December 5, 2014, before the Honorable L. Casey Manning. Glassmeyer submitted a memorandum concerning the issues in the case. (R. pp. 236-53.) Before trial began, the Lottery Commission made an oral motion

for judgment on the pleadings. (R. p. 218 ln. 5-7.) The Lottery Commission clarified that it sought declaratory relief under the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, rather than under FOIA, as its complaint indicated. (R. p. 27, p. 213 ln. 2-4.) Glassmeyer made an oral motion to dismiss the Lottery Commission's claims. (R. p. 218 ln. 20-21.) Glassmeyer also made an oral motion to strike the Lottery Commission's prayer for attorney's fees. (R. p. 226 ln. 16-18.) The transcript of the hearing shows that the Lottery Commission, after some apparent initial confusion, limited its motion for judgment on the pleadings to only its own claims, not Glassmeyer's counterclaims. (R. p. 229 ln. 8 through p. 230 ln. 1.) The Lottery Commission's counsel stated to the court that "our motion for judgment on the pleadings on -- is as to our case in chief. It's not to his counterclaim." (R. p. 229 ln. 24 through p. 230 ln. 1.) No one made any motion of any sort directed at Glassmeyer's counterclaims.

Those motions were all that were heard that day. (R. p. 235 ln. 12-18.) The court took a break, stating "I want to try to think whether I just want to resolve this issue before we go forward or not" and "I don't know whether I want to hear your testimony today . . . I may just take what I have, make a decision on the legal issues and come back later if I have to." (R. p. 235 ln. 12-18.) No trial was held that day or any day in this case. No party ever presented any evidence.

On November 17, 2015, the court filed an order granting the Lottery Commission the declaratory and injunctive relief it sought. (R. pp. 11-12.) The circuit court "ORDERED that [Glassmeyer] is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and

(4) forms of identification of all lottery winners and claimants.” (R. p. 12.) The order states that it “concludes the above-captioned lawsuit[.]” (R. p. 12.)

The order did not address Glassmeyer’s motions to dismiss and strike, and it did not address Glassmeyer’s counterclaims. (R. pp. 1-12.) It did not discuss the procedural posture that led to it being granted at all. (R. pp. 1-12.) The order found as facts things that Glassmeyer neither stated in his answer and counterclaim nor admitted in response to the Lottery Commission’s complaint. (R. pp. 1-12, 20-161.)

Glassmeyer moved to reconsider. (R. pp. 171-207.) The court denied his motion to reconsider by order filed May 17, 2016, stating that “[t]he Court properly ruled on Plaintiff’s motion for judgment on the pleadings by granting judgment in Plaintiff’s favor. Moreover, the Court properly denied the Defendant’s motion to dismiss, and properly granted his motion to strike the Plaintiff’s request for attorney’s fees.”¹ (R. p. 13, 15.)

This appeal followed.

STATEMENT OF FACTS

Glassmeyer sent FOIA requests to the Lottery Commission seeking information concerning lottery winners who claimed prizes of or over a million dollars over a period of time, including their names, addresses, telephone numbers, the dates and gross amounts of their claims, and forms of identification that they presented to the Lottery Commission to claim their prizes. (R. p. 21.) The Lottery Commission, in response, adopted a new policy regarding responses to FOIA requests and, apparently, chose to

¹ While the November 17, 2015, order did not state that it ruled on Glassmeyer’s motions at all, Glassmeyer notes that the Lottery Commission has not appealed Judge Manning’s ruling that Glassmeyer’s motion to strike the Lottery Commission’s prayer for attorney’s fees has been granted.

avoid compliance with Glassmeyer's FOIA requests as much as the Lottery Commission believed it could get away with doing. (R. pp. 21-24, 30-38.)

The Lottery Commission withheld a great deal of the information Glassmeyer requested. (R. pp. 34-38.) For some of the lottery winners at issue, the Lottery Commission provided Glassmeyer with the gross dollar amount of their claims, the dates of their claims, their home towns and states of residence, and the name of the lottery games they won. (R. pp. 34-38.) More than 15 days after Glassmeyer's request, the Lottery Commission provided him the same information for other lottery winners who fell within the scope of his request. (R. pp. 37-38.) The Lottery Commission decided it would not disclose the lottery winners' names, addresses, telephone numbers, and forms of identification to Glassmeyer. (R. pp. 23-24, 34-36.)

The Lottery Commission also sent letters to the lottery winners inviting them to sue the Lottery Commission (but not Glassmeyer) to attempt to prevent disclosure of information regarding them. (R. pp. 24, 31, 40, 45-51, 150-51.) Some lottery winners did so, though they did not make Glassmeyer, whose right to receive the information under FOIA was what was at issue, a party to those suits. (R. pp. 53-147, 150-51, 158.) The Lottery Commission consented to a permanent injunction against itself in one of those suits, and that injunction was ordered, by the same judge whose order is the subject of this appeal, largely as a result of the Lottery Commission's complicity and failure to defend the suit. (R. pp. 83-94, 132-47, 150-51.) The Lottery Commission wanted the plaintiffs in any such suits to win them. (R. pp. 150-51, 158.) To call those suits sham proceedings is charitable. (R. pp. 24, 31, 40, 45-51, 53-151, 158.)

Glassmeyer notified the Lottery Commission that he did not believe that the Lottery Commission's responses complied with FOIA. (R. pp. 24, 41.) He then made a FOIA request seeking only the names of the lottery winners who claimed prizes of a million dollars or more. (R. pp. 24, 41.) The Lottery Commission did not respond to that request at all. (R. pp. 24, 150.)

Instead, the Lottery Commission sued Glassmeyer for making FOIA requests. (R. pp. 20-28.) It sought declaratory relief that it did not have to respond to Glassmeyer's FOIA requests and a permanent injunction to prevent Glassmeyer from asking for such information. (R. pp. 27-28.) It sought to have Glassmeyer be ordered to pay the Lottery Commission's attorney's fees incurred in suing him because he asked the Lottery Commission for some information. (R. pp. 28.)

STANDARD OF REVIEW

Rule 12(c), SCRCP, provides for a judgment on the pleadings in a proper case. The standard of whether such a motion should be granted is the same as for a motion under Rule 12(b)(6), SCRCP, and the appellate court applies the same standard to the review of an order granting such a motion. See Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000); Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990). In deciding a motion for judgment on the pleadings, the trial court may not consider matters outside the allegations of the pleadings. Falk, 341 S.C. at 281; Firemen's Ins. Co., 302 S.C. at 234.

The ruling on a motion to dismiss under Rule 12(b)(6), SCRCP – and, thus, also on a motion for judgment on the pleadings – for failure to state facts sufficient to

constitute a cause of action must be based solely upon the allegations set forth in the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). Where the factual allegations of a complaint do not entitle a plaintiff to relief on any theory of the case, a 12(b)(6) motion is properly granted. Id. In deciding a 12(b)(6) motion, a court deems all of the complaint's well pleaded factual allegations as true for the purposes of deciding the motion; however, conclusions of law and other summary, conclusory allegations stated in the complaint are not deemed admitted for the motion's purposes. See Fields v. The Melrose Ltd. Partnership, 312 S.C. 102, 104, 439 S.E.2d 283, 284 (Ct. App. 1993); Carolina Winds Owners Ass'n. v. Joe Harden Builder, 297 S.C. 73, 76, 374 S.E.2d 897, 899 (Ct. App. 1988).

Similarly, "[a] motion to dismiss a counterclaim must be based solely on the allegations set forth in the counterclaim." Charleston County Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 559 S.E.2d 362 (Ct. App. 2001). "A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [complainant] to any relief on any theory of the case." Stiles, 318 S.C. at 300. The question is whether in the light most favorable to the defendant asserting the counterclaim, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The counterclaim should not be dismissed merely because the trial court doubts the counterclaiming defendant will prevail in the action. Id.

ARGUMENT

To say that the court's order is procedurally incorrect is an understatement, to say the least. What is more, the order is frightening in the implications of its substance.

It granted a declaratory judgment to a government body in a suit that body brought simply because a citizen requested some information under FOIA, even though FOIA permits only a citizen of South Carolina to bring such a suit. S.C. Code Ann. § 30-4-100(a). It granted an injunction against a citizen that is shockingly broad, an injunction to which the Lottery Commission was not entitled and which serves no lawful purpose. Indeed, the injunction issued does not even serve the purposes for which the order states it was granted.

A legal principle to keep in mind in reviewing the substantive result reached in this case is that information covered by the exemptions from mandatory disclosure listed in S.C. Code Ann. § 30-4-40 are the *only* things that that a public body is permitted to withhold in response to a FOIA request. There are no other exemptions. What may be the worst thing *substantively* about the order is that it would permit a public body to *permanently* keep a citizen from even seeking information that is plainly outside the scope of any exemption to disclosure under FOIA. (R. pp. 11-12.)

A legal principle to keep in mind in reviewing the process by which the lower court reached its result in this case is that, on a motion for judgment on the pleadings, the court views the pleadings in the light most favorable to the non-moving party and must accept as true the factual allegations of the non-movant's pleading. See Russell, 305 S.C. 86; Falk, 341 S.C. 281; Fireman's Ins., 302 S.C. 234. Further, no motion directed at Glassmeyer's counterclaims was before the court *at all*. (R. pp. 212-35.) What may be the worst two things *procedurally* about the order is that it has the effect of ruling against Glassmeyer on his counterclaims, without a trial, 1) not on the basis

of what he pled and 2) where no motion seeking judgment against Glassmeyer on his claims was before the court. (R. pp. 1-12, 212-35.)

I. A summary list of problems with the order reveals deep flaws in the circuit court's decision.

- 1) All the Lottery Commission sought at the time was a motion for judgment on the pleadings, which was not directed at Glassmeyer's counterclaims, yet the order makes findings of fact as to things that Glassmeyer did not admit in his answer and counterclaim. (R. pp. 1-12.) Further, given the procedural posture of the case and the motions that were before the circuit court, the only result that could have been reached lawfully within those constraints was one that left Glassmeyer's counterclaims pending.
- 2) The order speaks of evidence and the failure to offer evidence, when each party's motions were the sort that had to assume the truth of the facts alleged by the other party and on which it would have been improper to offer evidence. See Russell, 305 S.C. 86; Falk, 341 S.C. 281; Fireman's Ins., 302 S.C. 234.
- 3) The order makes numerous assertions of fact that, even if they could possibly be determined to be true as a matter of fact after a trial, were not alleged or admitted by Glassmeyer and are certainly not true *as a matter of law*. (R. pp. 4-11.)
- 4) The circuit court made a number of blanket statements as findings and conclusions that are either overbroad, erroneous, or both. Among them are:
 - a. The order states that Glassmeyer submitted "a long line of FOIA requests" to the Lottery Commission (R. p. 1); however, Glassmeyer submitted three FOIA requests to the Lottery Commission in this case.

(R. pp. 21, 24.) Three of something is not a long line; it is barely a line at all. The order tries to paint Glassmeyer as though he had engaged in abusive conduct in making FOIA requests of the Lottery Commission, but there is nothing in the record to indicate that he did. (R. pp. 1-12.)

- b. “The release of a claimant’s personal identifying information will result in an unreasonable invasion of a claimant’s personal privacy. The release of such personal identifying information is not required by and would not further the purpose of the FOIA.” That is not true, and it is certainly not true as a matter of law. (R. p. 5.)
- c. “An individual’s personal identifying information has nothing to do with the government operating in secret.” (R. p. 5.) Really? Never? Categorically? Is the circuit court saying there can never be any overlap between information that tends to identify someone and information that tends to indicate whether government is operating in secret? That is not true, and it is certainly not true as a matter of law.
- d. “A lottery claimant’s identity as the recipient of those winnings does not pertain to government activity in secret and involves personal privacy and personal identifying information.” (R. p. 5.) Is the circuit court saying there can never be any overlap between information that tends to identify someone as a lottery winner and information that tends to indicate whether government is operating in secret (as there would be if a lottery result were rigged)? That is not true, and it is certainly not true as a matter of law. Further, just because some information merely

implicates personal privacy or personal identifying information does not make it exempt from disclosure under FOIA. S.C. Code Ann. § 30-4-40.

- e. “Disclosure of claimants’ personal identifying information would invade the privacy of the claimants and their families, subject claimants and their families to unreasonable publicity, expose claimants and their families to threats against their safety, and otherwise be an unreasonable intrusion into the life and daily affairs of claimants.” (R. p. 6.) That is not true, and it is certainly not true as a matter of law.
- f. “The invasion of privacy that would result from the release of claimants’ personal identifying information also would be unreasonable.” (R. p. 6.) That is not true, and it is certainly not true as a matter of law.
- g. The court apparently found as facts six alleged unfortunate reported incidents of crime against lottery winners. (R. pp. 6-7, 22.) Not only was it error to find these facts just because the Lottery Commission alleged them to be, no trial was had, so they could not be examined in an appropriate context even if they are true. How many lottery winners are there per year in, say, the United States? In South Carolina? Perhaps these six incidents represent tiny fractions of some very large numbers. They probably do represent a very small fraction of lottery winners. The circuit court prevented there from ever being a trial at which that might have been demonstrated.

- h. The Lottery Commission “has demonstrated” – *how*, since there was no trial? – “that its claimants will suffer immediate, irreparable harm to their personal privacy and safety without the entry of a permanent injunction.” (R. p. 7.) That is not true as a matter of fact and certainly not true as a matter of law. Further, even if this had been demonstrated, it would be irrelevant, since the Lottery Commission, not the lottery winners, is the plaintiff in this case.
- i. “[T]he direct harm to the [Lottery Commission] from the release of its claimants’ personal identifying information would be the likely erosion of public confidence in the lottery and the [Lottery Commission] and the reduction in the number of players, thereby harming the [Commission] and its ability to effectively carry out its mission[,]” and “the release of its claimants’ person identifying information would also likely create legal exposure for the [Commission], thereby further harming the agency.” (R. p. 9.) That is not true, and it is certainly not true as a matter of law. That is not the sort of thing that could be decided on the basis of the pleadings unless Glassmeyer admitted to the truth of such allegations in his responsive pleading, which Glassmeyer did not do. (R. pp. 20-28, 148-161.) Like so many other findings in the order, this appears to have been either plucked from the air or accepted on faith from the arguments made by Lottery Commission’s counsel. Arguments of counsel are not evidence. Trivelas v. S.C. Dept. of Transportation, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001);

Higgins v. MUSC, 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997); Historic Charleston Foundation v. Krawcheck, 313 S.C. 500, 508 n. 7, 443 S.E.2d 401, 406 n. 7 (Ct. App. 1994); Gilmore v. Ivey, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986). Further, *on what legal theory would the lottery claimants have any claim against the Lottery Commission for releasing their information under FOIA?* No such claim exists.

- j. “[T]he potential harm to [Glassmeyer] is minimal, if at all, because he is able to confirm the legitimacy of lottery winnings and payouts and to ensure that the [Lottery Commission] is not acting in secret.” (R. p. 10.) The law, in contrast to this finding, is that a violation of Glassmeyer’s rights under FOIA “must be considered to be an irreparable injury for which no adequate remedy at law exists.” S.C. Code Ann. § 30-4-100(a).
- k. “And even though there were bald allegations and oblique, unsubstantiated references to public corruption made by [Glassmeyer] at the hearing on this matter, there is absolutely no evidence or any other credible information to suggest that the [Lottery Commission] has engaged in any corrupt activity, nor were there any allegations of any sort of corruption or improper conduct regarding the payment of claims raised by [Glassmeyer] in his counterclaim.” (R. p. 10.) These were motions directed at the pleadings. It would have been outside the scope of the motions and indeed improper to attempt to offer evidence. Falk,

341 S.C. at 281; Firemen's Ins. Co., 302 S.C. at 234. Further, it is not incumbent upon Glassmeyer to prove that there has been any corruption. He does not have to have a reason for wanting the information from the Lottery Commission. At trial, it would have been incumbent upon the Lottery Commission to prove an exemption to mandatory disclosure under FOIA. If the Lottery Commission is allowed to withhold its information in the absence of proving that an exemption applies, how would Glassmeyer be able to go about trying to discover *whether* there was any such corruption?

1. In paragraph 46 of the order, the circuit court alludes to the protection of claimants from disclosure about their personal information without their consent. (R. p. 11.) A look at the transcript of the motions hearing that resulted in this order reveals that Lottery Commission's counsel stated that the purpose of the Lottery Commission's form (a copy of which is attached to Glassmeyer's answer and counterclaim) that lottery winnings claimants submit is for the claimants to give informed consent. (R. p. 233 ln. 13-17.) Given what the form states, that informed consent is to the very disclosure the court apparently believes, somehow, that the lottery claimants have not consented. (R. p. 160.)
- 5) These findings were made in the absence of a factual record. This was reversible error.
- 6) The order does not address, and does not address the effect of, the fact (a fact for our purposes, as it was pled by Glassmeyer) that the claimants who claim

their lottery winnings from the Lottery Commission do so by completing a form that explicitly informs them that the information they submit may be subject to release under FOIA. (R. pp. 155-56, 160.) That form also releases the Lottery Commission from any liability to a claimant for disclosing information on the form pursuant to a FOIA request. (R. p. 160.)

- 7) Virtually throughout, the circuit court's order appears to equate "personal identifying information" with information that it would constitute an unreasonable invasion of personal privacy to disclose. (R. pp. 1-12.) These concepts are far from identical. Equating any information that serves to identify a person with the very different concept of information that it would constitute an unreasonable invasion of privacy to disclose is an error that appears to have infected the circuit court's entire analysis in this case. Plenty of information that serves to identify a person is not something it would constitute an unreasonable invasion of privacy to disclose.
- 8) Names and addresses are not very private information, anyway. Among their inherent purposes are to identify a person to those who do not know him well. What a person's name is and where he lives are not private matters, and certainly not inherently so. The circuit court appears to have ruled that names and addresses are the sort of *very* private information that falls under FOIA's unreasonable invasion of privacy exemption. This is error.
- 9) The scope of the injunction against Glassmeyer is frighteningly broad. The court did not enjoin him from obtaining certain information from the Lottery Commission. The court did not enjoin him from making FOIA requests of the

Lottery Commission for certain information. No, the court “ORDERED that Defendant is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants.” (R. p. 12.) Period. Of all lottery winners and claimants, whether their status as such is known to Glassmeyer or not. Whether that information is sought from *any source*. Forever. This is certainly not a proper case for an injunction against Glassmeyer, but, even if it were, *this* injunction would be impermissibly broad.

10) All the Lottery Commission has to do if it determines that Glassmeyer has requested some exempt information it believes it may lawfully withhold is to respond to his FOIA request and tell him so. That is not irreparable harm, to anyone. That is writing a letter. The order fails to link up the harm it envisions in the absence of an injunction to how the issuance of the injunction is *necessary* to prevent that harm. The circuit court equated a perceived harm from *disclosure* of the information at issue with *asking for* the information at issue. That equation, however, does not make sense.

II. The circuit court made factual determinations about disputed matters – and viewed them in a light unreasonably and impermissibly favorable to the Lottery Commission – without ever having held a trial, and the scope of the decision in the order exceeded the scope of the motions that were before the circuit court.

The circuit court ended Glassmeyer’s counterclaims without ever having held a trial or even a hearing on a motion about them. (R. p. 12.) The Lottery Commission’s motion for judgment on the pleadings was not directed at Glassmeyer’s counterclaims. The Lottery Commission’s counsel stated to the court that “our motion for judgment

on the pleadings on – is as to our case in chief. It's not to his counterclaim.” (R. p. 229 ln. 24 through p. 230 ln. 1.) Glassmeyer has never had any opportunity to be heard with regard to his counterclaims. No motion directed at them was before the court. The circuit court exceeded the scope of the motions that were before it by rendering a decision that ended the case, including the counterclaims, altogether. (R. p. 12.)

At a minimum, “due process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property.” LaSalle Bank Natl. Assn. v. Davidson, 386 S.C. 276, 279, 688 S.E.2d 121, 122-23 (2009) (quoting State v. Brown, 178 S.C. 294, 300, 182 S.E. 838, 841 (1935)).

Furthermore, the circuit court's order is replete with factual findings that are statements of things that Glassmeyer did not admit in response to the Lottery Commission's complaint and did not allege himself. (R. pp. 1-12.) In deciding a motion for judgment on the pleadings made by Glassmeyer's opponent, the circuit court was not permitted to look outside what Glassmeyer pled. See Russell, 305 S.C. 86; Falk, 341 S.C. 281; Fireman's Ins., 302 S.C. 234. The circuit court made a decision on the factual merits of the case that exceeded the narrow bounds of what was before the court at the time.

The circuit court's order is reversible error. The circuit court thumbed its nose at the procedural rules and standards applicable to motions directed at the pleadings. It is incumbent upon this court to reverse.

III. The Lottery Commission lacks standing in this case, and the court should have dismissed the Lottery Commission's claims.

“Standing refers to ‘[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.’” Powell ex rel. Kelley v. Bank of America, 665 S.E.2d 237, 241 (Ct. App. 2008) (quoting Black’s Law Dictionary 1413 (7th ed. 1999)). Standing goes to the question of a party’s right to bring a proceeding. Baird v. Charleston Cnty., 333 S.C. 519, 530 & 530 n. 7, 511 S.E.2d 69 (1999). It is fundamental that only a party with standing may maintain an action. See id.

Standing “consists of the following three elements” as noted by the South Carolina Supreme Court:

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. Natural Resources, 345 S.C. 594, 601, 550 S.E.2d 287 (2001) (internal quotation and quotation-related punctuation marks omitted). “The first element requires *the plaintiff* to suffer an injury in fact, or a particularized harm.” Id. (emphasis added).

Because FOIA controls declaratory judgment claims that fall within the scope of FOIA, the Lottery Commission lacks standing to bring the declaratory judgment claim on which the circuit court gave it victory. FOIA similarly prevents a non-citizen public body, such as the Lottery Commission, from seeking injunctive relief about a

FOIA request. Because the Lottery Commission could suffer no harm of any sort in the absence of an injunction like the one it obtained in this case, the Lottery Commission lacks standing to prosecute its claim for injunctive relief as well.

It was reversible error for the circuit court to grant any relief to the Lottery Commission on its claims at all.

a. The Lottery Commission lacks standing under FOIA, since only South Carolina citizens, not parts of the government, may bring suit under FOIA.

FOIA provides a remedy only to South Carolina citizens, as S.C. Code Ann. § 30-4-100(a) allows only a citizen of this state, which is not what the Lottery Commission is, to seek an injunction or declaratory relief concerning an issue of FOIA compliance. The General Assembly provided the following in S.C. Code Ann. § 30-4-100(a):

Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(Emphasis added.)

The Lottery Commission acknowledges and alleges in its complaint that it is a public body and part of the government of South Carolina and that Glassmeyer is the party who is a citizen of South Carolina. (R. p. 20.) The Lottery Commission is “a

public commission and an instrumentality of the State.” S.C. Code Ann. § 59-150-30. It is a part of the government of the State of South Carolina. Id.

The complaint prays for a judgment to declare that the Lottery Commission’s release of information such as the name, complete address, telephone numbers and forms of identification submitted to Lottery Commission by lottery winners would be an unreasonable invasion of the winners’ personal privacy and thus may be withheld under FOIA under S.C. Code Ann. § 30-4-40(a)(2). (R. p. 27.) The Lottery Commission clarified that it is seeking this relief under the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.* That is fatal to the Lottery Commission’s declaratory judgment claim, because FOIA defines the scope of who may seek a declaratory judgment about the application of FOIA to a set of facts. S.C. Code Ann. § 30-4-100(a).

“The general rule of statutory construction is that a specific statute prevails over a more general one.” Atlas Food Sys. & Servs., Inc. v. Crane Nat’l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). “Generally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation.” Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993); State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993) (same). Where there is a conflict between statutes, the more recent and specific legislation controls. Porter v. S.C. Pub. Serv. Comm’n., 327 S.C. 220, 224 n. 3, 489 S.E.2d 467, 469 n. 3 (1997). “A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.” Gardner v. Biggart,

308 S.C. 331, 333, 417 S.E.2d 858, 859 (1992) (quoting Hay v. S.C. Tax Comm'n, 273 S.C. 269, 273, 255 S.E.2d 837, 840 (1979)).

Here, S.C. Code Ann. § 30-4-100(a) is more specific than the Uniform Declaratory Judgments Act. The Declaratory Judgments Act provides generally that “[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30. FOIA, on the other hand, limits those who “may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter” to “citizen[s] of the State[.]” S.C. Code Ann. § 30-4-100(a). In so doing, “[t]he legislature has specifically conferred standing upon any *citizen of South Carolina* to bring a FOIA claim against a public body for declaratory or injunctive relief, or both.” Freemantle v. Preston, 398 S.C. 186, 195, 728 S.E.2d 40, 45 (2012) (emphasis added). The word “citizen” is not given a specific definition in FOIA, so we turn to its normal and customary meaning. See Branch v. City of Myrtle Beach, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000) (“When faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning.”). Webster’s defines *citizen* as “a member of a state or nation who owes allegiance to it by birth or naturalization and is entitled to certain rights, as the right to vote, etc.” Webster’s New World Dictionary & Thesaurus 105 (1996); accord Black’s Law Dictionary 100 (2d Pocket Ed. 2009) (“citizen, *n.*, 1. A

person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges.”) The word *citizen* comes from the Latin *civis*, “townsman.” Webster’s, *supra* at 105.

Two reported decisions in South Carolina have featured public bodies as plaintiffs in actions that sought a declaratory judgment under FOIA. City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996); South Carolina Tax Commission v. Gaston Copper Recycling Corporation, 316 S.C. 163, 447 S.E.2d 843 (1994). Neither of those decisions discuss any issue concerning the standing of a public body to bring such a suit; hence, neither case holds that a public body may bring an action under FOIA. Id. “Appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991). Accordingly, the question appears to be a novel one under South Carolina case law; however, application of the principles of statutory construction reveals that the Lottery Commission, which is a part of the government of South Carolina, is not a citizen and cannot bring a suit under FOIA. While the exact limits of who or what is a citizen for FOIA purposes may include a private corporation, see, e.g., Evening Post Publishing Co. v. Berkeley Cnty. Sch. Dist., 392 S.C. 76, 83, 708 S.E.2d 745 (2011), it is not logical that the term *citizen* was intended by the General Assembly to include a part of the government, which is what the Lottery Commission is. This would not be consistent with the general understanding of the word *citizen*. Further, allowing government bodies to bring suits under the Declaratory Judgments Act to make an end-

run around FOIA's restriction of declaratory relief actions to citizens would run counter to a specific limitation (to citizens) imposed by the General Assembly. See S.C. Code Ann. § 30-4-100(a). That would upend the canons of statutory construction, and for no good reason. See Atlas Food Sys., 319 S.C. at 558.

Also, the Uniform Declaratory Judgments Act was enacted in 1948, as noted in Williams Furniture Corp. v. So. Coatings & Chem. Co., 216 S.C. 1, 56 S.E.2d 576, 577 (1949). FOIA was enacted in 1978. FOIA is the more recent statute, so its provision stating that it is "[a]ny *citizen of the State* [who] may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce" it, S.C. Code Ann. § 30-4-100(a), controls over broader, less specific, and older language in the Uniform Declaratory Judgments Act. Porter, 327 S.C. at 224 n. 3; Langley, 313 S.C. at 403; Sullivan, 310 S.C. at 314.

Further, embodied in FOIA "is the principle of an open, transparent system of government, vital to maintaining an informed electorate and preventing the secret exercise of power with its potential corruption." Disaboto v. S.C. Assn. of Sch. Administrators, 404 S.C. 433, 439, 746 S.E.2d 329, 332 (2013). It would fit poorly with the legislative mandate that the provisions of FOIA "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" for the law to permit the government operated by those officials to bring suit against a person because he has made a FOIA request. S.C. Code Ann. § 30-4-15. FOIA is to be liberally construed to carry out the purpose mandated by the legislature. Campbell v. Marion Cnty. Hosp. Dist., 354 S.C. 274, 281,

580 S.E.2d 163, 166 (Ct. App. 2003). FOIA exists to make government information accessible to the public at a minimum of cost, expense, and delay. S.C. Code Ann. § 30-4-15. It does *not* exist so that a government public body may use litigation as a club against those whose FOIA requests it does not like. See id.

Permitting government entities to bring suits against those who make FOIA requests would have the chilling effect of discouraging citizens from making such requests; thus, it would run counter to FOIA's purpose and its interpretive mandate. See id. Such would not be "a reasonable and practical construction consistent with the purpose and policy expressed in the statute." Gardner, 308 S.C. at 333.

Because only a citizen of South Carolina may bring an action seeking declaratory or injunctive relief about the application of FOIA, the Lottery Commission, which is a part of South Carolina government and is not a citizen, may not do so. S.C. Code Ann. § 30-4-100(a). It was reversible error for the circuit court to rule otherwise. The circuit court should have denied the Lottery Commission's motion for judgment on the pleadings and granted Glassmeyer's motion to dismiss the Lottery Commission's claims.

- b. The Lottery Commission lacks standing to seek an injunction where the claimed "harm" it seeks to have the court prevent would not be harm of any kind to the Lottery Commission, and the Lottery Commission was not entitled to an injunction.**

Absent specific authority deviating from the general rule (such as that for citizen suits under S.C. Code Ann. § 30-4-100), the standard for the issuance of a permanent injunction is substantially the same as that for the issuance of a preliminary injunction, except that the plaintiff must show actual success on the merits rather than a likelihood of success on the merits. Amoco Prod. Co. v. Village of Gambell, 480

U.S. 546 n. 12 (1987). The party must show that 1) he has succeeded on the merits, 2) he will suffer immediate, irreparable harm unless the injunction is issued, and 3) he has no adequate remedy at law. Id.

The facts alleged in the complaint could not establish that the Lottery Commission has suffered or is likely to suffer irreparable harm. The Lottery Commission's complaint alleges no injury or threatened injury to the Lottery Commission. (R. pp. 20-28.) In its complaint, the Lottery Commission states "[b]ecause of [Glassmeyer]'s relentless efforts to obtain personal information related to South Carolina lottery winners, [the Lottery Commission] believes that there is a significant, immediate risk of irreparable harm to the personal privacy and safety of lottery winners and their families in South Carolina without the entry of injunctive relief," (R. p. 26.) What the Lottery Commission alleges to be the irreparable harm would be the disclosure of information that is identifying information of lottery winners, who are not the Lottery Commission. (R. pp. 25, 26.) The Lottery Commission has failed to allege that *it* would suffer *any* harm absent an injunction. (R. pp. 20-28.) The Lottery Commission has not alleged that *it* has suffered an injury or is in danger of suffering a prospective injury concerning the matters subject of this case. (R. pp. 20-28.) Regardless of the merits of the underlying question about how private the information involved is, the Lottery Commission's claim for injunctive relief must fail, when the law is applied, because the Lottery Commission cannot seek an injunction to prevent threatened harm to someone else. Amoco Prod. Co., 480 U.S. 546 n. 12.

There was nothing before the court in anyone's pleadings giving any indication that the Lottery Commission or even lottery winners will suffer irreparable harm without an injunction. No public body of South Carolina suffers harm simply by performing its legislated responsibilities under FOIA. A public body may even be compensated for its efforts in searching for and compiling the requested information under FOIA. See S.C. Code Ann. § 30-4-30(b). If a FOIA request is denied, no search for or compilation of the information is even done. The notion that the Lottery Commission would somehow be harmed by disclosing the information, as the order found, does not make sense. (R. p. 9.) Why, the lottery claimants have even released the Lottery Commission from any liability for disclosing information about them in response to a FOIA request. (R. p. 160.)

If proven, the facts alleged in the complaint could not establish that the Lottery Commission has no adequate remedy at law. Without an injunction, other citizens may make FOIA requests seeking information from the Lottery Commission along the same lines as that requested by Glassmeyer. The Lottery Commission's adequate remedy at law is to receive such requests and deny them if the Lottery Commission believes the information requested is exempt from disclosure under FOIA. Assuming, for the sake of argument, that the Lottery Commission could even have standing to assert a claim based upon a perceived harm suffered by an unidentified group of lottery winners, the Lottery Commission still stands in a unique position to protect lottery winners as the administrator of the South Carolina Education Lottery and a public body under FOIA: simply deny a written request for what Lottery Commission deems is exempt information and then, if the requesting citizen brings a lawsuit, defend on that basis.

Assuming the Lottery Commission is correct to deny the request, that takes care of it. There is no allegation in the Lottery Commission's complaint or statement in the court's order that the statutorily prescribed procedure for litigating a FOIA claim (which is being circumvented here) is defective or insufficient. (R. pp1-12, 20-28.)

The circuit court should have denied the Lottery Commission's motion for judgment on the pleadings and granted Glassmeyer's motion to dismiss the Lottery Commission's claim seeking an injunction. That the opposite result was reached here is reversible error.

IV. The lower court erred in issuing a shockingly broad injunction that prevents Glassmeyer from simply even asking for this sort of information.

The injunction the court imposed on Glassmeyer is extremely broad in scope. It would be too broad even if *an* injunction were proper (which it of course is not). An injunction should never be issued that is broader in scope than what is necessary to stop the harm it is designed to prevent. Goldberg v. Trakas, 206 F.Supp. 867 (E.D.S.C. 1962); see Gibbs v. Kimbrell, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993) (injunction precluding violation of covenants should not extend beyond date that covenants would expire by their terms).

Here, the circuit court "ORDERED that Defendant is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants." (R. p. 12.) It applies to all lottery winners and claimants, whether their status as such is known to Glassmeyer or not. (R. p. 12.) Glassmeyer could unwittingly run afoul of this injunction. It applies regardless of the source from which that

information is sought. (R. p. 12.) A lottery winner could contact Glassmeyer and want to give him this information, but would Glassmeyer dare ask for it, lest he violate the circuit court's order? Not the way the order is written. Further, this injunction lasts forever, so that, no matter what else ever happens, no matter how much the situation changes, Glassmeyer will be bound never to ask for any of this information, from any source, under any circumstances, for the rest of his days. (R. p. 12.)

The order further fails to connect the harm it envisions in the absence of an injunction to how the issuance of this or any injunction is needed to prevent that harm. The court appears to have equated a perceived harm from *disclosure* of the information at issue with *asking for* the information. This supposed "harm," though, is something that the court's order relates to the Lottery Commission's disclosure of the information, not to Glassmeyer seeking the information – yet the latter is what the court has enjoined. (R. p. 12.) Asking for the information, which is the enjoined activity, is not what causes or even could cause the "harm" perceived by the court. (R. pp. 1-12.)

The circuit court erred reversibly in issuing a sweepingly broad injunction that does not even address the so-called "harm" it states that it is imposed to prevent.

V. The circuit court erred in concluding that the Lottery Commission was entitled to the declaratory judgment it sought. The information requested does not fall within any FOIA disclosure exemption (and certainly is not exempt as a matter of law), and neither the Lottery Commission nor the circuit court can create a new exemption.

The few exemptions to a public body's obligation of mandatory disclosure of information requested under FOIA are listed in S.C. Code Ann. § 30-4-40. At issue in this case is the following:

(a) A public body may but is not required to exempt from disclosure the following information:

...

(2) 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 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.

...

(b) 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.

S.C. Code Ann. § 30-4-40(a)(2)& (b).

Under FOIA, “the exemptions should be narrowly construed to not provide a blanket prohibition of disclosure in order to ‘guarantee the public reasonable access to certain activities of the government.’” Evening Post, 392 S.C. at 83 (quoting Fowler v. Beasley, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996)). “The burden of proving that an exemption exists lies with the government.” Id. “The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis, and the exempt and non-exempt material shall be separated and the nonexempt material disclosed.” Id. at 82.

The analysis of a case involving the potential application of FOIA's unreasonable-invasion-of-personal-privacy exemption involves balancing an individual's privacy interest against the need or desire of the public generally to have access to the type of information in question. Burton v. York County Sheriff's Dept., 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004). The interest in the information that is subject of the inquiry is not that of the individual requester, it is the public's "general interest" in being able to access information of the type at issue. Id. The reason that the particular citizen who made the request wants the information is usually irrelevant. See id.; S.C. Code Ann. §§ 30-4-40, -50.

The balancing under this test is not done on equally weighted scales. The test is, and is supposed to, favor the inapplicability of the exemption. See Evening Post, 392 S.C. at 83; Fowler, 322 S.C. at 468. FOIA is to be liberally construed to carry out the purpose mandated by the legislature, which is essentially citizens' open access to information about the activities of their government in all areas. S.C. Code Ann. § 30-4-15; Campbell, 354 S.C. at 281. The scales are weighted more heavily in favor of this openness than they are toward privacy concerns. See id. After all, for the unreasonable-invasion-of-personal-privacy exemption to apply, the public body has to prove not just that the information is of a personal nature and not just that disclosing it would constitute an invasion of privacy; rather, the public body must prove that disclosure of the information would – not just *could*, but necessarily *would* – result in an *unreasonable* invasion of personal privacy. S.C. Code Ann. § 30-4-40(a)(2).

If the material sought by a FOIA request is not exempt from disclosure under S.C. Code Ann. § 30-4-40, the public body receiving the request must disclose the

information, period. S.C. Code Ann. § 30-4-30(a) & (c). The requesting citizen has a *right* to get the information. S.C. Code Ann. § 30-4-30(a).

The information the circuit court decided the Lottery Commission is authorized to withhold is not information that is exempt from disclosure under FOIA. (R. pp. 1-12.) The information sought by Glassmeyer was not “[i]nformation of a personal nature where the public disclosure thereof would constitute *unreasonable invasion* of personal privacy.” S.C. Code Ann. § 30-4-40(a)(2) (emphasis added).

The only right a person has regarding privacy under the South Carolina Constitution is the right to be free from *unreasonable invasions* of privacy, not even all invasions of privacy. S.C. Const. art. I, § 10 (“Searches and seizures; invasions of privacy”). “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.” *Id.*

Past case law has not shed much light on this provision of the South Carolina constitution. In 2015, however, our state Supreme Court decided State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015), in which the Court stated that physical intrusions into “the privacy interests in one’s home are precisely what our state constitutional provision was intended to protect.” *Id.* at 71 n. 7. Not only does providing the information in dispute here not cause any physical intrusion into a lottery claimant’s home or even tend to do so, the information sought by Glassmeyer was not about what is going on in a lottery claimant’s house but simply an address for the person, where

that house is (or was at the time the claim form was filled out). (R. pp. 21, 34, 160.) Providing the information subject of this case is nowhere near as intrusive as what Counts determined to be an unreasonable invasion of privacy. Id. It is the kind of information typically found in a phone book.

Glassmeyer expects that the Lottery Commission will rely at least in part on the Court of Appeals' recent opinion in Glassmeyer² v. City of Columbia, 414 S.C. 213, 777 S.E.2d 835 (Ct. App. 2015), probably primarily for the contention that disclosure of the lottery claimants' names and addresses would constitute an unreasonable invasion of their personal privacy. It would be wrong to do so. The decision in that case ought to be overruled.

Information of a "personal nature," standing alone, is not what is exempt from mandatory disclosure in response to a FOIA request under S.C. Code Ann. § 30-4-40(a)(2). For the exemption to apply, the invasion of personal privacy that would accompany disclosure of the information would have to so heavily outweigh the public's substantial interest in being able to know the activities of its government that the disclosure necessarily *would* "constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40(a)(2).

The sweeping City of Columbia holding, which seems to bolster a reading that a person's name and address are within this exemption, runs counter to the scant South Carolina case law we have that deals with this exemption. In Society of Professional Journalists v. Sexton, 324 S.E.2d 313, 316 (1984), our Supreme Court held that death certificates, which contain much more information of a personal nature than that sought

² Glassmeyer recognizes the oddity of his being a party in both that case and this one, but they are otherwise unrelated.

by Glassmeyer in this case or in City of Columbia, did not fall within the unreasonable-invasion-of-personal-privacy exemption. In ACLU, the Court rejected the proposition that “internal investigation reports of law enforcement agencies are *per se* exempt because they contain personal information.” 323 S.C. 384. In Burton, 358 S.C. 339, the Court of Appeals held that allegations concerning the sexual practices of off-duty deputy sheriffs constituted the sort of information that could fall within this exemption. Names and addresses do not make the cut of the unreasonable-invasion-of-personal-privacy exemption. This is no more than what may usually be found in a telephone book. Names and addresses are too public, not private enough.

No decision of the South Carolina Supreme Court has considered whether information provided by those who voluntarily submit an application or claim to the government in an attempt to obtain a government employment position (or, as here, government funds) falls within the unreasonable-invasion-of-personal-privacy exemption.

Legislative intention as to what information does fall within this exemption can be seen by looking at FOIA as a whole. FOIA provides in a section regarding “matters declared public information” that “home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to [FOIA] may not be used *for commercial solicitation purposes*.” S.C. Code Ann. § 30-4-50 (emphasis added). FOIA also deems as exempt from disclosure “information relating to public records which include the name, address, and telephone number . . . 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.” S.C. Code Ann. § 30-4-40(a)(2). The natural interpretation to take from this is that the General Assembly intended that home addresses and telephone numbers are the type of information that, under ordinary circumstances, are required to be disclosed in response to a FOIA request. At least two other states’ appellate courts have held that home addresses, while “information of a personal nature,” were not exempt from disclosure under those states’ freedom of information acts. Webb v. Shreveport, 371 So.2d 316 (La. App. 1979); Warden v. Bennett, 340 So.2d 977 (Fla. Dist. Ct. App. 1976).

In City of Columbia, the decision relied on inapposite statutory schemes that have also been interpreted according to their own bodies of jurisprudence, different from the principles that underlie South Carolina’s body of FOIA case law. These were the U.S. Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (“US FOIA”), and the Michigan Freedom of Information Act, M.C.L.A. § 15.231, *et seq.* (“Michigan FOIA”). Both US FOIA and Michigan FOIA differ from South Carolina’s FOIA in their wording and their interpretation. Indeed, the Supreme Court of South Carolina has unambiguously stated that “federal case law interpreting the US FOIA is not binding in this state because the exemptions contained in [US FOIA] are more expansive than those contained in South Carolina’s FOIA.” Newberry Pub. Co., Inc. v. Newberry County Commn. On Alcohol & Drug Abuse, 308 S.C. 352, 354 n. 4, 417 S.E.2d 870, 872 n. 4 (1992). Cases interpreting US FOIA and Michigan FOIA should not be seen as persuasive authority in a case about South Carolina’s FOIA. *See id.* The City of Columbia decision should not have relied on such authority.

The Court of Appeals' opinion in City of Columbia conflicts with Burton, Society of Professional Journalists, and Meetze v. Associated Press, 230 S.C. 330, 336 (1956), all of which hold 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." The information in City of Columbia that was at issue was of public interest, just as the information sought in this case is, *because it has the potential to reveal corruption*, among other reasons.

But even if none of that persuades the court, the court should note a big difference between the facts of City of Columbia and the instant case: in the instant case, the individuals who submitted their information to the government did so on a form that explicitly told them that the information might be disclosed in response to a FOIA request. (R. pp. 155-56, 160.) Being informed of that, they chose to submit the information anyway. (R. pp. 155-56, 160.) They gave up any right to claim that disclosure of that information in response to a FOIA request would constitute an unreasonable invasion of their personal privacy. (R. pp. 155-56, 160.) They could have kept any right they might have had to assert such a position; however, they took the money instead. (R. pp. 155-56, 160.)

"The right of privacy is not an absolute right. Some limitations are essential for the protection of right of freedom of speech and of the press and the interests of the public in having free dissemination of news and information." Meetze, 230 S.C. at 336. "At some point, the public interest in obtaining information becomes dominant over the individual's desire for privacy. It has been said that the truth may be spoken, written, or printed about all matters of a public nature, as well as matters of a private

nature in which the public has a legitimate interest.” Id. at 337 (citing 41 Am.Jur. Privacy § 14); accord Society of Professional Journalists, 324 S.E.2d at 315.

“A person may by his acts, achievements or mode of life become a public character and lose to some extent the right of privacy that would otherwise be his. There are times when one, whether willing or not, becomes an actor in an occurrence of public or general interest. When this takes place, he emerges from his seclusion and the publication of his connection with such occurrence is not an invasion of his right of privacy.” Meetze, 230 S.C. at 337.

The lottery claimants did not have to provide this information to the Lottery Commission. (R. pp. 155-56, 160.) They chose to. (R. pp. 155-56, 160.) They chose to do so under circumstances that made it abundantly clear to them that, whatever privacy interests they might have in that information that would allow it to be shielded from disclosure under FOIA were privacy interests they were giving up. (R. pp. 155-56, 160.)

The Lottery Commission did not advance any argument at the hearing that it is authorized to withhold the information sought by Glassmeyer under S.C. Code Ann. § 30-4-40(a)(4), which exempts from disclosure under FOIA “[m]atters specifically exempted from disclosure by statute or law[,]” and the circuit court did not find that. (R. pp. 212-35.) Glassmeyer thus presents this argument out of an abundance of caution.

The Family Privacy Protection Act provides that, “[e]xcept as provided in Sections 30-2-320 and 30-2-330 of this article, a public body, as defined in Section 30-1-10(B), may not ... (e) intentionally communicate or otherwise make available to the

general public an individual's social security number or a portion of it containing six digits or more or other personal identifying information." S.C. Code Ann. § 30-2-310(a)(1)(e). "'Personal identifying information,' as used in this section, has the same meaning as 'personal identifying information' in Section 16-13-510, except that it does not include electronic identification names, including electronic mail addresses, or parent's legal surname before marriage." S.C. Code Ann. § 30-2-310(a)(1)(e).

The text of S.C. Code Ann. § 16-13-510 provides that "personal identifying information" means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this state, when the data elements are neither encrypted nor redacted: (1) social security number; (2) driver's license number or state identification card number issued instead of a driver's license; (3) financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident's financial account; or (4) other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual. The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to general public. S.C. Code Ann. § 16-13-510(D).

By redacting the driver's license numbers and, possibly, the street addresses of the lottery winners and providing all the other information Glassmeyer requested, including the lottery winners' names, the Lottery Commission could have avoided any

issue about compliance with S.C. Code Ann. § 30-2-310(a)(1)(e). (R. p. 224 ln. 20 through p. 225 ln. 22.)

While the Lottery Commission's reliance (in its letter responses – not in its argument to the circuit court) on these statutes in denying Glassmeyer's early request for names in conjunction with other information was erroneous, any reliance on these statutes in not complying with Glassmeyer's final request for only the names of lottery winners was entirely inapplicable. (R. pp. 34-35.) Further, the Lottery Commission appears to have abandoned this as a basis for not providing the requested information, as it did not argue this in the circuit court. (R. pp. 212-35.)

The circuit court erred in ruling for the Lottery Commission on its declaratory judgment claim and erred in failing to grant Glassmeyer's motion to dismiss that claim.

VI. The lower court erred in ruling against Glassmeyer on his counterclaims.

The most plain reason why Glassmeyer's counterclaims should survive is because no one made any motion for any sort of judgment on them and they have not yet been tried. Further, the counterclaims would have survived a motion to dismiss in any event. Viewing the pleadings in the light most favorable to Glassmeyer, one must conclude that Glassmeyer's answer and counterclaim states a valid claim for relief for violation of FOIA and a valid claim for abuse of process.

FOIA violation claim. Glassmeyer's answer and counterclaim attaches "a copy of a South Carolina Education Lottery Winner Claim Form that was authored by and is (or at least at times material to this case was) used by the Lottery Commission for lottery winners to submit claims to the Lottery Commission[.]" as discussed above. (R. pp. 155-56, 160.) "A copy of any plat, photograph, diagram, document, or other

paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached thereto.” Rule 10(c), SCRCP.

The proponent of a FOIA claim does not have to plead around an exemption to mandatory disclosure under FOIA to state a claim. See Evening Post, 392 S.C. at 83 (quoting Fowler v., 322 S.C. at 468). “The burden of proving that an exemption exists lies with the government.” Id. “The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis, and the exempt and non-exempt material shall be separated and the nonexempt material disclosed.” Id. at 82. Glassmeyer pled that the way the Lottery Commission responded (and failed to respond) to his FOIA requests violated FOIA. (R. pp. 156-57.)

In the light most favorable to Glassmeyer, as the counterclaiming party, the allegations of the answer and counterclaim support Glassmeyer’s contention that the lottery prize claimants, having provided information to the Lottery Commission on a form that apprises them that the information about themselves they give on the form may be subject to disclosure under FOIA, have made that information such that providing it to a person making a FOIA request would not constitute an unreasonable invasion of their privacy. (R. pp. 155-57, 160.) (As discussed above, disclosure of that information would not be an unreasonable invasion of personal privacy, anyway.) Also, the attachments to the Lottery Commission’s complaint reveal that Glassmeyer’s last FOIA request to the Lottery Commission simply sought the names of lottery winners who had won prizes of one million dollars or more. (R. p. 41.) If the circuit court had applied the law, it could not have said as a matter of law that disclosing these names would amount to an unreasonable invasion of privacy, particularly since the

lottery claimants had submitted their names on the form discussed above. (R. pp. 41, 155-56, 160.)

Abuse of process claim. The elements of abuse of process are 1) an ulterior purpose and 2) a willful act in the use of the process not proper in the regular conduct of the proceedings. See, e.g., Broadmoor Apts. of Charleston v. Horwitz, 306 S.C. 482, 486, 413 S.E. 2d 9, 11 (1991). “Our courts have noted that an abuse of process action may lie if a party prosecutes an entire lawsuit for collateral purposes.” D.R. Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2002) (citing Food Lion, Inc. v. United Food & Commercial Workers Int’l. Union, 351 S.C. 65, 73, 567 S.E.2d 251, 255 (Ct. App. 2002)). In such a case, acts furthering the suit or other process satisfy the “willful act” requirement. See Broadmoor Apts., 306 S.C. at 487 (filing lis pendens constituted willful act where purpose of filing was to gain collateral objective). While the “willful act” often takes the form of a coercive act, coercion is not a necessary component of this element. See id.

Glassmeyer alleged the following:

The Plaintiff has acted with an ulterior purpose in bringing this lawsuit against the Defendant, such including to discourage him from seeking information from the Plaintiff under FOIA.

The collateral objective of coercing the Defendant into making no more FOIA requests for information about lottery winners from the Plaintiff was the Plaintiff’s objective in bringing this lawsuit.

The Plaintiff has acted with an ulterior purpose in inviting the other lawsuits discussed above to be brought against it and in its conduct in those suits, particularly when it had and has no intention of opposing the claims of the plaintiffs in those suits and in fact desired and desires that those plaintiffs win those suits.

The collateral objective of bolstering its position so as to attempt a better outcome in the instant case and to be in a better position to coerce the Defendant into making no more FOIA requests for information about lottery winners from the Plaintiff was the Plaintiff's objective in inviting the other lawsuits discussed above to be brought against it and in its conduct in those suits.

The Plaintiff's actions are a willful abuse of process.

The Defendant has been damaged by the Plaintiff's abuses of process.

(R. pp. 157-58.)

Speaking of a circuit court order in another suit the Lottery Commission attached to its complaint and attempted to use to bolster its case, Glassmeyer alleged the following:

Answering the allegations of paragraph 16 of the Complaint, the Defendant admits that the referenced order states what it states but denies that the order has any effect on the Defendant's rights to receive the information he has requested from the Plaintiff under FOIA. The Defendant further denies that the existence of the order in any way provides or contributes to the Plaintiff having grounds to bring the instant suit. The order is apparently the product of collusive conduct or what is tantamount to collusion. As shown by attachments to the Plaintiff's own Complaint, the Plaintiff invited the lawsuit that resulted in the order, as well other lawsuits, including those reflected by pleadings attached to the complaint, by asking the plaintiffs in those suits to sue the Plaintiff and seek the relief sought in those cases. The Plaintiff wanted and wants the plaintiffs in those lawsuits to win those suits. The Plaintiff did not and does not plan to substantively oppose the relief sought by the plaintiffs in those lawsuits. Those lawsuits do not and did not represent actual live controversies; rather, the Plaintiff (the defendant in those suits) desired and desires the same outcome sought in those suits by the plaintiffs therein. To the extent the order purports to adjudicate the

Defendant's right to receive the information he has requested from the Plaintiff under FOIA, the order is void and of no effect; the Defendant was not a party to the suit that produced the order, and no one in that suit advocated for the Defendant's rights or position as to the matters involved in that suit. The same is true for all the other suits invited by the Plaintiff in this regard. Further, the order reaches an incorrect conclusion and makes incorrect findings, likely as a result of the Plaintiff's failure to actually defend the suit that created the order.

(R. pp. 150-51.)

That meets the elements of abuse of process. Viewed in the light most favorable to Glassmeyer, the allegations indicate that the Lottery Commission invited the other lawsuits in order to capitulate to them and create at least one order to use in trying to bolster its position against Glassmeyer. (R. pp. 24, 31, 40, 45-51, 53-151, 157-58.) Viewed in the light most favorable to Glassmeyer, the allegations indicate that the Lottery Commission brought this case to punish Glassmeyer, cow him into submitting to the Lottery Commission's unlawful position on FOIA, and make him refrain from asking for the information he sought. (R. pp. 150-51, 157-58.) Looking at the pleadings favorably to Glassmeyer, all of this was done by the Lottery Commission with the aim of avoiding its responsibilities under FOIA and suppressing Glassmeyer's rights under FOIA (R. pp. 150-51, 157-58.)

Glassmeyer's counterclaims would have survived a motion directed at the way they were pled, if someone had made one. It was reversible error for the court to issue a *de facto* dismissal of Glassmeyer's claims.

VII. The lower court circumvented the legislative process to create, in essence, a new FOIA exemption, which is exactly what the Lottery Commission wants.

What the Lottery Commission really wants is a new FOIA exemption, one concerning lottery winners. To create such an exemption is not the job of the circuit court or this court, and to do so indeed runs counter to what a court's duties are. Changes in the law should be sought from the General Assembly. The question of whether the law should be changed to create such an exemption is one for the branch of government that concerns itself with promulgating and changing laws, not the one whose province is "to say what the law is." Marbury v. Madison, 5 U.S. 137, 138 (1803); accord State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) (discussing separation of powers).

CONCLUSION

This is a lengthy brief, but the circuit court's order is rife with error, and its errors often compound each other. This court should reverse the circuit court, dismiss the Lottery Commission's claims against Glassmeyer, and remand Glassmeyer's claims for trial.

Respectfully submitted,



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November 22, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

CERTIFICATE OF COUNSEL

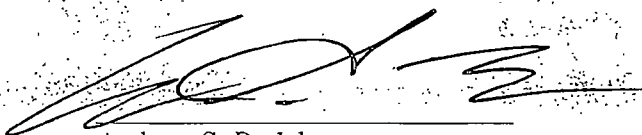
I certify that the foregoing brief complies with Rule 211(b), SCACR

Respectfully submitted,

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NOV 22 2016

SC Court of Appeals



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STATEMENT OF ISSUES ON APPEAL

- I. Whether the South Carolina Court of Appeals should affirm the circuit court's order holding that the public disclosure of lottery winners' personal identifying information, such as the (1) full names, (2) addresses, (3) telephone numbers, and (4) forms of identification of claimants, constitute an unreasonable invasion of personal privacy and is therefore exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a)(2).

STATEMENT OF THE CASE

Statement of the Facts

Respondent South Carolina Lottery Commission (“SCLC”) is an “instrumentality of the State and public body, corporate and politic, . . . [with] powers as generally exercised by commissions engaged in entrepreneurial pursuits” and was created pursuant to Act 59 of 2001 (South Carolina Education Lottery Act), S.C. Code Ann. §§ 59-150-10 *et seq.* (Compl. ¶ 1.) Appellant George S. Glassmeyer (“Appellant”) is a citizen and resident of Richland County, South Carolina, who submitted “a long line of FOIA requests to the SCLC, seeking personal information relating to ‘all bona fide claims’” for an extensive amount of SCLC prizes. (Nov. 17, 2015 Cir. Ct. Order 1.) The leadership of SCLC cares deeply about its winners and endeavors to protect their personal privacy, safety, and security while balancing the agency’s obligations under the South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. §§ 30-40-10 *et seq.* (Compl. ¶ 4.) Appellant’s unreasonable and intrusive requests for lottery winners’ personal identifying information undermine and impede SCLC’s discretion to prevent the disclosure of “[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy.” S.C. Code Ann. § 30-4-40(a)(2).

In 2003, SCLC adopted a policy concerning the release of winners’ information in response to FOIA requests which allowed winners, upon notification, to seek judicial relief from the release of all or part of their personal information. Under that policy, SCLC would provide information appropriate for release under FOIA if no such judicial relief was sought by winners within fifteen (15) business days of receiving notice from SCLC. (Compl. ¶ 2.) In most instances over the years, SCLC staff has been able to successfully work with FOIA requestors to provide them with the

information they are seeking while still protecting to the greatest degree possible the personal privacy and safety of its winners and their families. (*Id.* ¶ 6.) On or about March 31, 2014, Appellant submitted his first in a series of FOIA requests to SCLC, seeking certain information relating to “all bona fide claims” for any SCLC prize equal to or exceeding One Million Dollars (\$1,000,000) in gross proceeds from March 1, 2013 to March 20, 2014. (*Id.* ¶ 7.) Specifically, for all such claims Appellant requested the claimant’s full name, address, and telephone number; the date and gross amount of the claim; and a copy of any and all forms of identification obtained from the claimants. (*Id.* ¶ 8.) On April 11, 2014, the Executive Committee of the SCLC Board of Commissioners met and reconsidered its eleven-year-old policy concerning the release of lottery winners’ information in response to FOIA requests.¹ (*Id.* ¶ 9.)

Since the FOIA policy’s adoption in 2003, issues related to data security and the heightened need to protect individual privacy have rapidly evolved due to a number of factors, including technological advances and the relative ease of accessing personal information. (*Id.* ¶ 10.) In addition, large-scale data breaches in both the public and private sector, such as the 2012 breach of the South Carolina Department of Revenue computer system that compromised millions of taxpayers’ personal identifying information, have brought increased scrutiny and awareness of the importance of the government’s obligation to protect the security of the personal identifying information of its citizenry. (Compl. ¶10.) Furthermore, numerous cases of threats against the personal safety and security of lottery winners have been well-documented across the country in both media reports and case law.² (*Id.* ¶ 11.) In light of growing privacy and security concerns

¹ Contrary to Appellant’s allegations in his initial brief, this reconsideration was not initiated in response to Appellant’s FOIA requests, but rather in light of the growing privacy and security concerns expressed to SCLC by recent lottery winners and in recognition of the changing environment regarding the protection of personal information. (Compl. ¶ 12.)

² See, e.g., *People v. Bennett*, 2013 WL 967583 (Mich. App. Mar. 7, 2013) (unpublished) (considering the case of a defendant who robbed a home, murdered one person, shot and severely injured another person, and physically assaulted a ten-year-old child in an attempt to steal a lottery ticket worth \$2,700.00); *State v. Bradford*, 2003 WL

expressed to SCLC by recent lottery winners and in recognition of the changing environment regarding the protection of personal information, on April 11, 2014, the Executive Committee of SCLC unanimously voted to suspend the 2003 policy regarding the release of lottery winners' information in response to FOIA requests and, in turn, unanimously adopted a new policy authorizing the Executive Director to determine the appropriate response(s) to pending or future requests for information made pursuant to FOIA. (*Id.* ¶ 12.) The Executive Committee also designated the Chairman of the Board of Commissioners (or the Executive Director in his absence) to act with full authority and on behalf of the Board regarding the defense or initiation of lawsuits related to FOIA. (*Id.* Ex. A (Minutes of Apr. 11, 2014 Meeting of the SCLC Executive Committee)).

Consistent with the newly-adopted policy concerning the release of lottery winners' information in response to FOIA requests and consistent with its past practice of attempting to work with requestors, on or about April 16, 2014, SCLC provided a written response to Appellant's request, wherein SCLC provided the following information: (1) gross dollar amounts of all such claims; (2) the dates of all such claims; (3) the home town and state of residence for all such

21372743 (Iowa App. June 13, 2003) (unpublished) (considering the case of a person who purchased and cashed several winning lottery tickets who was choked until she passed out and suffered injuries requiring hospitalization when she was robbed for cash received from the winning tickets).

There are also numerous media reports regarding threats of and actual harm to lottery winners. Rebecca Nelson, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Jan. 9, 2013 (<http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lotterys-unluckiest-winners/>) (discussing a lottery winner's death from cyanide the day after his lump sum check was issued being treated as homicide); JuJu Kim, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Nov. 27, 2012 (<http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lotterys-unluckiest-winners/>) (discussing a lottery winner's murder in a robbery plot); Andy Campbell, *Killer of Lottery Winner Abraham Shakespeare Can't Keep his Home, Judge Rules*, HUFFINGTON POST CRIME, Oct. 4, 2013 (http://www.huffingtonpost.com/2013/10/04/abraham-shakespeare-murdered-lottery-winner_n_4042811.html) (discussing a woman who befriended a lottery winner to take control of his wealth being convicted of first-degree murder in his death); Ron Dicker, *Virginia Lottery Winner Who Uses Wheelchair Robbed After Cashing Ticket*, HUFFINGTON POST CRIME, Feb. 7, 2013 (http://www.huffingtonpost.com/2013/02/07/virginia-lottery-winner-wheelchair-robbed-ticket_n_2638978.html) (discussing a wheelchair-bound lottery winner who was robbed while leaving a store after cashing ticket).

claimants; and (4) the game associated with the prize won. (*Id.* Ex. B (SCLC Ltr. to Appellant)). In addition, in its April 16, 2014 response, SCLC notified Appellant that the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all such claimants (collectively and hereinafter, “personal identifying information”) are specifically exempted from disclosure by S.C. Code Ann. § 30-2-310(A)(1)(e), which in turn made this information exempt from disclosure under S.C. Code Ann. § 30-4-40(a)(4). (*Id.* ¶ 14.) Moreover, SCLC notified Appellant that it had determined that all such information is also exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40(a)(2), because it is of a personal nature and its public disclosure would constitute an unreasonable invasion of privacy. (Compl. ¶ 14.) On or about April 17, 2014, Appellant notified SCLC that he believed the response of April 16, 2014 did not satisfy his March 31, 2014 FOIA request, thus making this matter ripe for adjudication. (*Id.* ¶ 15.) Appellant further demonstrated his relentless manner in seeking to obtain the personal identifying information of lottery winners by also submitting an additional request seeking only the claimant’s full name for all claims for any SCLC prize equal to or exceeding One Million Dollars (\$1,000,000) in gross proceeds from March 1, 2013 to March 20, 2014.³ (*Id.*) Whether the public disclosure of lottery winners’ personal identifying information is exempted by FOIA is the subject of this litigation and appeal.

Procedural History

On May 7, 2014, SCLC filed a complaint against Appellant in the Court of Common Pleas for Richland County, South Carolina, seeking declaratory relief and/or injunctive relief to prevent the disclosure of lottery winners’ personal identifying information. (Compl., generally.) Appellant filed an answer and counterclaims on June 9, 2014. (Ans. & Counterclaims.) The case

³ On April 16, 2014, Appellant sent a FOIA request seeking a copy of the letter SCLC sent to lottery winners after his initial request, copies of any and all “legal documents” received from any source, and copies of any and all documents from “any lawyer, law firm, or winners of any SCEL prize” relating to his initial FOIA request. (Compl. Ex. C (Appellant’s FOIA Requests to SCLC)).

was heard on December 5, 2014, though only pre-trial motions were heard that day. (Hrg. Tr. Dec. 5, 2014, generally.) On November 17, 2015, the circuit court granted judgment in favor of SCLC, and ordered that Appellant “is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants.” (Nov. 17, 2015 Cir. Ct. Order 12.) Appellant filed a motion to reconsider on November 30, 2015. (Mot. Reconsider.) On May 17, 2016, the circuit court denied Appellant’s motion to reconsider. (May 17, 2016 Cir. Ct. Order 3.) Appellant filed the instant appeal to the South Carolina Court of Appeals on May 25, 2016. (Not. Appeal.)

STANDARD OF REVIEW

Declaratory judgments in and of themselves are neither legal nor equitable. *See Felts v. Richland Cnty.*, 303 S.C. 354, 400 S.E.2d 781 (1991); *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003); *Wiedemann v. Town of Hilton Head Island*, 344 S.C. 233, 542 S.E.2d 752 (Ct. App. 2001). Hence, the standard of review for a declaratory judgment action is determined by the nature of the underlying issue. *Campbell*, 354 S.C. at 279, 580 S.E.2d at 165; *see also Goldston v. State Farm Mut. Auto. Ins. Co.*, Op. No. 3749 (S.C. Ct. App. filed March 1, 2004) (Shearouse Adv. Sh. No. 8 at 52); *Travelers Indem. Co. v. Auto World*, 334 S.C. 137, 511 S.E.2d 692 (Ct. App. 1999); *Burton v. York Sheriff's Dep't*, 358 S.C. 339, 594 S.E.2d 888 (S.C. App. 2004).

A declaratory judgment action to determine whether certain information should be disclosed under FOIA is an action at law. *See S.C. Tax Comm'n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994); *Campbell*, 354 S.C. at 280, 580 S.E.2d at 165; *Burton*, 358 S.C. 339, 594 S.E.2d 888. In an action at law, the appellate court's standard of review extends only to the correction of errors of law. *Crary v. Djebelli*, 329 S.C. 385, 496 S.E.2d 21 (1998); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Okatie River v. Southeastern Site Prep*, 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003). "Thus, the circuit court's factual findings will not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the judge's findings." *Burton*, 358 S.C. 339, 594 S.E.2d 888 (citing *Townes*, 266 S.C. at 86, 221 S.E.2d at 775; *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 538 S.E.2d 672 (Ct. App. 2000); *Sloan v. Greenville Cnty.*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003)).

ARGUMENT

The South Carolina Court of Appeals should hold, as a matter of law, that the public disclosure of lottery winners' personal identifying information – i.e. the (1) full names, (2) addresses, (3) telephone numbers, and (4) forms of identification of claimants – is exempted from FOIA. Therefore, this court should affirm the circuit court's order for declaratory relief and permanent injunction against Appellant.

SCLC recognizes the balance between its affirmative duty to disclose public information and its discretion to withhold exempted materials to protect the privacy and safety of lottery winners and their families. *Compare Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991), with S.C. Code Ann. § 30-4-40(a)(2). In recognition of this balance and pursuant to case law, SCLC parsed through the information requested by Appellant and separated information that could be publicly disclosed from information that was exempt from disclosure under FOIA. *City of Columbia v. American Civil Liberties Union of S.C., Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996); *Newberry Publ'g Co. v. Newberry Cnty. Comm'n on Alcohol & Drug Abuse*, 308 S.C. 352, 417 S.E.2d 870 (1992). SCLC responded to Appellant's request and disclosed a portion of non-personal identifying information concerning past lottery winners that he requested, including (1) gross dollar amounts of all such claims; (2) the dates of all such claims; (3) the home town and state of residence for all such claimants; and (4) the game associated with the prize won. (Compl. Ex. B (SCLC Ltr. to Appellant)). However, the public disclosure of lottery winners' personal identifying information constitutes an unreasonable invasion of privacy and is therefore exempt under FOIA. S.C. Code Ann. § 30-4-40(a)(2). Thus, this court should affirm the lower court's judgment in favor of SCLC.

I. The Circuit Court Properly Made Its Factual Findings and Conclusions of Law

As a preliminary matter, Appellant begins his brief with a list of perceived errors with the circuit court's order, some of which are more thoroughly discussed in separate sections of his brief, as well as complaints of erroneous factual determinations. SCLC disagrees with Appellant, and the following brief demonstrates that most of Appellant's arguments here are without merit. However, Appellant presents two general arguments that are not expounded upon in the remainder of his brief and therefore need to be addressed prior to considering the remainder of Appellant's brief.

First, Appellant contends that multiple factual findings by the circuit court were erroneous. However, a trial court's factual findings should not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the judge's findings. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 538 S.E.2d 672 (Ct. App. 2000); *see also Sloan*, 356 S.C. 531, 590 S.E.2d 338. In this case, the circuit court's findings are reasonably supported by the record. Further, Appellant's perceived improper factual findings are in reality nothing more than a disagreement he has with the circuit court over matters of degree. For example, Appellant admits that he submitted three FOIA requests to SCLC in this case, but he quibbles over the circuit court's determination that his submissions constitute "a long line" of such requests. (Appellant's Initial Br. 11.) Even if Appellant is correct and three FOIA requests is not "a long line" of requests, the circuit court's finding is harmless error, because it has no relevance or impact on the ultimate determination of the circuit court.

Second, Appellant asserts that the circuit court's conclusions of law were improper, inaccurate, and even not true as a matter of law. (Appellant's Initial Br. 11-13, 17.) The circuit

court's fundamental conclusion of law is that the public disclosure of lottery winners' personal identifying information constitutes an unreasonable invasion of personal privacy and therefore is exempted from disclosure under FOIA. (Nov. 17, 2015 Cir. Ct. Order, generally.) It is erroneous for Appellant to suggest that a ruling on the applicability of a FOIA exemption is not a matter of law. Numerous cases illustrate that the applicability of a FOIA exemption is a legal determination. *See, e.g., Burton v. York Sheriff's Dep't*, 358 S.C. 339, 594 S.E.2d 888 (S.C. App. 2004) ("A declaratory judgment action under the FOIA to determine whether certain information should be disclosed is an action at law.") (citing *S.C. Tax Comm'n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994); *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165 (Ct. App. 2003)). Further, Appellant fails to provide substantive facts or law to demonstrate error in the circuit court's conclusions of law. Accordingly, both of Appellant's generalized allegations concerning the circuit court's factual findings and conclusion of law are without merit.

II. SCLC Has Standing In This Case

SCLC has standing to seek declaratory judgment and injunctive relief. First, Appellant claims that only South Carolina citizens may bring suit under FOIA. To support this claim, Appellant cites Subsection (a) of S.C. Code Ann. § 30-4-100, which states:

Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered an irreparable injury for which no adequate remedy at law exists.

S.C. Code Ann. § 30-4-100(a). However, Appellant has ignored the immediately following Subsection (b), which states:

If a person *or entity* seeking such relief prevails, he *or it* may be awarded reasonable attorney fees and other costs of litigation. If such person *or entity* prevails in part, the court may in its discretion award him *or it* reasonable attorney fees or an appropriate portion thereof.

S.C. Code Ann. § 30-4-100(b) (emphasis added). Had the legislature intended for only “citizen[s] of the State” to seek declaratory judgment or injunctive relief under FOIA as outlined in Subsection (a), the legislature would not have incorporated the broader categorization of “a person or entity” without reference to the citizenship of either said person or entity in the immediately succeeding Subsection (b) of S.C. Code Ann. § 30-4-100. The plain meaning of S.C. Code Ann. § 30-4-100, in its entirety, demonstrates that the legislature intended to enable a non-citizen public entity, such as SCLC, to seek declaratory judgment or injunctive relief under FOIA.

Further, this statutory authority for SCLC’s standing is supported by case law as well, which Appellant himself has cited. In two previous reported opinions by the South Carolina Supreme Court, non-citizen public entities were plaintiffs in actions that sought declaratory judgment under FOIA and the South Carolina Supreme Court did not find standing to be at issue in either case. *City of Columbia v. American Civil Liberties Union of S.C., Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996); *S.C. Tax Comm’n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994). The Supreme Court’s silence on this issue is deafening. As Appellant himself notes, it is fundamental that only a party with standing may maintain an action. (Appellant’s Initial Br. 20 (citing *Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999))). Thus, the Supreme Court could not have considered the merits of the case in either *City of Columbia* or *South Carolina Tax Commission* had it not implicitly found that both public entities had standing to maintain their declaratory judgment actions in the first instance. Thus, SCLC has standing based on both statutory authority and binding legal precedent.

Alternatively, Appellant claims SCLC lacks standing, because the only irreparable harm SCLC has alleged is based on third-party lottery winners and that such harm is not sufficient to establish that SCLC itself has suffered or is likely to suffer irreparable harm. However, persuasive precedent from another state court holds that the irreparable harm analysis does not necessarily focus on the entity in question, but on those third-party individuals who are the subject of the records request. For example, in denying a records request under Ohio's Public Record Law, the Ohio Supreme Court held that "a release of the requested information by the [state entity] in this matter places those who are the subject of the records request at risk of irreparable harm, albeit not necessarily by [the state entity itself]." *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (2000) (citing *Kallstrom v. City of Columbus*, 136 F.3d 1055 (6th Cir. 1998)). This reasoning is also implicit in the *South Carolina Tax Commission* case previously discussed, as the irreparable harm from a public records disclosure was based on a third-party entity, rather than on the Tax Commission itself. *S.C. Tax Comm'n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994).

Appellant suggests that the third-party lottery winners cannot establish that they have suffered or are likely to suffer irreparable harm either, because they "released the Lottery Commission from any liability in disclosing information about them in response to a FOIA request." (Appellant's Initial Br. 28.) However, this release of liability only states that the lottery winners' information "*may* be subject to disclosure" under FOIA (emphasis added). This language dilutes Appellant's argument, because it establishes that this release of liability is not a clear, absolute, or knowing waiver of public disclosure of private information. Further, the very fact that a judicial remedy to maintain anonymity exists for lottery winners (within a fifteen-day grace

period) illustrates that simply playing the South Carolina lottery is not an automatic waiver of public disclosure.

Ultimately, the irreparable harm to the third-party lottery winners in this case comes from the unreasonable invasion of privacy. The unreasonableness of Appellant's records request is demonstrated from a number of authorities: The right to privacy is the right to be left alone, or "the right to live without one's name, picture or statue, or that of a relative, made public against his will." *Holloman v. Life Ins. Co. of Va.*, 7 S.E.2d 169, 171, 192 S.C. 454, 458 (1940). Further, the South Carolina Constitution expressly recognizes the right to privacy. S.C. Const. art. I § 10. At a minimum, the state constitution therefore protects a claimant against invasions of privacy resulting from state action, including the release of personal information that would result in an unreasonable invasion of a claimant's personal privacy. A prominent example of the concern regarding improper public release of personal information is the public concern and outcry that arose following the breach of the South Carolina Department of Revenue's computer system and network, resulting in the suspected compromise of millions of taxpayers' personal identifying information and a civil lawsuit regarding the breach. *See Morgan v. S.C. Dep't of Revenue*, 2012-CP-40-07331. Recognizing the potential for harmful use of this personal information that was wrongfully accessed, the State of South Carolina has contracted for credit monitoring for affected taxpayers for two years. Moreover, the courts have also taken steps to address this concern. The South Carolina Supreme Court recently issued an order requiring the redaction of personal identifying information from documents filed with an appellate court, including but not limited to social security numbers, taxpayer identification numbers, driver's license numbers, passport numbers, or other personal identifying numbers; names of minor children; financial account numbers; home address of minors, sexual assault and abuse and neglect victims; non-parties; and

date of birth. *In re Revised Order Concerning Pers. Identifying Info. & Other Sensitive Info. in Appellate Court Filings*, 2013-002681, 2014 WL 1464413 (S.C. Apr. 15, 2014). The federal courts likewise recognize a similar need for privacy in court filings, generally requiring the redaction of personal identifying information. Fed. R. Civ. P. 5.2. Further, the United States Supreme Court has held that “as a *categorical matter* . . . a third party’s request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen’s privacy” *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (emphasis added). Lastly, a lower South Carolina court has held that a release of a lottery winner’s personal identifying information constitutes an unreasonable invasion of personal privacy within the meaning of S.C. Code Ann. § 30-4-40(a)(2). *John Doe v. S.C. Lottery Comm’n*, 2014-CP-40-2446. Thus, the irreparable harm to the third-party lottery winners, who are the subjects of the Appellant’s record request, is sufficient to establish SCLC’s standing.

III. The Circuit Court’s Injunction Is Not Overly Broad

The circuit court’s injunction is not broader in scope than what is necessary to stop the harm it is designed to prevent. *See Goldberg v. Trakas*, 206 F.Supp. 867 (E.D.S.C. 1962). Appellant argues the scope of the injunction is too broad for three reasons, none of which are meritorious. First, Appellant offers a hypothetical: he asserts that the injunction is overly broad, because it prevents him from unwillingly receiving the personally identifying information from a lottery winner, who could hypothetically contact him in order to freely divulge his or her personal identifying information. (Appellant’s Initial Br. 30.) SCLC disagrees with the assumption that this hypothetical passive activity violates the injunction. The circuit court’s injunction reads as follows: “IT IS ORDERED that [Appellant] is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of

identification of all lottery winners and claimants.” (Nov. 17, 2015 Cir. Ct. Order 12 (emphasis added)). Thus, the injunction only prohibits Appellant from “seeking” to obtain the information. Even if a lottery winner hypothetically desired to divulge his or her personal identifying information to Appellant, the Appellant’s passive action in listening to or receiving this information would not be considered actively “seeking” this information, which is expressly barred by the injunction. Thus, the injunction is not overly broad to prevent Appellant from receiving this information freely from a lottery winner. It merely prevents Appellant from seeking the disclosure of lottery winners’ personal identifying information from SCLC.

Second, Appellant argues that the injunction is overly broad because of its permanent nature, because he can never seek this information, “under any circumstances, for the rest of his days.” (Appellant’s Initial Br. 30.) This argument is both illogical and incorrect. First, if a permanent injunction is overly broad based only on the fact that it is permanent, then no permanent injunction could ever be issued. Such an outcome would be illogical, because it would frustrate the purpose of Rule 57 of the South Carolina Rules of Civil Procedure and the South Carolina Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 *et seq.*, both of which were enacted by the legislature in order to provide permanent injunctions as a form of judicial relief. Second, Appellant’s assertion is incorrect on its face, because he is allowed to seek this information if a court modifies or vacates the permanent injunction in the future due to changed circumstances. For example, Rule 60(b) of the South Carolina Rules of Civil Procedure allows a party to seek relief from judgment if a court finds “it is no longer equitable that the judgment [such as a permanent injunction] should have prospective application.” Thus, the circuit court’s permanent injunction is not overly broad based on its permanent nature.

Third, Appellant argues that the injunction prevents him from seeking the personal identifying information of lottery winners, which is not connected to the harm perceived by the circuit court, i.e. the disclosure of such information. (Appellant's Initial Br. 30.) However, this argument merely presents a distinction without a difference, because the seeking and disclosure of this information are intimately connected. Thus, the circuit court properly tailored the injunction to serve the purpose for which it was granted, specifically to prevent the harm of seeking and disclosing lottery winners' personal identifying information. In sum, the scope of the circuit court's injunction was proper and not overly broad.

IV. The Circuit Court Properly Held FOIA Exempted the Public Disclosure of Lottery Winners' Personal Identifying Information

The circuit court properly held that FOIA exempts the disclosure of a lottery winner's name or other personal identifying information, including, but not limited to, mailing address, phone number, social security number, and date of birth, because the disclosure of such information would constitute an unreasonable invasion of the lottery winner's personal privacy. Appellant argues that this information does not fall within a FOIA exemption. However, S.C. Code Ann. § 30-4-40(a)(2) exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." This language tracks the South Carolina Constitution, which states that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated" S.C. Const. art. I § 10. As set forth above, a number of authorities have demonstrated that disclosure of a lottery winner's name or other personal identifying information constitutes an unreasonable invasion of personal privacy. *See supra* III. SCLC Has Standing In This Case. Most notably, a lower South Carolina court has

held that the disclosure of lottery winners' personal identifying information constitutes an unreasonable invasion of personal privacy. *John Doe v. S.C. Lottery Comm'n*, 2014-CP-40-2446.

Appellant relies on *State v. Counts*, Op. No. 27546, n.7 (S.C. Ct. App. July 8, 2015), for the proposition that physical intrusions into "the privacy interests in one's home are precisely what our state constitutional provision was intended to protect." Appellant suggests that these physical intrusions must be the only kind of action that constitutes an unreasonable invasion of privacy. However, neither the state constitution nor the FOIA exemption is so narrowly defined. In fact, the South Carolina Constitution differentiates between physical intrusions and other types of invasions of privacy. The state constitution distinguishes between "unreasonable searches and seizures," which represents intrusions of a physical nature, and "unreasonable invasions of privacy," which is a broader, catch-all provision that protects against other types of non-physical intrusions, such as the public disclosure of lottery winners' personal identifying information. Further, the FOIA exemption reasserts this broader protection against non-physical intrusions of privacy by protecting against "unreasonable invasions of personal privacy," which is mirrored language from the state constitution. Thus, it was proper for the circuit court to find that a non-physical intrusion, such as the disclosure of lottery winners' personal identifying information, would constitute an unreasonable invasion of personal privacy.

Appellant also relies on *Society of Professional Journalists v. Sexton*, 324 S.E.2d 313 (S.C. 1984), for the proposition that because death certificates, "which contain much more information of a personal nature than that sought by [Appellant] in this case," do not fall within this FOIA exemption, then neither should lottery winners' personal identifying information. (Appellant's Initial Br. 35.) However, the South Carolina Supreme Court held that such personal information disclosed on a death certificate is considered a private, "personal right[] which do[es] not survive"

the death of the individual, and therefore FOIA did not exempt this disclosure. *Soc. of Prof. Journalists*, 324 S.E.2d 313. The implication of this Supreme Court decision is that such personal information would constitute a private, personal right during the life of an individual, subject to the protections from the state constitution and FOIA against unreasonable invasions of privacy. In the case at bar, SCLC seeks to protect the personal identifying information of persons still alive. Thus, contrary to Appellant's interpretation, the *Society of Professional Journalists* decision supports SCLC's position instead. Therefore, the circuit court did not err in holding that the disclosure of still-living lottery winners' personal identifying information would constitute an unreasonable invasion of personal privacy.

Additionally, Appellant attempts to interpret legislative intent from looking at FOIA in its entirety. Appellant cites S.C. Code Ann. § 30-4-50, a completely separate code provision upon which SCLC is not relying and which states that "home addresses and home telephone numbers of *employees and officers of public bodies* revealed in response to requests pursuant to [FOIA] may not be used for commercial solicitation purposes." *Id.* (emphasis added). Clearly, the legislative intent of this provision has no interpretive impact on the disclosure of information regarding lottery winners, who are not employees or officers of public bodies.

Further, Appellant cites S.C. Code Ann. § 30-4-40(a)(2), which provides some examples of what information is exempt, such as "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." From this example, Appellant argues that the "natural interpretation" is that the legislature intended that home addresses and telephone numbers, under "ordinary circumstances," are the type of

information required to be disclosed in response to FOIA requests. (Appellant's Initial Br. 36.) However, S.C. Code Ann. § 30-4-40(a)(2) prefaces all of the examples by expressly stating "[i]nformation of a personal nature shall include, *but not be limited to*" *Id.* (emphasis added). By using the phrase "shall include, but not be limited to," the legislature evidently did not intend for any of the examples, including the one Appellant cites, to narrow or limit the overarching protection against a "public disclosure [that] would constitute unreasonable invasion of personal privacy." *Id.*; see also *S.C. Dep't of Consumer Affairs v. Rent-a-Center, Inc.*, 547 S.E.2d 881, 883-84 (S.C. Ct. App. 2001) ("The canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'")

This maxim should be used to accomplish legislative intent, not defeat it. The maxim 'is a rule of statutory construction; it is not a rule of substantive law. Accordingly, [it] 'should be used with care.'") (internal quotation marks and citations omitted); *Hobart Corp. v. Waste Mgmt. of Ohio*, 758 F.3d 757 (6th Cir. 2014) (explaining "that the [expression unius] canon can be overcome by contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion" and declining to apply expressio unius where it would "defeat" the "principal purpose" of the statute); *Cintech Indus. Coatings v. Bennett Indus.*, 85 F.3d 1198 (6th Cir. 1996) (explaining that the ejusdem generis canon does not apply when "the provision . . . express[es] a contrary intent," by including language such as "including, but not limited to").

Further, Appellant's narrow interpretation would frustrate the legislative intent of the FOIA exemption, which seeks to prohibit broad categories of unreasonable invasions of personal privacy, rather than only the specific examples listed in the provision. Therefore, the circuit court did not err in holding that lottery winners' personal identifying information fell under the FOIA exemption

outlined in S.C. Code Ann. § 30-4-40(a)(2), which broadly protects against unreasonable invasions of privacy.

Appellant claims that SCLC and the circuit court have an ulterior motive to create a new FOIA exemption. SCLC denies that its ulterior motive is to obtain a new FOIA exemption concerning lottery winners. As the circuit court confirmed, the existing FOIA exemptions are more than sufficient to provide SCLC with the relief it sought. In sum, the circuit court correctly held that FOIA exempted the disclosure of lottery winners' personal identifying information.

Finally, Appellant completely ignores the Supreme Court precedent regarding the essential purpose of FOIA, which "is to protect the public from secret government activity." *Perry v. Bullock*, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014). This case has nothing at all to do with the public's right to be protected from secret government activity, but everything to do with protecting the right of private citizens who are not government officials from the disclosure of personal information that would constitute unreasonable invasion of personal privacy. As a result, the circuit court reached a proper conclusion in this case, and its decision should be affirmed.

V. The Circuit Court Properly Ruled on Appellant's Counterclaims

The circuit court properly ruled upon Appellant's counterclaims by granting judgment in favor of SCLC. Appellant argues the circuit court erred procedurally and that his counterclaims survive, because there was no "motion for any sort of judgment on them and they have not yet been tried." (Appellant's Initial Br. 40-41.) However, "where a judgment implicitly resolves issues raised by a defendant's counterclaim, the judgment may constitute a final judgment, even though it makes no explicit reference to the counterclaim." *Hackathorn v. Four Seasons Lakesites*, 959 S.W.2d 954 (Mo. Ct. App. 1998). Further, the circuit court's order clearly states that its "Order concludes the . . . lawsuit and judgment is entered for [SCLC]." (Nov. 17, 2015 Cir. Ct. Order 12

(emphasis added)). Thus, the circuit court implicitly resolved the issues raised by Appellant's counterclaims, and therefore the circuit court did not procedurally err in granting judgment in favor of SCLC. Even if the circuit court's order did not rule upon Appellant's counterclaims, those counterclaims should be regarded as non-final and non-appealable.

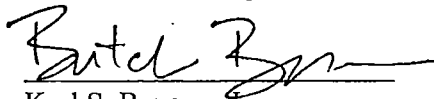
Therefore, the fact that Appellant is treating these counterclaims as final and appealable undermines his argument that the circuit court improperly ruled upon his counterclaims. To the extent the Appellant reasserts the merits of the substance of his counterclaims, the circuit court properly granted judgment in favor of SCLC for all the reasons previously discussed. Thus, the circuit court properly ruled on Appellant's counterclaims.

CONCLUSION

For the foregoing reasons, SCLC respectfully requests that the South Carolina Court of Appeals affirm the lower court's order because the public disclosure of lottery winners' personal identifying information, such as the (1) full names, (2) addresses, (3) telephone numbers, and (4) forms of identification of claimants, constitute an unreasonable invasion of personal privacy and therefore is exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a)(2).

Respectfully submitted,

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
Honorable Shirley C. Robinson, Judge

Case No.: 2016-001112

South Carolina Lottery Commission.....Respondent,

v.

George S. Glassmeyer.....Appellant.

RULE 211(b) CERTIFICATE

I certify that the final brief of Respondent complies with the requirements of S.C.App.Ct.
Rule 211(b).



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November 30, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

FINAL REPLY BRIEF OF APPELLANT

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NOV 22 2016

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STATEMENT OF ISSUES

- I. Did the circuit court err in rendering a judgment that did away with Appellant's counterclaims without ever having had a trial on them or hearing any motion directed at them and without analysis of those claims?**
- II. Did the circuit court err in entering judgment on the pleadings against Appellant on the basis of so-called facts that were neither admitted nor alleged by Appellant in his answer and counterclaim?**
- III. Did the circuit court err in rendering judgment on the pleadings for the Respondent on its declaratory judgment claim about whether information is exempt from disclosure under the South Carolina Freedom of Information Act where the Respondent's own complaint showed the Respondent is a government public body, not a citizen, and has no standing to bring such a claim?**
- IV. Did the circuit court err in rendering judgment on the pleadings for the Respondent on its claim seeking an injunction to prevent Appellant from seeking information where the Respondent's own complaint showed the Respondent has no standing to bring such a claim?**
- V. Did the circuit court err in failing to dismiss the Respondent's declaratory judgment claim about whether information is exempt from disclosure under the South Carolina Freedom of Information Act where the Respondent's own complaint showed the Respondent is a government public body, not a citizen, and has no standing to bring such a claim?**
- VI. Did the circuit court err in failing to dismiss the Respondent's claim seeking an injunction to prevent Appellant from seeking information where the Respondent's own complaint showed the Respondent has no standing to bring such a claim?**

ARGUMENT

Appellant, George S. Glassmeyer (hereinafter “Glassmeyer”), disagrees with how the Respondent, the South Carolina Lottery Commission (hereinafter “the Lottery Commission”), characterizes this appeal. While Glassmeyer agrees that this appeal concerns the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.*, (hereinafter “FOIA”) and S.C. Code Ann. § 30-4-40(a)(2), the similarity between the way that the Lottery Commission sees this case and the way things actually happened basically ends there.

This is a case in which a government body sued a man merely for making FOIA requests and in which a circuit court gave that government body what it wanted on the basis of “factual findings” that are supported by nothing at all, since the circuit court never received any evidence. *That* is what this case is about.

I. The Lottery Commission’s brief references an inapplicable standard of review. This case was never tried, no factual record was ever made, and there is, accordingly, no evidence to support any of the circuit court’s findings of fact.

The Lottery Commission acknowledges in its brief that this case was not tried and that “only pre-trial motions were heard” on the day that had been set for trial. (Initial Brief of Respondent p. x.) Despite this, the Respondent recites a standard of review that would be applicable to a trial court’s findings of fact made on the evidence adduced at the trial of an action at law. (Initial Brief of Respondent p. xi.)

The circuit court’s judgment in this case was made upon the Lottery Commission’s motion for judgment on the pleadings. (R. p. 13, p. 218 ln. 5-7.) There was no trial in this case, and no factual record was ever made. (R. p. 235 ln. 12-18.)

No party presented any evidence to the circuit court. There is no evidence to support any of the circuit court's findings of fact. Evidence is something that the record in this case lacks completely.

The standard of whether a motion for judgment on the pleadings should be granted is the same as for a motion under Rule 12(b)(6), SCRCP, and the appellate court applies the same standard to the review of an order granting such a motion. See Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000); Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990). In deciding a motion for judgment on the pleadings, the trial court may not consider matters outside the allegations of the pleadings, and the appellate court is limited to the content of the pleadings in just same way. Falk, 341 S.C. at 281; Firemen's Ins. Co., 302 S.C. at 234. An appellate court must reverse the grant of a motion for judgment on the pleadings if, when viewed in the light most favorable to the non-moving party, "the facts alleged [in the non-moving party's pleadings] and inferences reasonably deducible therefrom would entitle the [non-moving party] to any relief on any theory of the case." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). Accordingly, the standard applicable here is whether, based on what is alleged in Glassmeyer's answer and counterclaim and viewing that in the light most favorable to him, it was possible for Glassmeyer to prevail under any theory. Id.; Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

In addition, the Lottery Commission confuses whether something is an action at law, as opposed to an action in equity, with the very different question of whether something is a *matter* of law. (Initial Brief of Respondent p. 3.) A matter of law is

“[a] matter involving a judicial inquiry into the applicable law.” Black’s Law Dictionary 1067 (9th ed. 2009). An action at law is “[a] civil suit stating a legal cause of action and seeking only a legal remedy[,]” as opposed to an action in equity (which this actually is as to the Lottery Commission’s injunction claim). Id. at 33.

As discussed at length in Glassmeyer’s appellant’s brief, the circuit court made its ruling based on findings of fact, but, since no evidentiary record was made in the case, it would be impossible for any of those findings to satisfy even the standard of review advanced by the Lottery Commission, as none of the findings are supported by any evidence at all. See Branche Builders, Inc. v. Coggins, 386 S.C. 43, 47, 686 S.E.2d 200, 202 (Ct. App. 2009) (in action at law tried without a jury, appellate court “will not disturb the trial court’s findings of fact unless no evidence reasonably supports the findings”).

Applying the correct standard of review or the incorrect one cited by the Lottery Commission, the conclusion is the same: when, on the Lottery Commission’s motion for judgment on the pleadings and in the absence of any evidentiary record, the circuit court viewed the case in a light highly favorable to the Lottery Commission and made findings of fact in favor of the Lottery Commission, that was reversible error.

II. The Lottery Commission incorrectly characterizes this case and relies on unproven “facts” outside Glassmeyer’s pleadings to argue that the disclosure to Glassmeyer of the names of lottery claimants is inherently dangerous or would be an unreasonable invasion of their privacy.

The Lottery Commission’s argument seems premised upon the notion that, statistically, there is grave danger of physical harm that faces anyone known to have

won the lottery. The circuit court's order is premised upon that same thing. (R. pp. 1-12.) That premise is anything but established, however.

In addition to citing unpublished opinions and orders (that were not even rendered by any appellate court of this state), which is prohibited by rule, Rule 268(d)(2), SCACR, the Lottery Commission also cites as a "fact" that "numerous cases of threats against the personal safety and security of lottery winners have been well-documented across the country in both media reports and case law." (Initial Brief of Respondent pp. vii-viii.) In support of this, the Lottery Commission lists four "media reports" that it alleged in its complaint in this case. (Initial Brief of Respondent p. viii; R. p. 22.) (Apparently, out of all the lottery winners out there, the Lottery Commission could find only four media reports about any of them being harmed.) It has actually never been shown that these articles even exist, much less that what is in them is accurate. The Lottery Commission even cites these articles as though they were legal authorities. (Initial Brief of Respondent p. iv.) They are not, nor are they facts. What they are right now and were before the circuit court are unproven facts alleged by the Lottery Commission, the party that made the motion for judgment on the pleadings that resulted in the judgment subject of this appeal. (R. pp. 13, 22, p. 218 ln. 5-7.) The only way they could be considered by the circuit court or in this appeal as being facts would be if they had been pled by Glassmeyer, the non-moving party, or admitted by him in his responsive pleading to the complaint. Rule 12(c), SCRCP; Falk, 341 S.C. at 281; Firemen's Ins. Co., 302 S.C. at 234. They were not.

In response to these allegations in the Lottery Commission's complaint, Glassmeyer's answer and counterclaim states that he "denies that such instances are

truly numerous, particularly in light of the aggregate number of lottery winners; rather, what the Plaintiff cites are at most isolated instances of unfortunate occurrences.” (R. p. 149.) Accordingly, for purposes of motion against Glassmeyer for judgment on the pleadings, the circuit court had to adopt the truth of the statements in *Glassmeyer*’s pleading about these things: that such instances are not “truly numerous, particularly in light of the aggregate number of lottery winners” and that “what [the Lottery Commission] cites are at most isolated instances of unfortunate occurrences.” (R. p. 149.)

Further, the Lottery Commission’s brief totally ignores the words of the Lottery Commission’s form on which the lottery claimants voluntarily write the information in question, which they then voluntarily submit to the Lottery Commission, thus creating the public records at issue. (R. p. 160.) The form contains the following, in bold type, displayed prominently above the line for the claimant’s signature:

**INFORMATION FROM THIS FORM MAY BE
SUBJECT TO DISCLOSURE UNDER THE S.C.
FREEDOM OF INFORMATION ACT (FOIA). I
release SCEL from all liability or claims relating to
information provided to or used by a party obtaining
information pursuant to FOIA.**

(R. p. 160.)

The Lottery Commission cites FOIA precedent that notes that the reason the General Assembly enacted FOIA and provided citizens with a right to access government information “is to protect the public from secret government activity.” Perry v. Bullock, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014). The Lottery Commission attempts to argue that “[t]his case has nothing at all to do with the public’s

right to be protected from secret government activity[.]” (Initial Brief of Respondent p. 13.)

Right now, because of the failure of the Lottery Commission and the circuit court to follow the law, the Lottery Commission is keeping secret the identities of persons to whom it has paid millions of dollars in public funds. For that reason alone, the type of information sought here would fall within the public interest; further, this sort of information has the potential to lead to the uncovering of corruption, if there has been any, at the Lottery Commission. “FOIA was enacted for the purpose of making it ‘possible for citizens, or their representatives, to learn and report fully the activities of their public officials.’” Bellamy v. Brown, 305 S.C. 291, 293, 408 S.E.2d 219, 220 (1991) (quoting S.C. Code Ann. § 30-4-15). “The purpose of the Act is to protect the public by providing for the disclosure of information.” Id. at 295. Right now, because of the failure of the Lottery Commission and the circuit court to follow the law, it is impossible for Glassmeyer to learn and fully report the activities of Lottery Commission officials in paying out very large sums of public money. (R. p. 12.)

But perhaps just as important in countering the Lottery Commission’s argument is that a citizen requesting information under FOIA is not required to supply a reason or even have any particular reason why he wants the information. S.C. Code Ann. § 30-4-30(a). The Lottery Commission attempts to conflate the reason why FOIA exists with some imagined requirement about the purpose of the particular requesting citizen. The law does not support such a reading. See S.C. Code Ann. §: 30-4-15, 30-4-30(a); Bellamy, 305 S.C. at 293.

III. Authorities cited by the Lottery Commission do not mean what the Lottery Commission argues they do, and many actually help illustrate the wrongness of the Lottery Commission's position.

The Lottery Commission cites Bellamy v. Brown, but that case not only undercuts one of its arguments as discussed above, it also illustrates that an implied premise of the Lottery Commission's arguments – that it owes a duty to lottery claimants to keep secret the government records those claimants created – does not have support in the law. Id. at 295. The Supreme Court held in Bellamy that “no special duty of confidentiality is established by the FOIA.” Id.

City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996), and South Carolina Tax Commission v. Gaston Copper Recycling Corporation, 316 S.C. 163, 447 S.E.2d 843 (1994), do not stand for the proposition that a government body, which by definition cannot be a citizen, has standing to bring an action under FOIA. As discussed in Glassmeyer's appellant's brief, it is well established that “[a]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991). A review of both these cases reveals that no one's standing was made an issue; thus, neither case held or stands for the proposition that a government body has standing to sue under FOIA. Id. Contrary to the Lottery Commission's suggestion (Initial Brief of Respondent p. 4), under South Carolina law, standing is not a matter of subject matter jurisdiction of which the Court would have been required to take notice; rather, standing goes instead to the question of a party's right to bring the lawsuit. Baird v. Charleston Cty., 333 S.C. 519, 530 & 530 n. 7, 511 S.E.2d 69 (1999) (citing Bardoon

Properties, *infra*, and noting standing requires party to be real party in interest); Bardoon Properties, NV v. Eidolon Corp., 326 S.C. 166, 170-71 & 171 n. 4, 485 S.E.2d 371, 373-74 & 374 n. 4 (1997) (holding unequivocally that whether party is real party in interest is not jurisdictional and overruling prior case law to the contrary).

The City of Columbia v. ACLU case, though, does demonstrate the wrongness of the Lottery Commission's contention that the information sought by Glassmeyer is necessarily "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy" under S.C. Code Ann. § 30-4-40(a)(2) just because it contains information about lottery claimants. In that case, the City of Columbia claimed the unreasonable invasion of personal privacy exemption under S.C. Code Ann. § 30-4-40(a)(2) applied, but the Supreme Court disagreed with the "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. Thus, it remains to be seen whether the report qualifies for an exception under FOIA." City of Columbia, 323 S.C. at 387. The Newberry Publishing Company case cited by the Lottery Commission analogously "reject[ed] SLED's contention that this, or any, criminal investigative report is per se exempt from disclosure" under FOIA. Newberry Pub. Co., Inc. v. Newberry Cty. Commn. on Alcohol and Drug Abuse, 308 S.C. 352, 417 S.E.2d 870 (1992). In the Burton v. York County Sheriff's Department case cited by the Lottery Commission – which does not stand for the proposition that whether a record is exempt from mandatory FOIA disclosure is a matter of law – the Court of Appeals, following the

Supreme Court precedent just discussed, ruled against a categorical determination that information was exempt under the unreasonable invasion of personal privacy exception, citing these cases to note that “the determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis.” 358 S.C. 339, 348, 594 S.E.2d 888 (Ct. App. 2004).

The case of State ex rel. McCleary v. Roberts, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (2000), that the Lottery Commission cites determined that the information sought there did not have to be disclosed because it did not meet Ohio’s (very different) definition of a record and was, thus, not a public record. It deals with another state’s different law. Id.

The Lottery Commission cites United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989). The case is readily distinguished by reference to the statutory law at issue. Reporters Committee concerned the applicability of 5 U.S.C. § 552(b)(7)(C), an exception to disclosure under the Federal Freedom of Information Act (US FOIA). 489 U.S. at 751. The Supreme Court of South Carolina has previously noted that “federal case law interpreting the US FOIA is not binding in this state because the exemptions contained in [US FOIA] are more expansive than those contained in South Carolina’s FOIA.” Newberry Pub. Co., 308 S.C. at 354 n. 4. Further, Reporters Committee concerned an exemption to US FOIA that differs markedly from the unreasonable invasion of privacy exception in S.C. Code Ann. § 30-4-40(a)(2). 489 U.S. at 751. At issue in Reporters Committee was an exemption from US FOIA disclosure for “records or information compiled for law enforcement purposes, but only to the extent that the production of such law

enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]” 5 U.S.C. § 552(b)(7)(C). The Court noted the import of the “could reasonably be expected to” language in its analysis. Reporters Committee, 489 U.S. at 778-80. This is markedly unlike the exemption to our FOIA upon which the Lottery Commission relies, under which the public body must prove that disclosure of the information would – not just *could*, but necessarily *would* – result in an unreasonable invasion of personal privacy. S.C. Code Ann. § 30-4-40(a)(2).

The Lottery Commission’s attempt to find authority for its position in the order it helped to create in a collusive, sham proceeding (Initial Brief of Respondent p. 7) would be laughable if this were not such a serious matter.

The Lottery Commission tries to rely for support on FOIA deeming as exempt from disclosure under the unreasonable invasion of privacy exception “information relating to public records which include the name, address, and telephone number . . . 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.*” S.C. Code Ann. § 30-4-40(a)(2) (emphasis added). What that very specific exemption indicates, though, is that it is the handicapped status of the individuals that brings such a request within the ambit of an unreasonable invasion of personal privacy, and then only when “the information is requested for person-to-person commercial solicitation” of the handicapped because they are handicapped. Id. Further, the fact that this had to be explicitly added to the definition of such information suggests that it would have been doubtful, if this language had not

been added, that this kind of information would have qualified as the sort that it would constitute an unreasonable invasion of personal privacy to disclose. See id.

The argument advanced by the Lottery Commission based on Hackathorn v. Four Seasons Lakesites, Inc., 959 S.W.2d 954 (Mo. Ct. App. 1998), is baffling. That case concerns a question of appealability under Missouri law, which a review of that opinion makes plain is obviously quite different from South Carolina law about what is appealable. Id. Glassmeyer is appealing the circuit court's ending of his counterclaims because the circuit court ended the entire case without those claims or any motion directed at them ever having been heard. (R. p. 12.)

IV. Despite some gymnastic briefing, that the Lottery Commission lacks standing to pursue its claims is really quite plain.

The Lottery Commission now argues that it *does* have standing under FOIA to bring the claims it brought against Glassmeyer. (Initial Brief of Respondent pp. 3-7.) At the beginning of the hearing on its motion for judgment on the pleadings, however, the Lottery Commission clarified that it sought declaratory relief under the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, rather than under FOIA, as its complaint indicated. (R. p. 25 p. 213 ln. 2-4.) The Lottery Commission abandoned FOIA as a basis for its declaratory judgment action and proceeded on its injunction claim as seeking it under general equity principles. The circuit court's order reflects those as the bases for the Lottery Commission's claims. (R. pp. 1-12.)

Review of the Lottery Commission's arguments shows that they fall short. The arguments the Lottery Commission advances are quite creative; however, they are just incorrect. The legal support for them is just not there.

The Lottery Commission plainly lacks standing to assert either of the two claims it brought against Glassmeyer in this case.

a. The Lottery Commission argues a strained interpretation of S.C. Code Ann. § 30-4-100.

The Lottery Commission bases its argument upon the two subsections of S.C. Code Ann. § 30-4-100. That statute reads as follows:

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

S.C. Code Ann. § 30-4-100.

That subsection (b) provides the remedies for “a person or entity” that prevails in an action under FOIA merely demonstrates that the General Assembly did not intend to restrict the definition of “citizen” under this statute to only natural persons. Id. FOIA created a right to get information from government that did not exist previously. See S.C. Code Ann. § 30-4-30(a). FOIA did not create a right or remedy for anyone other than a citizen. S.C. Code Ann. §§ 30-4-30, 30-4-100. That a citizen (someone who may bring an action under FOIA) may be a natural person or some other kind of entity

does not somehow vest the Lottery Commission, which is a part of state government, with standing to sue under this statute.

Further, accepting the Lottery Commission's argument would produce a result that would be absurd from a policy perspective. It would permit a government body to do what the Lottery Commission did here – sue a citizen merely for making FOIA requests – and get an award of attorney's fees against that citizen if the government body wins the suit. The court should note that that is exactly what the Lottery Commission tried to do here. (R. pp. 28.)

b. The Lottery Commission has failed to cite any precedent for the notion that it has standing to seek an injunction to prevent what it perceives as harm to someone else.

The South Carolina Tax Commission case most certainly does not stand for the proposition that a government body has standing to seek an injunction because of supposed threatened harm to someone else. 316 S.C. 163. No statement or situation even remotely close to that is in that opinion. Id. The Lottery Commission has failed to cite even one case for its argument that it may seek an injunction to prevent harm to someone else.

V. *Personal* and *private* under S.C. Code Ann. § 30-4-40(a)(2) are not synonyms.

The words of the unreasonable invasion of personal privacy exemption are as follows:

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 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.

S.C. Code Ann. § 30-4-40(a)(2).

An examination of the definition at issue, “[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy[,]” reveals that it has two parts: the information has to be about a person, i.e., “personal,” and it has to be the kind of information it “would constitute unreasonable invasion of personal privacy” to disclose. Id.

The Lottery Commission, however, has never advanced any argument about the nature of the information at issue being not just private but also so very private that disclosing it would be this kind of unreasonable invasion, other than this: the information is about the lottery claimants. All that tells us, though, is that the information is literally personal. The Lottery Commission’s argument, and the circuit court’s reasoning, fall down, as they always have, when it comes to explaining why it is that merely identifying information about a lottery claimant, much of which might be gleaned from other sources, is this sort of super-private information. That is because it is not.

The Lottery Commission derides Glassmeyer’s discussion of State v. Counts, 413 S.C. 153, 776 S.E.2d 59, 71 n. 7 (2015), in which our Supreme Court, discussing the state constitutional prohibition on unreasonable invasions of privacy, noted that physical intrusions into “the privacy interests in one’s home are precisely what our state

constitutional provision was intended to protect.” The Lottery Commission misses the point of the discussion, which is that something on the order of the severity of a physical intrusion into the home is the kind of thing that would constitute an unreasonable invasion of personal privacy under S.C. Code Ann. § 30-4-40(a)(2).

Also, as discussed above, the Lottery Commission’s brief totally ignores the words of its own form on which the lottery claimants voluntarily write the information in question, which they then voluntarily submit to the Lottery Commission, which is how the lottery claimants create the public records at issue. (R. p. 160.) A lottery winner has no obligation to claim his winnings. By choosing to do so, however, he himself authors the public record of his claim that contains information of the sort sought by Glassmeyer. (R. p. 160.) He knows he is doing so, knows he is submitting it to a government entity, and knows that **“INFORMATION FROM THIS FORM MAY BE SUBJECT TO DISCLOSURE UNDER THE S.C. FREEDOM OF INFORMATION ACT (FOIA)”** and that the information may be **“provided to or used by a party obtaining information pursuant to FOIA.”** (R. p. 160.) Any right he may have had to keep that information private is one he has relinquished.

To conclude that, viewing Glassmeyer’s answer and counterclaim that attached this form in the light most favorable to Glassmeyer, the only way the law permitted the case to come out is that the information Glassmeyer sought is of the ultra-private sort covered by S.C. Code Ann. § 30-4-40(a)(2) is to make a conclusion that lacks any legal, factual, or logical support. That is what the circuit court did in this case. (R. pp. 1-12.)

VI. The absence of argument by the Lottery Commission on some points argued by Glassmeyer is telling.

The Lottery Commission does not take issue with the statements in Glassmeyer's appellant's brief that "the circuit court's order is replete with factual findings that are statements of things that Glassmeyer did not admit in response to the Lottery Commission's complaint and did not allege himself[,]” that “[i]n deciding a motion for judgment on the pleadings made by Glassmeyer's opponent, the circuit court was not permitted to look outside what Glassmeyer pled[,]” and that “[t]he circuit court made a decision on the factual merits of the case that exceeded the narrow bounds of what was before the court at the time.” (Initial Brief of Appellant p. 19.) It does not take issue with Glassmeyer's argument that FOIA is a more recent and specific statute than the Uniform Declaratory Judgments Act and that FOIA thus controls over that act's broader, less specific and older language. (Initial Brief of Appellant p. 25.)

The Lottery Commission does not take issue with Glassmeyer's statement that “[p]ermitting government entities to bring suits against those who make FOIA requests would have the chilling effect of discouraging citizens from making such requests; thus, it would run counter to FOIA's purpose and its interpretive mandate.” (Initial Brief of Appellant p. 26.) It does not take issue with Glassmeyer's argument that the Lottery Commission failed to allege that *it* would suffer any harm absent an injunction. (Initial Brief of Appellant pp. 26-28.) The Lottery Commission takes no issue with Glassmeyer's argument that “[i]f proven, the facts alleged in the complaint could not establish that Lottery Commission has no adequate remedy at law.” (Initial Brief of Appellant p. 28.) The Lottery Commission takes no issue with Glassmeyer's argument

that he pled a sufficient abuse of process claim with regard to the Lottery Commission's collusive and abusive litigation practices. (Initial Brief of Appellant pp. 42-45.)

By failing to address these arguments in its brief, this court can conclude that the Lottery Commission has conceded Glassmeyer's arguments on these points are correct. First Union Nat. Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (where respondent fails to respond to issue in respondent's brief, court may treat failure to respond as concession that appellant is correct). The Lottery Commission certainly offers nothing that would contradict such a conclusion.

CONCLUSION

Because of the deep procedural problems with the circuit court's judgment alone, Glassmeyer would be entitled to the relief he seeks in this appeal. That the circuit court so blithely ignored substantive law, too, only heightens the need for this court's intervention in this case.

This court should reverse the circuit court, dismiss the Lottery Commission's claims against Glassmeyer, and remand Glassmeyer's claims for trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew S. Radeker', written over a horizontal line.

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November 22, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

CERTIFICATE OF COUNSEL

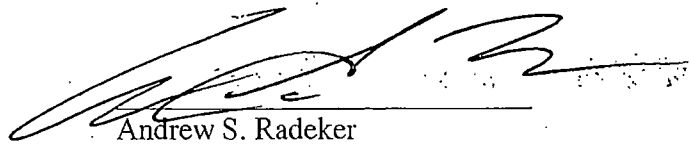
I certify that the foregoing brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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NOV 22 2016

SC Court of Appeals



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November 22, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

South Carolina Lottery Commission,.....Respondent,

v.

George S. Glassmeyer,.....Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

South Carolina Lottery Commission,)
Plaintiff,)

Civil Action No. 2014-CP-40-02926

vs.)

**ORDER GRANTING DECLARATORY
AND INJUNCTIVE RELIEF**

George S. Glassmeyer,)
Defendant.)

2014 NOV 17 PM 12:53
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
COLUMBIA, S.C.

Plaintiff South Carolina Lottery Commission ("the SCLC") filed this action seeking declaratory and injunctive relief with respect to the release of personal information regarding claimants of lottery winnings in response to a South Carolina Freedom of Information Act (FOIA) request. A hearing was held in this matter on December 5, 2014. The Court grants the requested declaratory relief and enters a permanent injunction for the reasons set forth below.

INTRODUCTION

1. The SCLC receives numerous requests each year pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-40-10 *et seq.*, seeking personal identifying information about its claimants.

2. On or about March 31, 2014, Defendant submitted his first in a long line of FOIA requests to the SCLC, seeking certain personal information relating to "all bona fide claims" for any SCLC prize equal to or exceeding One Million Dollars (\$1,000,000) in gross proceeds from March 1, 2013 to March 20, 2014.

3. Specifically, for all such claims Defendant requested the claimant's full name, address, and telephone number; the date and gross amount of the claim; and a copy of any and all forms of identification obtained from the claimants.

4. On or about April 16, 2014 the SCLC provided a written response to Defendant's request, wherein the Defendant was provided with the following information: (1) gross dollar amounts of all such claims; (2) the dates of all such claims; (3) the home town and state of residence for all such claimants; and (4) the game associated with the prize won.

5. In addition, in its April 16, 2014 response the SCLC notified Defendant that the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all such claimants are specifically exempted from disclosure by S.C. Code Ann. § 30-2-310(A)(1)(e), which in turn made this information exempt from disclosure under S.C. Code Ann. § 30-4-40(a)(4). Moreover, the SCLC notified Defendant that it had determined that all such information is also exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40(a)(2) because it is of a personal nature and its public disclosure would constitute an unreasonable invasion of personal privacy.

6. On or about April 17, 2014, Defendant notified the SCLC that he believed the response of April 16, 2014 did not satisfy his March 31, 2014 FOIA request, thus making this matter ripe for adjudication.

7. In the Complaint, the SCLC sought declaratory relief that the release of the names, addresses, telephone numbers, and forms of identification of lottery winners in South Carolina would constitute an unreasonable invasion of their personal privacy in accordance with S.C. Code Ann. § 30-4-40(a)(2) and thus may be withheld from disclosure by the SCLC in

response to a FOIA request. The SCLC further sought an injunction against the release of that information.

LEGAL BACKGROUND

8. A party may apply to a court to declare their rights under the statutory law of this state. S.C. Code Ann. § 15-53-20.

9. The standards for a permanent injunction are substantially the same as those for issuing a preliminary injunction, except that the plaintiff must show actual success on the merits. *Amoco Prod. Co. v. Vill. Of Gambell, AK* 480 U.S. 531, 546 n. 12 (1987).

10. Therefore, to obtain a permanent injunction, the applicant must show the following:

(1) he has succeeded on the merits;

(2) he will suffer immediate, irreparable harm without the injunction; and

(3) he has no adequate remedy at law.

Compton v. S. Carolina Dep't of Corrections, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

11. The Court also is required to balance the equities in the case. *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427, 429 (1995); *see also Shaw v. Coleman*, 373 S.C. 485, 645 W.E.2d 252 (Ct. App. 2007) (affirming grant of permanent injunction based on balancing of equities).

ANALYSIS

12. FOIA exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40(a)(2).

13. The South Carolina Constitution expressly recognizes the right to privacy and protects citizens against invasions of privacy resulting from state action. S.C. Const. art. I § 10.

14. In his FOIA request, Defendant specifically requested the claimant's full name, address, and telephone number; the date and gross amount of the claim; and a copy of any and all forms of identification obtained from the claimants.

15. The disclosure of a lottery winner's name or other information that could be used to identify him ("personal identifying information"), including, but not limited to, mailing address, phone number, SSN, or DOB would constitute an unreasonable invasion of the claimant's personal privacy.

DECLARATORY JUDGMENT

16. The right to privacy is the right to be left alone, or "the right to live without one's name, picture or statue, or that of a relative, made public against his will." *Holloman v. Life Ins. Co. of Virginia*, 192 S.C. 454, 458, 7 S.E.2d 169, 171 (1940).

17. The South Carolina Constitution expressly recognizes the right to privacy. S.C. Const. art. I, §10: At a minimum, the state constitution therefore protects a claimant against invasions of privacy resulting from state action, including the release of personal information that would result in an unreasonable invasion of a claimant's personal privacy.

18. A prominent example of the concern regarding the improper public release of personal information is the public concern and outcry that arose following the breach of the South Carolina Department of Revenue's computer system and network, resulting in the suspected compromise of millions of taxpayers' personal identifying information and a civil lawsuit regarding the breach. See *Morgan v. S.C. Dept. of Revenue*, 2012-CP-40-07331.

19. Recognizing the potential for harmful use of this personal information that was wrongfully accessed, the State of South Carolina has contracted for credit monitoring for affected taxpayers for two years.

20. The Courts also have taken steps to address this concern. Just recently, the South Carolina Supreme Court issued an order requiring the redaction of personal identifying information from documents filed with an appellate court, including but not limited to social security numbers, taxpayer identification numbers, driver's license numbers, passport numbers, or other personal identifying numbers; names of minor children; financial account numbers; home address of minors, sexual assault and abuse and neglect victims; non-parties; and date of birth. *In re Revised Order Concerning Pers. Identifying Info. & Other Sensitive Info. in Appellate Court Filings*, 2013-002681, 2014 WL 1464413 (S.C. Apr. 15, 2014).

21. The federal courts likewise recognize a similar need for privacy in court filings, generally requiring the redaction of personal identifying information. Fed.R.Civ.P. 5.2.

22. The release of a claimant's personal identifying information will result in an unreasonable invasion of a claimant's personal privacy. The release of such personal identifying information is not required by and would not further the purpose of the FOIA.

23. The purpose of the FOIA is not to expose individuals to unwarranted invasions of privacy, but to "prevent the government from acting in secret." *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001). An individual's personal identifying information has nothing to do with the government operating in secret. The fact that the SCLC pays lottery winnings – the only part that involves government action – already is a matter of public knowledge. A lottery claimant's identity as the recipient of those winnings does not pertain to government activity in secret and involves personal privacy and personal identifying information. Enjoining the release of a lottery claimant's personal identifying information therefore is consistent with the purposes and provisions of the FOIA.

24. Disclosure of claimants' personal identifying information would invade the privacy of the claimants and their families, subject claimants and their families to unreasonable publicity, expose claimants and their families to threats against their safety, and otherwise be an unreasonable intrusion into the life and daily affairs of claimants.

25. The invasion of privacy that would result from the release of claimants' personal identifying information also would be unreasonable.

26. The SCLC's allegations are further supported by recognized instances of harm or the threat of harm befalling lottery winners.

27. Such threats of harm against the safety and personal security of lottery winners and their families, as well as actual harm to them, are well documented in case law. *See, e.g., People v. Bennett*, 2013 WL 967583 (Mich.App. March 7, 2013) (unpublished) (defendant robbed a home; murdered one person, shot and severely injured another person, and physically assaulted a ten year-old child in an attempt to steal a lottery ticket worth \$2,700.00); *State v. Bradford*, 2003 WL 21372743 (Iowa App. June 13, 2003) (unpublished) (person who purchased and cashed several winning lottery tickets was choked until she passed out and suffered injuries requiring hospitalization when she was robbed for cash received from the winning tickets).

28. Media reports also exist regarding threats of and actual harm to lottery winners. Rebecca Nelson, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Jan. 9, 2013 (<http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lottorvs-unluckiest-winners/>) (lottery winner's death from cyanide the day after his lump sum check was issued treated as homicide); JuJu Kim, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Nov. 27, 2012 (<http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lottorvs-unluckiest-winners/>) (lottery winner murdered in

robbery plot; Andy Campbell, *Killer of Lottery Winner Abraham Shakespeare Can't Keep his Home. Judge Rules*, HUFFINGTON POST CRIME, Oct. 4, 2013 (http://www.huffingtonpost.com/2013/10/04/abraham-shakespeare-murdered-lottery-winner_n_4042811.html) (woman who befriended lottery winner to take control of his wealth convicted of first-degree murder in this death); Ron Dicker, *Virginia Lottery Winner Who Uses Wheelchair Robbed After Cashing Ticket*, HUFFINGTON POST CRIME, Feb. 7, 2013 (http://www.huffingtonpost.com/2013/02/07/virginia-lottery-winner-wheelchair-robbed-ticket_n_2638978.html) (wheelchair-bound lottery winner robbed while leaving store after cashing ticket).

29. Therefore, the release of personal identifying information by the SCLC will subject claimants and their families to unreasonable publicity, exposing claimants and their families to threats against their safety, and unreasonably intruding into and invading their lives and daily affairs.

30. If claimants' personal identifying information is released at any time, claimants and claimants' families will be subject to unreasonable publicity, exposing claimants and claimants' families to threats against their safety, and unreasonably intruding into and invading their lives and daily affairs.

31. The SCLC is therefore entitled to declaratory judgment that the release of all or any part of claimants' personal identifying information, such as claimants' names, would result in an unreasonable invasion of claimants' personal privacy in accordance with § 30-4-40(a)(2).

IMMEDIATE IRREPARABLE HARM

32. The SCLC has demonstrated that its claimants will suffer immediate, irreparable harm to their personal privacy and safety without the entry of a permanent injunction.

33. As noted above, the South Carolina Constitution expressly protects claimants against invasions of privacy resulting from state action.

34. By granting an applicable exemption from releasing information under the FOIA, § 30-4-40(a)(2) recognizes that there are situations in which the release of certain information will result in an unreasonable invasion of that person's privacy, and accordingly exempts that information from disclosure.

35. On behalf of claimants, the SCLC may therefore assert such exemption in response to a FOIA request because claimants have constitutional and statutory protections against any unreasonable invasion of their personal privacy and against any release of their personal identifying information.

36. The disclosure by the SCLC of claimants' personal identifying information would invade the privacy of claimants and claimants' families, subject claimants and claimants' families to unreasonable publicity, expose claimant and claimants' families to threats against their safety, and otherwise be an unreasonable intrusion into claimants' lives and daily affairs.

37. The recognized instances of harm or the threat of harm befalling lottery winners discussed above with respect to the unreasonableness of the invasion of claimants' privacy also demonstrates the irreparable harm that would ensue from the release of claimants' personal identifying information.

38. The release of claimants' personal identifying information would subject claimants and claimants' families to unreasonable publicity, exposing claimant and claimants' families to threats against their safety, and unreasonably intruding into and invading claimants' lives and daily affairs.

39. Moreover, the direct harm to the SCLC from the release of its claimants' personal identifying information would be the likely erosion of public confidence in the lottery and the SCLC and the reduction in the number of players, thereby harming the SCLC and its ability to effectively carry out its mission.

40. Finally, the release of its claimants' personal identifying information would also likely create legal exposure for the SCLC, thereby further harming the agency.

NO ADEQUATE REMEDY AT LAW

41. In addition, the SCLC has no adequate remedy at law. An adequate remedy at law is defined as a legal remedy that is "as certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity." *Santee Cooper Resort, Inc. v. South Carolina Public Svc. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

42. Moreover, given the privacy-related nature of the claims, claimants could not be made whole if claimants' privacy is impaired at this or any stage by the release of personal identifying information by the SCLC. It also would be difficult if not impossible for claimants to be fully compensated through damages if claimants' privacy or safety is impaired. Privacy is not a physical asset that can be restored if it is damaged or rebuilt if it is destroyed. Rather, once impaired, claimants' privacy cannot be recovered. Because of its nature, it would be difficult if not impossible to calculate the damages to claimants for any impairment of claimants' privacy. This renders it possible that claimants could not be fully compensated in an action at law because he might be able to recover only nominal damages. See *Bethel A.M.E. Church v. City of Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947). Further, the release of its claimants' personal identifying information could also create unlimited legal exposure for the SCLC and

diminish the number of lottery players in South Carolina, for which there is no adequate remedy at law.

43. In sum, there is no legal remedy that will provide the SCLC, and by extension claimants, with the same relief as the granting of an injunction.

BALANCING OF THE EQUITIES

44. As more fully explained and described above, the potential harm to the SCLC and its claimants if a permanent injunction is not granted is great through the unreasonable invasion of claimants' personal privacy, the threat of physical harm to the claimants and their families, the potential legal exposure of the SCLC, and the potential diminution of lottery players.

45. In contrast, the potential harm to the Defendant is minimal, if at all, because he is able to confirm the legitimacy of lottery winnings and payouts and to ensure that the SCLC is not acting in secret. And even though there were bald allegations and oblique, unsubstantiated references to public corruption made by Defendant at the hearing on this matter, there is absolutely no evidence or any other credible information to suggest that the SCLC has engaged in any corrupt activity, nor were there any allegations of any sort of corruption or improper conduct regarding the payment of claims raised by the Defendant in his counterclaim. The South Carolina General Assembly has established a detailed system of auditing and reporting for the SCLC to ensure its financial integrity. S.C. Code Ann. § 59-150-320. The Defendant is certainly entitled to request information from the SCLC regarding its budget, audits, financial reports, and security procedures to confirm the SCLC's financial integrity and that it is not acting in secret.

46. Moreover, it is clear that the Defendant's and the public's interests are served by the production of information the SCLC has already made, and no further disclosure of personal information is warranted. In addition, granting the injunction will serve the interests of judicial economy while assisting the SCLC in its operations by authorizing it to refuse to disclose personal information about persons who win the lottery without their consent, thereby protecting those persons' right to privacy and protecting their safety, and further encouraging persons to play the lottery without a fear that personal information will be released without their consent.

47. As discussed above, granting the permanent injunction is not inconsistent with the purposes of the FOIA to prevent the government from acting in secret – the existence of the lottery and payouts are known – and in fact furthers the purpose of the express exemption from disclosing matters that may lead to an unreasonable invasion of personal privacy.

48. Therefore, the balancing of the equities weighs in favor of granting a permanent injunction.

CONCLUSION

49. The exemptions in FOIA allow a public agency the discretion to withhold exempted materials from public disclosure. *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). Based on the record and related information discussed herein, I find that the SCLC exercised its discretion appropriately in this matter and is entitled to a declaratory judgment that the release of claimants' personal identifying information would constitute an unreasonable invasion of personal privacy within the meaning of § 30-4-40(a)(2).

50. The SCLC is also entitled to a permanent injunction because it (1) is entitled to a declaratory judgment and, thus, has prevailed on the merits of its claims; (2) the SCLC has

established immediate and irreparable harm on behalf of both itself and its claimants; and (3) the SCLC and its claimants have no adequate remedy at law.

51. Therefore, IT IS ORDERED that Defendant is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants.

52. This Order concludes the above-captioned lawsuit and judgment is entered for Plaintiff SCLC as set forth above.

SIGNATURE PAGE ATTACHED

IT IS SO ORDERED.

Walt
October 17, 2015
Columbia, South Carolina

L. Casey Manning
L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

South Carolina Lottery Commission,)
Plaintiff,)

Civil Action No. 2014-CP-40-02926

vs.)

**ORDER DENYING MOTION
TO RECONSIDER**

George S. Glassmeyer,)
Defendant.)

2016 MAY 17 AM 9:48
J. AMELIA B. JONES
CLERK OF COURT

This Court issued an Order filed on November 17, 2015, in the above-captioned action, and this matter is before me upon the Defendant's timely motion under Rules 52(b) and 59(e), SCRCF, concerning that order. For the reasons set forth herein, the Court finds that it did not misapprehend any principle of fact or law in its order, and the Defendant's motion is therefore denied.

In his motion, the Defendant alleges that there were procedural deficiencies in the hearing on this matter. Defendant is in error. The Court properly ruled on Plaintiff's motion for judgment on the pleadings by granting judgment in Plaintiff's favor. Moreover, the Court properly denied the Defendant's motion to dismiss, and properly granted his motion to strike the Plaintiff's request for attorney's fees. Accordingly, all of the pending motions were argued by counsel for the parties and addressed by the Court in its order. Therefore, Defendant's claim of procedural error is without merit.

Defendant also alleges that multiple factual findings and conclusions of law made by the Court are erroneous. Again, Defendant is incorrect in his assertions. What Defendant perceives as improper factual findings are in reality nothing more than a disagreement he has with the

Court over matters of degree. For example, Defendant admits that he submitted three FOIA requests to the Plaintiff in this case, but he quibbles over the Court's determination that this constitutes "a long line" of such requests. The Court disagrees. Alternatively, even if Plaintiff is correct and three FOIA requests is not "a long line" of requests, the Court's finding is harmless because it has no relevance or impact on the ultimate determination of the Court.

Furthermore, Defendant's allegations that the Court's conclusions of law are improper or inaccurate are without merit. It is not surprising that the Defendant disagrees with the Court's conclusions of law; that is often the case with parties who do not prevail in litigation. However, Defendant fails to provide substantive facts or law to demonstrate error in the Court's conclusions of law. Accordingly, Defendant's allegations on this point are without merit.

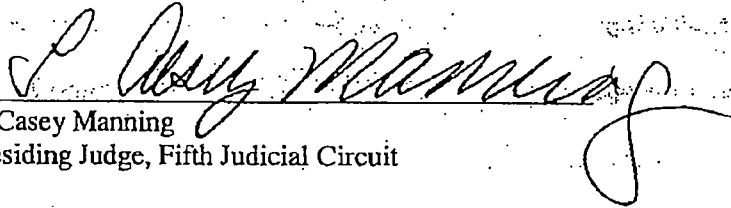
Defendant also argues that the injunctive and declaratory relief granted against him is improper. First, Plaintiff clearly has standing to assert a claim regarding FOIA requests directed at Plaintiff. In fact, in this motion Defendant himself cites two reported cases wherein public bodies were plaintiffs in actions that sought declaratory judgment under FOIA: *City of Columbia v. American Civil Liberties Union of South Carolina, Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996), and *South Carolina Tax Commission v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994).

Second, Defendant contends that the declaratory relief granted to Plaintiff is improper because S.C. Ann. § 30-4-100(a) only authorizes "citizens" of South Carolina to seek declaratory relief under FOIA, and he asserts that Plaintiff is not a "citizen" and therefore cannot bring this action. However, Defendant not only ignores the two cases he cited, both of which involve public bodies which were allowed to bring declaratory judgment actions under FOIA, but he also completely ignores S.C. Ann. § 30-4-100(b), which states that "(i)f a person or entity seeking

such [declaratory or injunctive] relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof (emphasis added)." Clearly, this provision demonstrates that the South Carolina legislature intended to enable "entities" to bring declaratory judgment actions under FOIA, and there is no dispute that Plaintiff qualifies as an entity. Therefore, Defendant's arguments on this point fail.

Finally, Defendant alleges that Plaintiff's ulterior motive is to obtain a new FOIA exemption concerning lottery winners. The Court disagrees. As the Order in this matter confirms, the existing FOIA exemptions are more than sufficient to provide Plaintiff with the relief it sought. Accordingly, for all of the reasons set forth herein and in the Order of November 17, 2015, Defendant's motion to reconsider is DENIED.

IT IS SO ORDERED.


L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

May 17, 2016
Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4002926

South Carolina Lottery Commission

George S Glassmeyer

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: _____

Defendant's Motions to Dismiss and to Strike are DENIED.

INFORMATION FOR THE JUDGMENT 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 30 day of July, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Karl Smith Bowers Jr.

Taylor Meriwether Smith IV

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Lottery Commission,

Plaintiff(s)

vs.

George S. Glassmeyer,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40-29260

Submitted By: Karl S. Bowers, Jr.

Address: P.O. Box 50549 Columbia, S.C. 29250

SC Bar #: 16141

Telephone #: (803) 753-1099

Fax #: (803) 250-3985

Other:

E-mail: butch@butchbowers.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☒ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20-CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☒ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☒ Other (799) DJ action	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: Butch Bowers

Date: May 7, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

South Carolina Lottery Commission,) Civil Action No. 2014-CP-40-

Plaintiff,)

vs.)

George S. Glassmeyer,)

Defendant.)

SUMMONS

RICHLAND COUNTY
FILED
2014 MAY -7 PM 4:07
JEANNETTE W. MCGRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HERBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address show below, within thirty (30) days after service hereof, exclusive of the day of service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

BOWERS LAW OFFICE LLC

By: Butch Bowers

Karl S. Bowers, Jr.

SC Bar No. 16141

butch@butchbowers.com

P.O. Box 50549

Columbia, South Carolina 29250

(803) 753-1099

Attorney for the South Carolina Lottery Commission

May 7, 2014

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

South Carolina Lottery Commission,) Civil Action No. 2014-CP-40-
)

Plaintiff,)

vs.)

George S. Glassmeyer,)

Defendant.)

COMPLAINT FOR DECLARATORY

JUDGMENT AND INJUNCTIVE

RELIEF

(NON-JURY)

RICHLAND COUNTY
FILED
MAY - 7 PM 4:07
JULIETTE M. MCBRIDE
C.L.P. S.B.S.

Plaintiff South Carolina Lottery Commission hereby files this Complaint against

Defendant George S. Glassmeyer and alleges as follows:

PARTIES

1. Plaintiff South Carolina Lottery Commission (SCLC) is an "instrumentality of the State and public body, corporate and politic, ...[with] powers as generally exercised by commissions engaged in entrepreneurial pursuits" and was created pursuant to Act 59 of 2001 (South Carolina Education Lottery Act), S.C. Code Ann. §§ 59-150-10 *et seq.*

2. Defendant is a citizen and resident of Richland County, South Carolina.

JURISDICTION AND VENUE

3. Jurisdiction and venue are properly in this Court.

BACKGROUND AND FACTUAL ALLEGATIONS

4. SCLC receives numerous requests each year pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-40-10 *et seq.*, seeking personal identifying information about its lottery winners. The leadership of SCLC cares

deeply about its winners and endeavors to protect their personal privacy, safety, and security while balancing the agency's obligations under FOIA.

5. In 2003, SCLC adopted a policy concerning the release of winners' information in response to FOIA requests which allowed winners, upon notification, to seek judicial relief from the release of all or part of their personal information. Under that policy, SCLC would provide information appropriate for release under FOIA if no such judicial relief was sought by winners within fifteen (15) business days of receiving notice from SCLC.

6. In most instances over the years, SCLC staff has been able to successfully work with FOIA requestors to provide them with the information they are seeking while still protecting to the greatest degree possible the personal privacy and safety of its winners and their families.

7. On or about March 31, 2014, Defendant submitted his first in a series of FOIA requests to SCLC, seeking certain information relating to "all bona fide claims" for any SCLC prize equal to or exceeding One Million Dollars (\$1,000,000) in gross proceeds from March 1, 2013 to March 20, 2014.

8. Specifically, for all such claims Defendant requested the claimant's full name, address, and telephone number; the date and gross amount of the claim; and a copy of any and all forms of identification obtained from the claimants.

9. On April 11, 2014, the Executive Committee of the SCLC Board of Commissioners met and reconsidered its eleven year-old policy concerning the release of winners' information in response to FOIA requests

10. Since the FOIA policy's adoption in 2003, issues related to data security and the heightened need to protect individual privacy have rapidly evolved due to a number of factors, including technological advances and the relative ease of accessing personal information. In addition, large-scale data breaches in both the public and private sector, such as the 2012 breach of the South Carolina Department of Revenue computer system that compromised millions of taxpayers' personal identifying information, have brought increased scrutiny and awareness of the importance of the government's obligation to protect the security of the personal identifying information of its citizenry.

11. Furthermore, numerous cases of threats against the personal safety and security of lottery winners have been well-documented across the country in both media reports and case law.¹

12. In light of growing privacy and security concerns expressed to SCLC by recent winners and in recognition of the changing environment regarding the protection of personal information, on April 11, 2014 the Executive Committee of SCLC unanimously

¹See, e.g., *People v. Bennett*, 2013 WL 967583 (Mich. App. March 7, 2013) (unpublished) (defendant robbed a home, murdered one person, shot and severely injured another person, and physically assaulted a ten year old child in an attempt to steal a lottery ticket worth \$2,700.00); *State v. Bradford*, 2003 WL 21372743 (Iowa App. June 13, 2003) (unpublished) (person who purchased and cashed several winning lottery tickets was choked until she passed out and suffered injuries requiring hospitalization when she was robbed for cash received from the winning tickets).

There also are numerous media reports regarding threats of and actual harm to lottery winners. Rebecca Nelson, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Jan. 9, 2013 (<http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lottorvs-unluckiest-winners/>) (Lottery winner's death from cyanide the day after his lump sum check was issued treated as homicide); JuJu Kim, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Nov. 27, 2012 (<http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lottorvs-unluckiest-winners/>) (Lottery winner murdered in robbery plot); Andy Campbell, *Killer of Lottery Winner Abraham Shakespeare Can't Keep his Home. Judge Rules*, HUFFINGTON POST CRIME, Oct. 4, 2013 (http://www.huffingtonpost.com/2013/10/04/abraham-shakespeare-murdered-lottery-winner_n_4042811.html) (woman who befriended lottery winner to take control of his wealth convicted of first-degree murder in his death); Ron Dicker, *Virginia Lottery Winner Who Uses Wheelchair Robbed After Cashing Ticket*, HUFFINGTON POST CRIME, Feb. 7, 2013 (http://www.huffingtonpost.com/2013/02/07/virginia-lottery-winner-wheelchair-robbed-ticket_n_2638978.html) (wheelchair-bound lottery winner robbed while leaving store after cashing ticket).

voted to suspend the 2003 policy regarding the release of winners' information in response to FOIA requests and, in turn, unanimously adopted a new policy authorizing the Executive Director to determine the appropriate response(s) to pending or future requests for information made pursuant to the FOIA. The Executive Committee also designated the Chairman of the Board of Commissioners (or the Executive Director in his absence) to act with full authority and on behalf of the Board regarding the defense or initiation of lawsuits related to FOIA (*See* Minutes of April 11, 2014 Meeting of the SCLC Executive Committee attached as Exhibit A).

13. Consistent with the newly-adopted policy concerning the release of winners' information in response to FOIA requests and consistent with its past practice of attempting to work with requestors, on or about April 16, 2014, SCLC provided a written response to Defendant's request (Exhibit B²), wherein Plaintiff provided the following information: (1) gross dollar amounts of all such claims; (2) the dates of all such claims; (3) the home town and state of residence for all such claimants; and (4) the game associated with the prize won.

14. In addition, in its April 16, 2014 response SCLC notified Defendant that the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all such claimants are specifically exempted from disclosure by S.C. Code Ann. § 30-2-310(A)(1)(e), which in turn made this information exempt from disclosure under S.C. Code Ann. § 30-4-40(a)(4). Moreover, SCLC notified Defendant that it had determined that all such information is also exempt from disclosure pursuant to S.C. Code Ann. § 30-4-

² Exhibit B also includes a letter to Mr. Glassmeyer, dated April 24, 2014, wherein a supplemental list was provided relating to winners that were considering filing a lawsuit who decided not to do so.

40(a)(2) because it is of a personal nature and its public disclosure would constitute an unreasonable invasion of personal privacy.

15. On or about April 17, 2014, Defendant notified SCLC that he believed the response of April 16, 2014 did not satisfy his March 31, 2014 FOIA request, thus making this matter ripe for adjudication. To further demonstrate the relentless manner in which he is seeking to obtain the personal identifying information of lottery winners, Defendant also submitted an additional request seeking only the claimant's full name for all claims for any SCLC prize equal to or exceeding One Million Dollars (\$1,000,000) in gross proceeds from March 1, 2013 to March 20, 2014³.

16. On April 25, 2014, in the Court of Common Pleas for the Fifth Judicial Circuit of South Carolina, The Honorable L. Casey Manning entered an order granting declaratory judgment to a recent lottery winner confirming that the release of the winner's personal identifying information would constitute an unreasonable invasion of personal privacy within the meaning of S.C. Code Ann. § 30-4-40(a)(2) (Exhibit D). The Court further entered a permanent injunction restraining the SCLC from releasing any and all information regarding that lottery winner in response to any FOIA request.

FOR A FIRST CAUSE OF ACTION
(Declaratory Relief)

17. Each and every allegation above is re-alleged herein as if repeated verbatim.

³ On April 16, 2014, the Defendant sent a FOIA request seeking a copy of the letter SCLC sent to winners after his initial request, copies of any and all "legal documents" received from any source, and copies of any and all documents from "any lawyer, law firm, or winners of any SCEL prize" relating to his initial FOIA request. Mr. Glassmeyer's requests of April 16, 2014, April 17, 2014, and SCLC's response are presented in Exhibit C.

18. In the aftermath of the recent order attached as Exhibit D, SCLC now seeks a Declaratory Judgment pursuant to Rule 57, SCRCP, and the South Carolina Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 *et seq.*, confirming that the release of a lottery winner's name, complete address, telephone number(s), and/or forms of identification submitted to SCLC would constitute an unreasonable invasion of their personal privacy in accordance with S.C. Code Ann. § 30-4-40(a)(2) and therefore may be withheld from disclosure in response to any FOIA request.

19. As demonstrated above, legitimate and immediate concern for the safety and welfare of lottery winners exists regarding the need for privacy of such personal information to protect against the invasion thereof.

20. In recognition of the importance of the protection of personal identifying information, on April 15, 2014, the South Carolina Supreme Court issued an order requiring the redaction of personal identifying information from documents filed with an appellate court. *In re Revised Order Concerning Pers. Identifying Info. & Other Sensitive Info. In Appellate Court Filings*, 2013-002681, 2014 WL 1464413 (S.C. Apr. 15, 2014).

21. In addition, the South Carolina Constitution expressly recognizes the right to privacy and protects citizens against invasions of privacy resulting from state action. S.C. Const. art. I § 10.

22. SCLC therefore requests that the Court declare that the release of a lottery winner's name, complete address, telephone number(s), and/or forms of identification submitted to SCLC would constitute an unreasonable invasion of their

personal privacy in accordance with S.C. Code Ann. § 30-4-40(a)(2) and thus may be withheld from disclosure by SCLC in response to a FOIA request.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

23. Each and every allegation above is re-alleged herein as if repeated verbatim.

24. Because of Defendant's relentless efforts to obtain personal information related to South Carolina lottery winners, SCLC believes that there is a significant, immediate risk of irreparable harm to the personal privacy and safety of lottery winners and their families in South Carolina without the entry of injunctive relief.

25. In the absence of an injunction, SCLC will be without an adequate remedy at law to ensure the protection and security of personal identifying information of its lottery winners, which would put the personal privacy and physical safety of lottery winners in constant danger.

26. The purpose of FOIA is not to expose individuals to unwarranted and unnecessary invasions of privacy, but instead it is designed to "prevent the government from acting in secret." *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001). The personal identifying information of lottery winners has no relationship to the government operating in secret. The identity of lottery winners in no way relates to government activity in secret but instead involves information of a personal nature which, if publicly disclosed, would constitute an unreasonable invasion of personal privacy. Therefore, the granting of injunctive relief is consistent with the purpose and intent of FOIA since SCLC will continue to publicize lottery wins and payouts, and in fact

it will enhance the purpose of the express FOIA exemption from disclosing matters that may lead to an unreasonable invasion of personal privacy.

27. For these reasons, SCLC requests that the Court issue a temporary restraining order, a preliminary injunction, and a permanent injunction preventing Defendant from obtaining the a lottery winner's name, complete address, telephone number(s) and/or the forms of identification submitted to SCLC that he seeks.

PRAYER FOR RELIEF

WHEREFORE, the South Carolina Lottery Commission prays for the following relief:

a. That the Court declare that the release of a lottery winner's name, complete address, telephone number(s), and/or forms of identification submitted to SCLC would constitute an unreasonable invasion of their personal privacy in accordance with S.C. Code Ann. § 30-4-40(a)(2) and thus may be withheld from disclosure by SCLC

in response to a FOIA request;

b. to further declare that SCLC's release of the (1) gross dollar amount of a prize claimed; (2) the date of a claim; (3) the winner's home town and state of residences; and (4) the game associated with the prize won for all such claims is consistent with FOIA;

c. enter a temporary restraining order, preliminary injunction, and a permanent injunction against Defendant that bars him from accessing or obtaining a lottery winner's name, complete address, telephone number(s) and/or forms of identification submitted to SCLC;

- d. award the South Carolina Lottery Commission the costs of this action, including reasonable attorneys' fees;
- e. and order such other and further relief as the Court may deem just and proper.

BOWERS LAW OFFICE LLC

By: Butch Bowers
Karl S. Bowers, Jr.
SC Bar No. 16141
butch@butchbowers.com
P.O. Box 50549
Columbia, South Carolina 29250
(803) 753-1099

Attorney for the South Carolina Lottery Commission

May 7, 2014
Columbia, South Carolina

EXHIBIT A

Meeting Minutes
Executive Committee of the
South Carolina Education Lottery Board of Commissioners
April 11, 2014
3 P.M.

The Executive Committee of the South Carolina Education Lottery Board of Commissioners held a teleconference meeting on Friday, April 11, 2014, at 3 p.m. originating from Room #407, 1333 Main Street, Columbia, South Carolina.

The following committee members participated:

Participating from the Legal Committee:

Tim Madden, Chairman
Dr. Edward Keith, Vice Chairman
Nancy Cannon, Treasurer
Sam Litchfield, Secretary
Peter Bristow, At-Large

Karen Ballentine
Keith Munson

The Chairman called the meeting to order.

The Chairman asked Hogan Brown, Director of Legal Services, to brief the Committee on a lawsuit, John Doe v. South Carolina Lottery Commission, filed in Horry County on April 4, 2014, and served on the Commission on April 11, 2014. Mr. Brown reported that the suit was filed in reaction to a recent Freedom of Information Act (FOIA) request for information relating to prize winners of a million dollars or more.

The Chairman asked Mr. Brown if he intended to provide legal advice or discuss other matters related to the pending law suit or potential claims covered by the attorney-client privilege. Mr. Brown responded affirmatively and stated that presenting legal advice and the discussion of legal strategies relating to pending or potential claims and other matters covered by attorney-client privilege in Executive Session is allowed under § 30-4-70(a)(2) of the South Carolina Freedom of Information Act. The Chairman then entertained a motion for Executive Session.

Executive Session

Commissioner Cannon moved to go into Executive Session as authorized in § 30-4-70(a)(2), and to include members of the Legal Committee in the Executive Session, for the specific purpose of receiving legal advice where the legal advice relates to a pending,

threatened, or potential claim against SCEL and to receive information or other matters covered by the attorney-client privilege. Commissioner Edward Keith seconded the motion, which was unanimously adopted.

Upon adoption of the motion, as provided in § 30-4-70(a)(2), Chairman Madden announced the specific purpose of the Executive Session as referenced in the above motion and asked others in attendance to exit the meeting.

Return to Open Session

Upon conclusion of the executive session, the Chairman confirmed no action was taken during the executive session and no business other than that which was authorized by the motion was discussed.

The Chairman asked staff to explain SCEL's *Freedom of Information Act Policy on Disclosure of a Winner's Information* (Winner's Information Policy) adopted by the Board of Commissioners in 2003. SCEL notifies each affected winner of a pending request and allows each winner the opportunity (fifteen business days) to seek court relief if he or she does not want some or all of the requested information released. Unless a suit is filed, the information which is appropriate for release under FOIA is provided to the requestor.

For the pending request which resulted in John Doe v. South Carolina Lottery Commission, SCEL experienced an unusually strong negative reaction after the winners were notified. The number of calls and the concerns expressed over privacy and safety were greater than the last time similar information was requested. Several attorneys called to inquire about filing a lawsuit and to express concern over their client bearing the costs associated with the filing. Other winners asked if they could be put on "a list" as wishing to not have their information disclosed. The concerns over the current FOIA request may be heightened by the security breach at the S.C. Dept. of Revenue, the recent security breaches at major retailers, and other instances when similar information was hacked or disseminated via the Internet. The callers were particularly concerned that the current request asks for a copy of the winner's driver's license, which are not public records. In addition to the pending lawsuit, staff believes two or three more lawsuits may be filed.

Given this background, staff asked the Committee for guidance as to whether it should proceed with the SCEL FOIA policy or whether the pending lawsuit and player feedback warrant a different approach.

Motions Adopted

Commissioner Cannon moved to suspend the Winner's Information Policy adopted by the Board on February 10, 2003, and authorize the Executive Director to determine the appropriate response(s) to pending or future requests for information made pursuant to

the FOIA. Commissioner Edward Keith seconded the motion. The motion was unanimously adopted.¹

Commissioner Cannon moved to designate the Chairman (or the Executive Director in his absence) to act with full authority and on behalf of the Board as needed regarding decisions concerning John Doe v. South Carolina Lottery Commission, the defense or initiation of any lawsuits related to FOIA, and to determine when meetings of the Executive Committee, Legal Committee, and/or the entire Board would be helpful or necessary. Commissioner Bristow seconded the motion. The motion was unanimously adopted.

Commissioner Edward Keith moved to empower the Executive Director to retain counsel for the pending lawsuit, any other potential litigation, and to manage any and all litigation on a day-to-day basis. Commissioner Cannon seconded the motion. The motion was unanimously adopted.

Other Business

There being no further business, the meeting of the Executive Committee was adjourned.

/s/
Tim Madden, Chairman

April 24, 2014
Date

As required by Section 30-4-80, notification for this meeting was posted at SCEL headquarters, 1333 Main Street in Columbia. As provided in the Board Bylaws, the meeting notice and agenda were also posted on the SCEL website, sceducationlottery.com, and sent via facsimile transmission pursuant to requests made by media outlets and other organizations. These notifications included the time, date, place, and agenda of the meeting.

¹ Section 3.A. of the Commission Bylaws provides in pertinent part:
"Standing committees may address any item referred to it by the Commission or address any matter upon its own initiative that may reasonably relate to its title and subject matter generally reviewed by that standing committee through custom and practice. If needed, between meetings of the Commission, within this scope of authority, a Committee may act on behalf of the Commission."

EXHIBIT B



VIA EMAIL – HARD COPY TO FOLLOW BY U.S. MAIL

April 16, 2014

Mr. George Glassmeyer
P.O. Box 661
Irmo, SC 29063

RE: Request for Information

Dear Mr. Glassmeyer:

Thank you for your e-mail received by the South Carolina Education Lottery (SCEL) on March 31, 2014, requesting information under the South Carolina Freedom of Information Act (FOIA) (S.C. Code Ann. § 30-4-10 *et seq.*). Specifically, you requested data relating to any and "all bona fide claims" for any SCEL prize equal to, or exceeding, one million dollars (\$1,000,000.00) in gross proceeds (i.e., prior to any setoff, deduction, or tax withholding) during the period of March 1, 2013, to March 20, 2014, to include:

- (1) claimant's full name;
- (2) claimant's complete address;
- (3) claimant's telephone number(s);
- (4) gross dollar amount of claim;
- (5) date of claim; and
- (6) a copy of any and all forms of identification obtained from the claimant(s) pursuant to his or her respective claim(s).

SCEL makes four determinations regarding your request. First, SCEL determines that the information requested in items (1), (2), (3), and (6) when used in combination with each other is specifically exempted from disclosure by S.C. Code Ann. § 30-2-310 (A)(1)(e), which in turn makes these items exempt from disclosure under § 30-4-40(a)(4). In addition, pursuant to § 30-4-40(a)(2) SCEL exercises the discretion provided therein and elects to exempt items (1), (2), (3), and (6) of your request from disclosure as SCEL determines the combined information of is of a personal nature and the public disclosure thereof would constitute unreasonable invasion of personal privacy.

SCEL's determination is not only authorized by §§ 30-4-40(a)(2) and (4), but is also consistent with a shift in public policy by several government branches toward protecting personal identifying information. Recent changes to law illustrate the effects of this policy shift such as Chapter 2 (Family and Personal Identifying Information Privacy Protection) of Title 30 which requires public officials to redact public records that contain personal identifying information. As recently as April 15, 2014, the South Carolina Supreme Court revised a 2007 Order further clarifying what personal identifying information should be redacted in appellate

1333 Main Street · 4th Floor · Columbia, SC 29201
P.O. Box 11949, Columbia, SC 29211 - 1949
Ph. 803-737-2002 · FAX 803-737-2005 · sceducationlottery.com

court filings. On January 15, 2014, the same court amended Rule 41.2 S.C.R.C.P. to require redaction of personal identifying information in court filings.

Second, SCEL determines that item (6), standing alone, is not a public record under FOIA and, hence, is not subject to the Act. All but one of the forms of identification obtained from the claimants pursuant to their respective claims are SC Drivers' Licenses which contain the claimants' height, weight, race, photograph, signature, and digitized image, and as such they are not public records under S.C. Code Ann. § 30-4-165 (B). Although a birthdate on a driver's license is not addressed in this statute, a birthdate is addressed in the next paragraph and based upon the provisions cited therein, SCEL determines that a winner's birthdate will not be released. The remaining form of identification one claimant presented is a U.S. Passport which SCEL addresses in the next paragraph.

Third, under S.C. Code Ann. § 30-2-310 (A)(1)(e), SCEL determines that it cannot intentionally communicate or otherwise make available to you, a member of the general public, an individual's personal identifying information. Among other things, "personal identifying information" includes, but is not limited to, driver's license numbers; dates of birth; current names, when combined with, and linked to, other identifying information; current addresses, when combined with, and linked to, other identifying information provided in this section; S.C. Code Ann. § 16-13-510(D). Providing you with the claimants' names in combination with, and linked to, their addresses, both of which are personal identifying information, is prohibited under S.C. Code Ann. § 30-2-310 (A)(1)(e). Providing you with driver's license information and/or U.S. Passport information in addition to current names and addresses only strengthens this statutory prohibition.

Fourth, SCEL determines items (4) and (5) of your request are subject to FOIA and has enclosed that information. In addition, SCEL is providing the home town and state of the claimant and the game associated with the prize won. The information being provided does not include any information regarding the individuals who have filed suit requesting a court to prohibit disclosure of any information and those individuals who have informed SCEL that they expect to file such a suit. If these winners do not file a lawsuit by close of business on Monday, April 21, 2014, SCEL will provide a supplemental list next week which will include the same information related to those claims as is being released today.

Although SCEL's determination regarding the availability of the requested public record is final as specified in Section 30-4-30(c), if you have any questions, please email me at carl.stent@scclot.com or call me at 803-737-2457. If I do not hear from you, I will assume this information satisfies your request.

Sincerely,



Carl W. Stent
Deputy Director, Legal Services

City	State	Date	Claim Total	Game info
Myrtle Beach	SC	3/12/2013	\$2,000,000.00	PowerBall
Cottageville	SC	3/25/2013	\$1,000,000.00	PowerBall
Travelers Rest	SC	4/4/2013	\$1,000,000.00	Money Money Millionaire
Jonesville	SC	4/16/2013	\$1,000,000.00	Money Money Millionaire
Columbia	SC	4/22/2013	\$1,000,000.00	MegaMillions
Statesville	NC	5/1/2013	\$500,000.00	MegaMillions
Hamer	SC	5/1/2013	\$500,000.00	MegaMillions
Kannapolis	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Mint Hill	NC	5/21/2013	\$83,333.33	PowerBall
Gastonia	NC	5/21/2013	\$83,333.33	PowerBall
Fort Mill	SC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Pineville	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.36	PowerBall
Concord	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Monroe	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Clover	SC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Fayetteville	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Bethune	SC	7/29/2013	\$1,000,000.00	PowerBall
Spartanburg	SC	8/21/2013	\$1,000,000.00	PowerBall
N Charleston	SC	10/15/2013	\$1,000,000.00	PowerBall
Eutawville	SC	1/8/2014	\$1,000,000.00	Money Money Millionaire
Hickory Grove	SC	2/11/2014	\$2,000,000.00	PowerBall
Taylors	SC	2/21/2014	\$1,000,000.00	PowerBall
Irmo	SC	3/14/2014	\$1,000,000.00	Millionaire Madness

* Successive claims of \$83,333.33 represent a \$2 million prize split among 23 claimants



VIA EMAIL -- HARD COPY TO FOLLOW BY U.S. MAIL

April 24, 2014

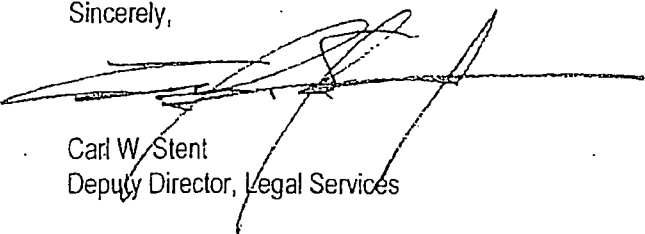
Mr. George Glassmeyer
P.O. Box 661
Irmo, SC 29063

RE: Request for Information

Dear Mr. Glassmeyer:

As you will recall, in our April 16, 2014, response to your Freedom of Information Act (FOIA) request received by the South Carolina Education Lottery (SCEL) on March 31, 2014, SCEL did not include any information on individuals who filed lawsuits or those who informed SCEL that they expect to file such a suit. Regarding the latter group, SCEL stated it would provide a supplemental list of individuals who did not file suit by close of business on Monday, April 21, 2014. This list includes the same information related to those claims as was released on April 16, 2014. That supplemental list is attached.

Sincerely,



Carl W. Stent
Deputy Director, Legal Services

Enclosure

1333 Main Street · 4th Floor · Columbia, SC 29201
P.O. Box 11949, Columbia, SC 29211 - 1949
Ph. 803-737-2002 · FAX 803-737-2005 · sceducationlottery.com

City State Date Claim Total				Game info
Charlotte	NC	5/21/2013	\$83,333.33	PowerBall
Irmo	SC	9/16/2013	\$1,000,000.00	PowerBall
W Columbia	SC	11/7/2013	\$1,000,004.00	PowerBall

EXHIBIT C

Stent, Carl

From: SCverdict@aol.com
Sent: Wednesday, April 16, 2014 9:16 PM
To: Stent, Carl
Subject: FOIA Request

Dear Mr. Stent:

Pursuant to the South Carolina Freedom of Information Act (FOIA), I am requesting the following:

1. A copy of the letter sent to various lottery winners as a result of my FOIA request to your office dated March 20, 2014 and sent via email to you on March 20, 2014 and on March 31, 2014, in which your office advised various lottery winners of the existence and substance of my aforementioned FOIA request.
2. Copies of any and all legal documents, of any and all types and description, received from any source whatsoever, relating in any way, or resulting from, my FOIA request noted above. Note that this is a continuing request for any such documents in possession of the South Carolina Education Lottery (SCEL) now, or at any time in the future.
3. Copies of any and all documents including (but not limited to) letters, emails, and faxes from any lawyer, law firm, or winner of any SCEL prize, that relate in any form or manner to my FOIA request noted in Item # 1 above.

Kindly acknowledge receipt of this FOIA request by return email. Thank you very much.

Sincerely,

George S. Glassmeyer
Attorney at Law
P.O. Box 661
Irmo, SC 29063

Stent, Carl

From: SCverdict@aol.com
Sent: Thursday, April 17, 2014 4:47 PM
To: Stent, Carl
Subject: Telephone Conversation/FOIA Request

Dear Mr. Stent:

Please allow this email to memorialize our telephone conversation of this afternoon, submit questions to you, and submit a new FOIA request.

During our conversation, I acknowledged receipt of your letter to me dated April 16, 2014 in which you responded to my FOIA request received by SCEL on March 31, 2014. I advised you that your response **did not** satisfy my request.

You reiterated that on the day following receipt of my FOIA request that SCEL sent a letter to approximately 45 lottery winners who were impacted as a result of my FOIA request. In that letter, each winner was advised of the existence and nature of my FOIA request and was advised that if said winner did not notify SCEL of his/her objection to the release of data pertaining to him or her that was requested by me, or file a lawsuit or take similar legal action to prevent such a release, by a deadline of on or about April 21, 2014, that SCEL would release said data to me.

You also advised me that the SCEL policy which prescribed the dissemination of such letters to lottery winners in the event SCEL received a FOIA request for data similar to mine was suspended by the SCEL Executive Committee during a public meeting on April 11, 2014. I inquired as to whether this policy suspension was specifically made retroactive and you advised that you were unsure but would secure a definitive answer to that question and get back to me. I told you that it was my view that if the policy suspension was not made retroactive that, in my view, SCEL was obligated to comply with the protocol for release of data to me as provided in the letters sent to the various winners.

I also asked you what the procedure was for approval of the minutes from the April 11, 2014 SCEL Executive Committee meeting and you responded that you did not know but would secure that information for me and agreed to email those minutes to me as soon as they got approved. I also requested a copy of John Doe v. South Carolina Education Lottery as it appears on the agenda of the April 11, 2014 meeting noted above.

Finally, I submit the following new FOIA request:

Pursuant to the South Carolina Freedom of Information Act, I am requesting the following data as it relates to any and all bona-fide claims for any South Carolina Lottery Commission prize equal to, or exceeding, one million dollars (\$1,000,000.00) in gross proceeds (i.e., prior to any setoff, deduction, or tax withholding) during the period of March 1, 2013, to the present date (March 20, 2014):

Claimant's full name

Kindly acknowledge receipt of this email by return email and advise if any of the above recitation of our telephone conversation is not exactly as you recall. Thank you very much.

George S. Glassmeyer
Attorney at Law
P.O. Box 661
Irmo, SC 29063
(803) 749-0480



VIA EMAIL – HARD COPY TO FOLLOW BY U.S. MAIL

May 7, 2014

Mr. George Glassmeyer
P.O. Box 661
Irmo, SC 29063

RE: Requests for Information ##2 and 3

Dear Mr. Glassmeyer:

Thank you for your e-mails dated April 16 and 17, 2014, requesting information from the South Carolina Education Lottery (SCEL) under the South Carolina Freedom of Information Act (FOIA) (S.C. Code Ann. § 30-4-10 et seq.). This response will cover both requests. I have reprinted the salient parts of your request below, item-by-item, and listed SCEL's determination after each one.

1. "A copy of the letter sent to various lottery winners as a result of my FOIA request to your office dated March 20, 2014 and sent via email to you on March 20, 2014 and on March 31, 2014, in which your office advised various lottery winners of the existence and substance of my aforementioned FOIA request." [from April 16 request]:

SCEL determines this requested information is subject to FOIA and has enclosed a redacted copy of the letter sent to various lottery winners and a copy sent to counsel of a lottery winner as a result of your first FOIA request.

2. "Copies of any and all legal documents, of any and all types and description, received from any source whatsoever, relating in any way, or resulting from, my FOIA request noted above. Note that this is a continuing request for any such documents in possession of the South Carolina Education Lottery (SCEL) now, or at any time in the future." [from April 16 request]:

Expressly and specifically excluding "legal documents" SCEL may have generated or requested which are protected under the attorney-client privilege or attorney work product doctrine (as referenced in § 30-4-40(a)(7)), SCEL determines your requested information is subject to FOIA and has enclosed copies of those materials. While you

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P.O. Box 11949, Columbia, SC 29211 - 1949
Ph. 803-737-2002 • FAX 803-737-2005 • sceducationlottery.com

have noted your request is a continuing one, FOIA provides no continuing duty to update requested information therefore SCEL does not intend to update this information continually.

3. "Copies of any and all documents including (but not limited to) letters, emails, and faxes from any lawyer, law firm, or winner of any SCEL prize, that relate in any form or manner to my FOIA request noted in Item # 1 above." [from April 16 request]:

Expressly and specifically excluding documents SCEL may have generated or requested which are protected under the attorney-client privilege or attorney work product doctrine (as referenced in § 30-4-40(a)(7)), SCEL determines your requested information is subject to FOIA and has enclosed copies of those materials. In one instance SCEL received a document from an affected winner and has redacted the name and address.

4. "Pursuant to the South Carolina Freedom of Information Act, I am requesting the following data as it relates to any and all bona fide claims for any South Carolina Lottery Commission prize equal to, or exceeding, one million dollars (\$1,000,000.00) in gross proceeds (i.e., prior to any setoff, deduction, or tax withholding) during the period of March 1, 2013, to the present date (March 20, 2014): Claimant's full name" [from April 17 request]:

SCEL determines that releasing the claimants' full names would amount to disclosing information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy and hence, exercises the discretion provided in § 30-4-40(a) by exempting claimants' full names from disclosure. For guidance, SCEL cites § 30-4-40(a)(2) which prohibits release of 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. Since the prohibition in § 30-4-40(a)(2) *includes, but is not limited to*, such specific information on handicapped persons SCEL exercises its discretion to determine lottery winners' names, addresses, and telephone numbers are no less important.

Also, in your April 17th request, you inquired:

5. whether the suspension of SCEL's policy on release of Winner's Information was retroactive:

SCEL's response to your first request was consistent with its policy at the time SCEL made its determination under FOIA.

6. about the procedure for approving SCEL's committee minutes:

As stated in the Commission's Bylaws, each standing committee keeps minutes and, upon approval of the committee chair, the minutes are distributed to the entire Commission as soon as practicable. (Bylaws Article 2 Governance, Section 3 A) A copy of the Commission's By-laws is on SCEL's website.

7. about a copy of the Executive Committee meeting minutes from April 11, 2014.

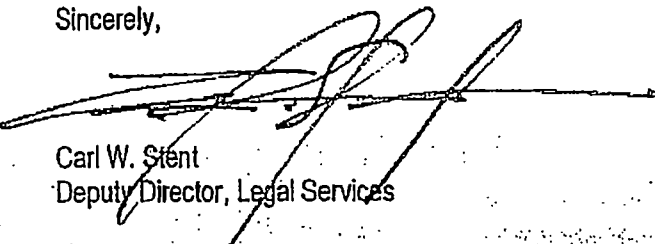
These minutes are on SCEL's website. Although I agreed to send you a copy of the minutes as soon as they were available, for the sake of efficiency, SCEL decided to respond in one communication.

8. about a copy of *John Doe v. South Carolina Education Lottery*:

SCEL has attached a copy of this lawsuit and other lawsuits filed in response to items 2 and 3 above.

If I do not hear from you, I will assume this information satisfies your request.

Sincerely,



Carl W. Stent
Deputy Director, Legal Services

Encl.



April 1, 2014

[REDACTED]
[REDACTED]
[REDACTED]

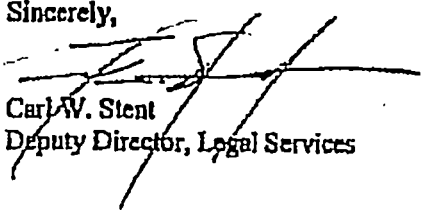
Re: Release of Winner's Information

Dear [REDACTED]:

The South Carolina Education Lottery (SCEL) has received a request for information under the South Carolina Freedom of Information Act from George Glassmeyer regarding your recent claim.

In accordance with the South Carolina Lottery Commission's policy on this type of request involving a claim in excess of \$1,000,000, we are notifying you that Mr. Glassmeyer has requested your name, address, telephone number(s), amount of claim, date of claim and a copy of any forms of identification obtained from you (about your respective claim) pursuant to the South Carolina Freedom of Information Act (S.C. Code Ann. § 30-4-10 et seq.) and that SCEL intends to release this information unless you file a petition in a South Carolina Court of Common Pleas for an injunction to prohibit the release of the information within fifteen (15) days of the date of this letter. If you choose to exercise this option, please have your attorney contact us at (803) 737-2457 to ensure your information is not released pending a court's determination.

Sincerely,


Carl W. Stent
Deputy Director, Legal Services

1333 Main Street • 4th Floor • Columbia, SC 29201
P.O. Box 11949, Columbia, SC 29211 • 1949
Ph. 803-737-2002 • FAX 803-737-2005 • sceducationlottery.com



Via email to kirby.shealy@arlaw.com and jack.pringle@arlaw.com-
Hard copy by U.S. Mail

April 1, 2014

Kirby Darr Shealy III, Esq.
John J. Pringle, Jr., Esq.
Adams and Reese LLP
PO Box 2285
Columbia, SC 29202-2285

Re: Release of Winner's Information

Dear Kirby and John:

The South Carolina Education Lottery (SCEL) has received a request for information under the South Carolina Freedom of Information Act from George Glassmeyer on March 31, 2014, requesting the name, address, telephone number(s), amount of claim, date of claim and a copy of any forms of identification obtained from claimants who have a claim in excess of 1,000,000.00. This request affects your client.

In accordance with the South Carolina Lottery Commission's policy on release of this type of information and according to the Settlement Agreement with your client, SCEL is notifying you that Mr. Glassmeyer has requested the above-referenced information pursuant to the South Carolina Freedom of Information Act (*S.C. Code Ann. § 30-4-10 et seq.*) and that SCEL intends to release such information unless you file a petition in a South Carolina Court of Common Pleas for an injunction to prohibit the release of the information within fifteen (15) days of the date of this letter.

Please call me at (803) 737-2457 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl W. Stent". The signature is fluid and stylized, with a long horizontal stroke extending to the right.

Carl W. Stent
Deputy Director, Legal Services

1333 Main Street • 4th Floor • Columbia, SC 29201
P.O. Box 11949, Columbia, SC 29211 - 1949
Ph. 803-737-2002 • FAX 803-737-2005 • sceducationlottery.com

Stent, Carl

From: Kirby Shealy <Kirby.Shealy@arlaw.com>
Sent: Tuesday, April 01, 2014 3:11 PM
To: Stent, Carl; Jack Pringle
Cc: Brown, Hogan
Subject: RE: FOIA request

Thanks, Carl. We'll be in touch.

Kirby

Please note our new email address and read about the merger of Ellis Lawhorne with Adams and Reese LLP at www.adamsandreese.com

Kirby D. Shealy III
Adams and Reese LLP
1501 Main Street, 5th Floor
Columbia, SC 29201
Main: 803-254-4190
Main Fax: 803-779-4749
Direct 803-212-4966
E-Fax 803-343-1258
Cell 803-609-1762
kirby.shealy@arlaw.com

Stent, Carl

From: Arthur White <art@landandlegal.com>
Sent: Thursday, April 03, 2014 12:37 PM
To: Stent, Carl
Subject: FOIA

Carl,

Please accept this email as a request for the FOIA pleadings concerning my client. This will give me an indication as to which direction my client should pursue. Also please accept this letter as notice that the South Carolina Education Lottery is not to deluge my client's name, address or any information concerning her identification. To release this information could subject my client to identify theft.

Thank-you,
Sincerely,

Art White

WLF & WLS
3103 Leaphart Road
West Columbia, SC 29169
www.landandlegal.com
(803) 796-7007

CONFIDENTIALITY NOTICE

This message and any accompanying documents contain information that belongs to sender and may contain information that is privileged, confidential, or exempt from disclosure under applicable law. If the reader of this e-mail is not the intended recipient, you are hereby notified that you are strictly prohibited from reading, disseminating, distributing, copying, or taking action in reliance on the content of this communication. If you have received this e-mail in error, please notify the sender immediately and destroy the original transmission.

Stent, Carl

From: William H. Johnson <william@whjohnsonlaw.com>
Sent: Thursday, April 03, 2014 3:31 PM
To: Stent, Carl
Subject: Injunction to Prevent Release of Information

Follow Up Flag: Follow up
Flag Status: Flagged

Carl,

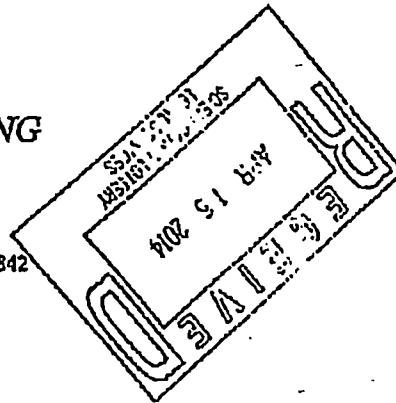
This will confirm our conversation wherein I advised that I have been retained to represent "Jane Doe" named in your letter dated April 1, 2014. On behalf of that client, I intend to petition the Court of Common Pleas for an Injunction to prevent the release of the information requested by George Glassmeyer as it relates to my client. Please do not release any information until required to do so by court order.

Thank you for your attention to this matter.

William H. Johnson
The Law Offices of William H. Johnson, LLC
Post Office Box 137
411 North Brooks Street
Manning, SC 29102
(803) 435-0909
(803) 435-2858 Facsimile

**WHITE LAW FIRM
&
WHITE LAND SURVEYING**

Arthur E. White, Jr. (SC Bar 006066)
3103 Leaphart Road (P.O. Box 5292)
West Columbia
South Carolina 29169 (29171)
Ph: (803) 796-7007 Fax: (803) 926-7842
art@landandlegal.com
www.landandlegal.com



April 9, 2014

Carl W. Stent
Deputy Director, Legal Services
South Carolina Education Lottery
P.O. Box 11949
Columbia, SC 29211-1949

Re: FOIA

Dear Mr. Stent:

First I would like to take this opportunity to thank you for the copy of Civil Action 2013-CP-40-6165. At present my client has not decided to seek injunctive relief or not. However, my client, unnamed winner, does have a certain expectations of privacy that must be upheld by the Lottery Commission.

Under the statute outlined in the above referenced litigation, §30-4-40(a)(2) of the 1976 Code of Laws of South Carolina as amended, the commission is hereby placed on notice not to release any information including but not limited to name, address, and/or identification of the unnamed winner. In the event that any information is granted to anyone, via a Request under the South Carolina Freedom of Information Act or is in anyway transmitted to the public at large and damages result for my client, unnamed winner, including but not limited to the loss of privacy, the possibility of identity theft or any other act that may result in damages to the unnamed winner, the unnamed winner will seek damages as may be determined by the Court of competent jurisdiction. Information concerning the identity of the unnamed winner will or could result in the address and date of birth of the unnamed winner being compromised and could completely change the remainder of his or her life.

Respectfully submitted the information requested under the FOIA is to be denied except for the amount, date and location of the purchase of the winning ticket of any such win.

I am
Respectfully,

Arthur E. White, Jr.

Stent, Carl

From:
Sent: Wednesday, April 09, 2014 8:12 PM
To: Stent, Carl
Subject: Re: Information

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks, Carl!!

I'm meeting with an attorney tomorrow (Thursday) at 10:00 AM.

I'll let you know what I decide to do.

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

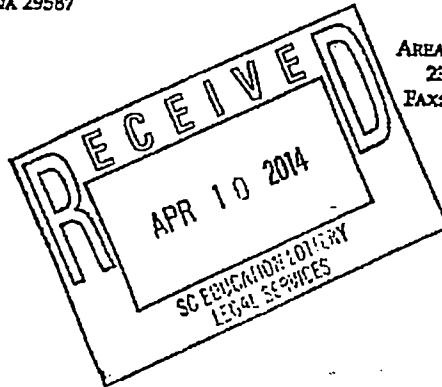
P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS
* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

April 7, 2014



Carl W. Stent
Deputy Director, Legal Services
P.O. Box 11949
Columbia, SC 29211-1949

Re: *John Doe v. South Carolina Lottery Commission*
C/A No. 2014-CP-26-2074
Our File No. 2014-0096C

Dear Mr. Stent:

Pursuant to your conversation with Gene Connell, it is my understanding that you have agreed to accept service of the enclosed pleadings regarding the above-referenced case. I am enclosing a copy of the Motion and Order Information Form and Cover Sheet, Notice of Motion and Motion for Temporary Injunction, Civil Action Coversheet, Summons, and Complaint, together with an Acceptance of Service. Please sign the Acceptance of Service and return same to me in the envelope provided for your convenience.

Thank you.

Sincerely,

Barbara A. Smith
Legal Assistant to Gene M. Connell, Jr.

/bas
Enclosures

cc: Client w/enclosures

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

John Doe

Plaintiff(s)

vs.

South Carolina Lottery Commission

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 26-

2074

Submitted By: Gene M. Connell, Jr.

Address: Kelaher, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547

SC Bar #: 1358
Telephone #: (843) 238-5648
Fax #: (843) 238-5050
Other:
E-mail: gconnell@classactlaw.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

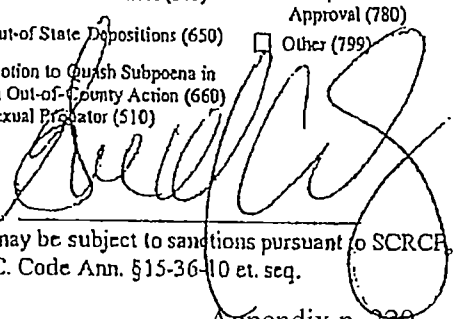
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20 - CP - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☒ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: 

Date: April 3, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-26-2074

John Doe,

Plaintiff,

vs.

South Carolina Lottery Commission,

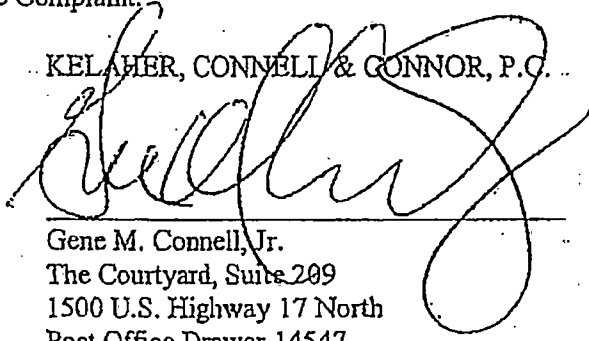
Defendant.

SUMMONS

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHER, CONNELL & GONNOR, P.C.


Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

April 3, 2014
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-26 - 2074

John Doe,

Plaintiff,

vs.

South Carolina Lottery Commission,

Defendant.

COMPLAINT
(Injunctive Relief)
NON-JURY

2014-11-14 PM 4:30

The Plaintiff, complaining of the Defendant, would respectfully allege unto this Court as follows:

1. The Plaintiff is a citizen and resident of the State of South Carolina.
2. The Defendant is a governmental entity organized and existing pursuant to the laws of the State of South Carolina with the authority as a governmental entity to implement the South Carolina Education Lottery Act (S.C. Code § 59-150-10).
3. That pursuant to the South Carolina Education Lottery Act, the Lottery Commission organizes and runs a state lottery and awards prizes based on the operation of the lottery.
4. That lotteries have been approved in South Carolina as a game of chance by the South Carolina General Assembly and include instant tickets, online lottery games, quick picks, drawing numbers, all of which are drawn by chance.
5. That the Plaintiff, a South Carolina resident, went to an authorized lottery retailer and purchased an authorized lottery game ticket from the South Carolina Lottery Commission.
6. That the Plaintiff in purchasing the ticket learned that he was the winner of a quick pick lottery and had won the sum of \$1,000,000.00.

7. That the Plaintiff desires to keep his name, his address, his telephone number, the amount of claim, the date of claim, and any other identification obtained by the Lottery Commission from being disclosed to the public.

8. That Plaintiff has been informed by the South Carolina Education Lottery that a request has been made under the South Carolina Freedom of Information Act from another individual for information regarding the Plaintiff's claim.

9. That Plaintiff is informed and believes that the disclosure of his name, address and amount of his claim will put Plaintiff and other members of his household in danger.

10. That Plaintiff lives in a high crime area and is concerned that when his name and address is publicized that he may be the victim of a crime or his family may be victims of a crime.

11. The Plaintiff is informed and believes that under the South Carolina Freedom of Information Act certain matters are exempt from disclosure and that the South Carolina Lottery Commission does not automatically disclose the name of winners to the public.

12. The Plaintiff is further informed and believes that pursuant to the Freedom of Information Act, Plaintiff's winnings are a matter of a personal nature and that public disclosure would constitute unreasonable invasion of his personal privacy.

13. The Plaintiff is further informed and believes that under the South Carolina Freedom of Information Act, information such as gross receipts contained on applications for business licenses are not disclosed and the Plaintiff is informed and believes that the Plaintiff's winnings should not be disclosed to the public and that such may place the Plaintiff and his family in danger of grievous bodily harm.

14. The Plaintiff is further informed and believes that the area where Plaintiff lives is a high crime area and that there have recently been at least two murders in that area.

15. The Plaintiff is informed and believes that without an injunction, Plaintiff's life, health and property may be endangered by the disclosure of this information.

16. The Plaintiff respectfully requests of the court that a temporary and permanent injunction be issued by the court ordering that Plaintiff's name, address, telephone number, amount of claim, date of claim and any forms of identification relating to the claim not be disclosed and that to do so would place Plaintiff and his family in a potential for grievous bodily harm.

FOR A SECOND CAUSE OF ACTION

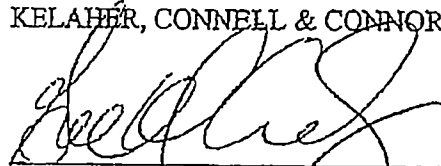
17. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

18. The Plaintiff brings this cause of action for mandatory permanent injunction enjoining the Defendant from disclosing his name, address, telephone number, amount of claim, date of claim and any forms of identification obtained for the claim.

19. The Plaintiff has set out the reasons for permanent injunction as requested above.

WHEREFORE, Plaintiff prays for a temporary and permanent injunction enjoining the Defendant from disclosing the requested information and for such other and further relief as the court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

April 3, 2014
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

John Doe,
☒ Plaintiff

v.

South Carolina Lottery Commission,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-26-

2074

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Gene M. Connell, Jr., Bar No. 1358
KELAHAR, CONNELL & CONNOR, P.C.
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
phone: (843) 238-5648 fax: (843) 238-5050
email: gconnell@classactlaw.net

Defendant's Attorney:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Injunction

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

April 3, 2014

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-26-2074

John Doe,

Plaintiff,

vs.

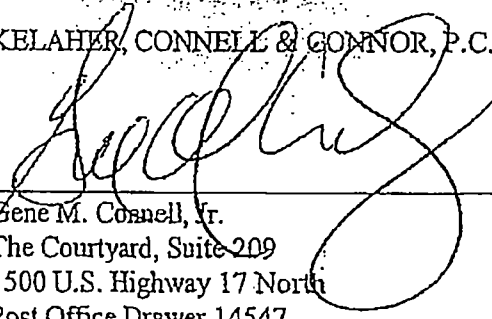
South Carolina Lottery Commission,

Defendant.

NOTICE OF MOTION AND MOTION
FOR TEMPORARY INJUNCTION

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, will, on the tenth day, or as soon thereafter as counsel may be heard, move before the Presiding Judge for the Court of Common Pleas for an order temporarily enjoining the Defendant from disclosing the Plaintiff's name, address, telephone number, amount of claim, date of claim and any forms of identification. The basis of this motion is the attached Summons and Complaint.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

April 3, 2014
Surfside Beach, South Carolina

2014 APR 4 PM 4:32
CLERK OF COURT
FIFTEENTH JUDICIAL CIRCUIT
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

John Doe,)

Plaintiff,)

vs.)

South Carolina Lottery Commission,)

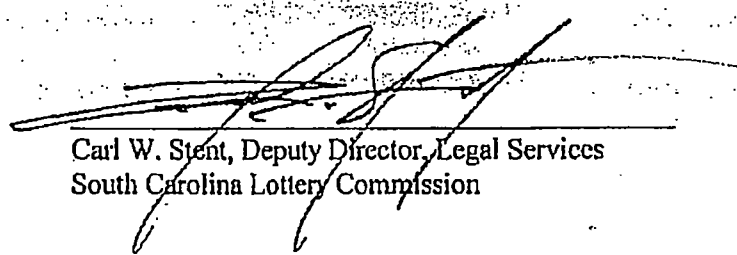
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-26-2074

ACCEPTANCE OF SERVICE

DUE AND LEGAL SERVICE of the within Motion and Order Information Form and
Cover Sheet, Notice of Motion and Motion for Temporary Injunction, Civil Action Coversheet,
Summons, and Complaint, are hereby accepted and a copy duly retained by Carl W. Stent, Deputy
Director, Legal Services, on behalf of the South Carolina Lottery Commission, this 10th day of
April, 2014.



Carl W. Stent, Deputy Director, Legal Services
South Carolina Lottery Commission

STATE OF SOUTH CAROLINA

COUNTY OF Dillon

IN THE COURT OF COMMON PLEAS

FILED
GWEN T. HYATT

CIVIL ACTION COVERSHEET

2014 APR 11 PM 1:17

-CP-

2014-CP-17 150

vs.

CLERK OF COURT
DILLON COUNTY

South Carolina Education Lottery Commission

Defendant(s)

Submitted By:

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20-CP- ☐ Notice/Fid. Mal. Mal. (230) ☐ Other (299)	☐ Torts - Personal Injury ☐ Assault/Battery/Unl. (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claims & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
☐ Family Relations ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Administrative Law/Relief ☐ Reinstatement License (600) ☐ Judicial Review (610) ☐ Relief (620) ☒ Permanent Injunction (630) ☐ Forfeiture-Petition (640) ☐ Forfeiture-Content Order (650) ☐ Other (699)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgments (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm. (991) ☐ Other (999)
☐ Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)		

Submitting Party Signature:

Date: April 11, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Alcon, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA,

COUNTY OF DILLON

FILED)
GWEN T. HYATT

IN THE COURT OF COMMON PLEAS

2014 APR 11 AM 11:17

SUMMONS

CLERK OF COURT
DILLON COUNTY

vs.

South Carolina Education Lottery
Commission

FILE NO.
2014-CP-17 150

Defendant. }

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Dillon, South Carolina

Dated: April 7, 2014

Plaintiff/Attorney for Plaintiff

Address: *****

A CERTIFIED
TRUE COPY
Gwen T. Hyatt
CLERK OF COURT
DILLON COUNTY

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

FILED
GIVEN T. HYATT
2014 APR 11 AM 10:11 ET NO.: 2014-CP-17 150

CLERK OF COURT
DILLON COUNTY

Plaintiff,

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTION

vs.

The South Carolina Education Lottery
Commission,
Defendant.

ACQUIRED
3rd COPY
Dillon County
CLERK OF COURT
DILLON COUNTY

[REDACTED] ("[REDACTED]"), proceeding *pro se*, is seeking a permanent injunction against defendant South Carolina Education Lottery Commission ("SCELC") requiring it to withhold information requested by George Glassmeyer ("Glassmeyer") under the South Carolina Freedom of Information Act ("FOIA").

Plaintiff, complaining of the Defendant, would show unto the court:

1. Plaintiff [REDACTED] is a resident of South Carolina domiciled in Dillon County, SC. Plaintiff is a "Person" within the meaning of §30-4-20(b) of the Freedom of Information Act ("FOIA"), codified in the S.C. Code at § 30-4-10 *et seq.*
2. Upon reasonable Defendant SCELC is a South Carolina "Public body" within the meaning of §30-4-20(b) of the Freedom of Information Act ("FOIA"), codified in the S.C. Code at § 30-4-10 *et seq.*
3. Upon reasonable belief, on or about April 1, 2014, Glassmeyer requested information under FOIA from the SCELC regarding [REDACTED] MegaMillions Lottery prize claim in 2013.
4. SCELC provided notice to [REDACTED] via letter on or about April 1, 2014 stating that Glassmeyer requested [REDACTED] name, address, telephone number(s), amount of claim, date of claim, and a copy of any forms of identification obtained by the SCELC from [REDACTED] about his claim. (See "Lottery Letter," Attached as Exhibit A.)

5. SCELK notified [REDACTED] that failure to file a petition in a South Carolina Court of Common Pleas for an injunction to prohibit the release of the information within fifteen (15) days of the date of the letter dated April 1, 2014, would result in SCELK releasing said requested information to Glassmeyer.
6. Upon reasonable belief, production of such information will reveal to Glassmeyer Plaintiff's social security number, an unredacted photocopy of his driver's license, his date of birth, and other private information.
7. Plaintiff [REDACTED] interprets the purpose of the FOIA as stated in § 30-4-15 as providing transparency to public body activities such that citizens can easily learn about the activities of their public officials. Upon reasonable belief, information Glassmeyer seeks is not within the scope of the act since he seeks information about a private citizen and not the actions of public officials. Upon reasonable belief, release of [REDACTED] personal information to a third party serves no legitimate purpose provided under the act.
8. Upon reasonable belief, the information sought is not within the scope of the definition of "Public record" as defined in § 30-4-20.
9. Upon reasonable belief, the information sought is exempt from disclosure under § 30-4-40 as it is "information of a personal nature where public disclosure thereof would constitute unreasonable invasion of privacy."
10. Upon reasonable belief, the requested disclosure would violate Title 37, section 20 of the South Carolina Consumer Protection Code, "Consumer Identity Theft Protection."
11. Upon reasonable belief, release of Plaintiff's information to Glassmeyer would violate South Carolina Public Policy.
12. Plaintiff is entitled to a declaration that release to Glassmeyer of Plaintiff's information submitted as part of claiming a lottery prize is in violation of The FOIA, The South Carolina Consumer Protection Code, and South Carolina Public Policy.
13. Plaintiff is entitled to a temporary and permanent injunction enjoining Defendant SCELK from distributing Plaintiff's information gathered as part of claiming a lottery prize to Glassmeyer.
14. Upon reasonable belief, failure of this Court to grant Plaintiff [REDACTED] a temporary and permanent injunction will cause Plaintiff irreparable harm. Plaintiff reasonably believes

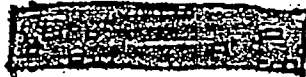
that he would prevail at trial if the facts stated herein are as he believes them to be.
Plaintiff has no other adequate remedy at law.

WHEREFORE having complained of the Defendants, the Plaintiff prays that this Court enter its
order establishing the rights of the parties as follows:

Plaintiff Brumble seeks a declaration that:

- a. Release by Defendant SCELK of Plaintiff's information collected as part of claiming a
lottery prize is in violation of the FOIA, The South Carolina Consumer Protection Code,
and South Carolina Public Policy.
- b. Defendant SCELK shall be temporarily and permanently enjoined from distributing to
Glassmeyer and other third parties Plaintiff's information collected as part of claiming a
lottery prize.

Furthermore, Plaintiff Brumble prays that this Court Grant such other and further relief as it
deems just and proper.

 *de*
Address
Phone

Dillon, South Carolina,
April 11, 2014

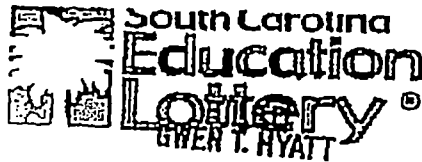


EXHIBIT 11

2014 APR 11 AM 11:11

CLERK OF COURT
DILLON COUNTY

April 1, 2014

[REDACTED]
[REDACTED]
[REDACTED]

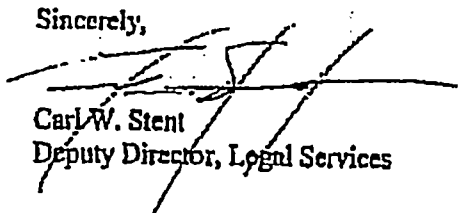
Re: Release of Winner's Information

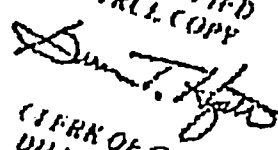
Dear [REDACTED]:

The South Carolina Education Lottery (SCEL) has received a request for information under the South Carolina Freedom of Information Act from George Glassmeyer regarding your recent claim.

In accordance with the South Carolina Lottery Commission's policy on this type of request involving a claim in excess of \$1,000,000, we are notifying you that Mr. Glassmeyer has requested your name, address, telephone number(s), amount of claim, date of claim and a copy of any forms of identification obtained from you (about your respective claims) pursuant to the South Carolina Freedom of Information Act (S.C. Code Ann. § 30-4-10 et seq.) and that SCEL intends to release this information unless you file a petition in a South Carolina Court of Common Pleas for an injunction to prohibit the release of the information within fifteen (15) days of the date of this letter. If you choose to exercise this option, please have your attorney contact us at (803) 737-2457 to ensure your information is not released pending a court's determination.

Sincerely,


Carl W. Stent
Deputy Director, Legal Services

ACCRITED
TRUL COPY

CLERK OF COURT
DILLON COUNTY

1333 Main Street • 4th Floor • Columbia, SC 29201
P.O. Box 11949, Columbia, SC 29211 - 1949
Ph. 803-737-2002 • FAX 803-737-2005 • sceducationlottery.com

STATE OF SOUTH CAROLINA
COUNTY OF Dillon

FILED
GWEN T. HYATT

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

2014 APR 11 AM 11:28

CERTIFICATE OF SERVICE

[REDACTED] v. [REDACTED]
COURT
CLERK OF COURT
DILLON COUNTY

vs.

South Carolina Education Lottery
Commissioner Defendant

Case No.: 2014-CP-17 150

I certify that on this date, I served a copy of Summons and
Complaint and exhibit "A" in this action, dated
April 11, 2014, on _____ by

☐ Delivering it to him/her personally;

☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S.

Mail, in an envelope with sufficient postage affixed, addressed as follows:

Carl W Stent

P.O. Box 11949 Columbia, SC 29211-1949

☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9),

SCRCF, addressed as follows:

☐ Other:

RECEIVED
TRU COPY
of
Dillon
CLERK OF COURT
DILLON COUNTY

(See Rule 5(b)(1), SCRCF)

April 11, 2014
Date



SCCA 255 (05/2013)

STATE OF SOUTH CAROLINA

COUNTY OF

Dillon

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

FILED
GIVEN TO HYATT

2014 APR 11

AM 11:28

CERTIFICATE OF SERVICE

COURT
DILLON COUNTY

Case No.:

2014-CP-17 150

South Carolina Education Lottery
Commission
Defendant

I certify that on this date, I served a copy of _____ in this action, dated _____, on _____ by _____

☐ Delivering it to him/her personally;

☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S.

Mail, in an envelope with sufficient postage affixed, addressed as follows:

☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9),

SCRCP, addressed as follows: _____; or,

☐ Other: _____

April 11, 2014
Date

Signature

ACKNOWLEDGED
TRUE COPY
Dillon County
CLERK OF COURT
DILLON COUNTY

SCCA 255 (05/2013)

Law Offices of William H. Johnson, LLC

411 North Brooks Street
Post Office Box 137
Manning, South Carolina 29102
Telephone 803-435-0909
Facsimile 803-435-2858

William H. Johnson*

Christopher R. DuRant

April 16, 2014

(VIA REGULAR MAIL AND FACSIMILE: 803-737-2005)

Carl W. Stent, Esquire
Deputy Director, Legal Services
South Carolina Lottery Commission
Post Office Box 11949
Columbia, South Carolina 29211-1949

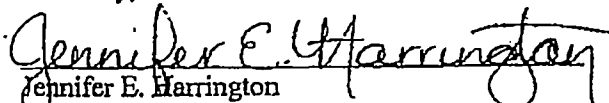
RE: Jane Doe v. South Carolina Lottery Commission
Richland County Docket No. 2014-CP-40-2465
Our File No. 14-160WM

Dear Mr. Stent:

Enclosed herewith and served upon you, please find a certified true copy of the Civil Action Coversheet, Summons, Complaint for Temporary and Permanent Injunction, and Notice of Motion and Motion for Temporary Restraining Order, in regard to the above captioned matter.

Thank you for your attention to this matter.

Sincerely,


Jennifer E. Harrington
Legal Assistant to William H. Johnson

/jeh
Enclosure(s)

cc: Lottie Fleming

*Also Admitted to Practice in North Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JANE DOE,

Plaintiff(s)

vs.

SOUTH CAROLINA LOTTERY COMMISSION,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40-2415

Submitted By: William H. Johnson, Esquire
 Address: PO Box 137, Manning, SC 29102

SC Bar #: 15167
 Telephone #: 803-435-0909
 Fax #: 803-435-2858
 Other:

E-mail: william@whjohnsonlaw.com

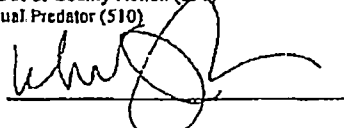
NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20-CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	☐ Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☒ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
☐ Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: 

Date: April 14, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jane Doe,)

Plaintiff,)

v.)

South Carolina Lottery Commission,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-40- 2465

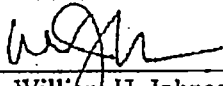
SUMMONS

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this

action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers, The Law Offices of William H. Johnson, LLC, at their offices, Post Office Box 137, Manning, South Carolina, within thirty (30) days after the service hereof, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff(s) will apply to the Court for a judgment by default against you for the relief demanded in the Complaint.

LAW OFFICES OF WILLIAM H. JOHNSON, LLC

By: 

William H. Johnson
PO Box 137 - 411 N. Brooks St.
Manning, South Carolina 29102
Telephone: (803) 435-0909
Facsimile: (803) 435-2858
william@whjohnsonlaw.com
Attorneys for the Plaintiff, Jane Doe ,

April 14, 2014

RICHLAND COUNTY
FILED
2014 APR 15 PM 2:52
JEANETTE W. JOHNSON
C.C.P. & H.S.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jane Doe,)

Plaintiff,)

v.)

South Carolina Lottery Commission,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-40- 2465COMPLAINT FOR TEMPORARY AND
PERMANENT INJUNCTIONRICHLAND COUNTY
FILED
2014 APR 15 PM 2:52
JEREMY H. JOHNSON
CLERK OF COURT
S.C.

The Plaintiff, complaining of the Defendant named above, respectfully alleges as follows:

1. The Plaintiff, Jane Doe, whose further identity is withheld for the reasons set forth below, is a citizen and resident of the County of Clarendon, State of South Carolina.

2. The Defendant, South Carolina Lottery Commission, is a public commission and instrumentality of the State of South Carolina, organized pursuant to S.C. Code Ann. § 59-150-30 (1976, as amended), which governs and holds itself out as the South Carolina Education Lottery (SCEL) and whose principal place of business is located in the County of Richland, State of South Carolina.

3. This court has jurisdiction over the parties and subject matter of this action pursuant to S.C. Code Ann. § 15-77-50 (1976, as amended).

4. The Plaintiff, further identified by claim number 1029999, is a recent claimant of winnings through the SCEL.

5. In regards to that claim, the Plaintiff is in receipt of a letter from the SCEL, dated April 1, 2014, informing her that a request has been received from a named individual pursuant to the "South Carolina Freedom of Information Act," S.C. Code Ann. § 3-4-10 et seq., for disclosure

of certain personal information of the Plaintiff's, to include her name, address, telephone number, amount and date of claim, and copies of any forms of identification obtained from the Plaintiff.

7. According to the correspondence received by the Plaintiff, the SCEL intends to release her personal information to the named requestor, within fifteen (15) days of the date of that letter.

8. The Plaintiff has not authorized the Defendant to disclose her personal information to the named requestor or any other "person" as that term is defined in *S.C. Code Ann. § 30-4-20(b)*.

9. The Plaintiff is informed and believes that the disclosure requested in this matter is protected by the "Family Privacy Protection Act of 2002," *S.C. Code Ann. § 30-2-10 et seq.*

10. Specifically, *S.C. Code Ann. § 30-2-310(e)* prohibits the release of an individual's "personal identifying information" to the general public. "Personal identifying information" is further defined by *S.C. Code Ann. § 16-13-510(D)* to include, among others, the individual's social security number, driver's license or identification card number, date of birth, and current or former names and/or addresses when used in combination with other identifying information.

11. In addition, *S.C. Code Ann. § 30-2-50* requires state agencies to take reasonable measures to ensure that no person or private entity obtains an individual's personal information for commercial solicitation. For the purpose of that statute, *S.C. Code Ann. § 30-2-30(1)* defines "personal information" to include, among others, the individual's name, home address, telephone number, date of birth, social security number, driver's identification number, photograph, bank account numbers, and financial status.

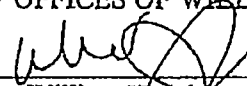
12. The Plaintiff is informed and believes that release of her personal information, as requested, will cause her and her immediate family to suffer immediate and irreparable injury in the form of harassment, damaged reputation, and personal and commercial solicitation.

13. The Plaintiff is further informed and believes that the disclosure requested of the Defendant is unlawful and that she is entitled to a temporary restraining order and a permanent injunction, preventing the Defendant from releasing her personal information, and directing compliance with the "Family Privacy Protection Act of 2002," in accordance with *S.C. Code Ann.* § 30-2-340.

WHEREFORE, having fully stated its complaint, the Plaintiff prays that the Court inquire into the matters alleged herein and issue its Order granting the following relief:

1. An immediate Temporary Restraining Order preventing the Defendant from disclosing the Plaintiff's personal information and directing compliance with the "Family Privacy Protection Act of 2002," in accordance with *S.C. Code Ann.* § 30-2-340.
2. A permanent injunction preventing the Defendant from disclosing the Plaintiff's personal information and directing compliance with the "Family Privacy Protection Act of 2002," in accordance with *S.C. Code Ann.* § 30-2-340.
3. For such other and further relief as the Court may deem just and proper.

LAW OFFICES OF WILLIAM H. JOHNSON, LLC

By: 

William H. Johnson
PO Box 167 - 411 N. Brooks St.
Manning, South Carolina 29102
Telephone: (803) 435-0909
Facsimile: (803) 435-2858
william@whjohnsonlaw.com

April 15, 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

CASE NO.: 2014-CP-40-2465

Jane Doe)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.)

South Carolina Lottery Commission)

Plaintiff,)
Defendant.)

Plaintiff's Attorney: William H. Johnson, Bar No. 15167 Address: PO Box 137, Manning, SC 29102 Phone: 803-435-0909 Fax 803-435-2858 E-mail: william@whjohnsonlaw.com Other:		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Temporary Restraining Order Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief of action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		April 15, 2014 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jane Doe,)

Plaintiff,)

v.)

South Carolina Lottery Commission,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-40- 2465NOTICE OF MOTION AND MOTION
FOR TEMPORARY RESTRAINING
ORDERRICHLAND COUNTY
FILED
2014 APR 15 PM 3:52
JEANETTE H. JOHNSON
C.C.P. 2-6-3

The Plaintiff hereby moves this Court for the issuance of a Temporary Restraining Order pursuant to Rule 65 of the *South Carolina Rules of Civil Procedure*, enjoining the Defendant, its agents and employees, from disclosing the Plaintiff's personal identifying information to the general public and/or any "person" as that term is defined in *S.C. Code Ann. § 30-4-20(b)*. Said motion shall be made on the following grounds:

The Plaintiff, further identified by claim number 1029999, is a recent claimant of winnings through the South Carolina Education Lottery (SCEL), governed by Defendant, South Carolina Lottery Commission. In regards to that claim, the Plaintiff is informed that the SCEL has received a request pursuant to the "South Carolina Freedom of Information Act," *S.C. Code Ann. § 3-4-10 et seq.*, for disclosure of certain personal information to include her name, address, telephone number, amount and date of claim, and copies of any forms of identification obtained from the Plaintiff. The Plaintiff is further informed that the SCEL intends to release said information within fifteen (15) days of its receipt of the said request.

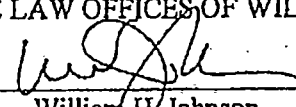
The disclosure requested in this matter is protected by the "Family Privacy Protection Act of 2002," *S.C. Code Ann. § 30-2-10 et seq.* Pursuant to that Act, all state entities, including commissions, are required to follow certain privacy policies and procedures to protect personal

information collected from citizens of this State. Specifically, *S.C. Code Ann.* § 30-2-310(e) prohibits the release of an individual's "personal identifying information" to the general public. "Personal identifying information" is further defined by *S.C. Code Ann.* § 16-13-510(D) to include, among others, the individual's social security number, driver's license or identification card number, date of birth, and current or former names and/or addresses when used in combination with other identifying information.

In addition, *S.C. Code Ann.* § 30-2-50 requires state agencies to take reasonable measures to ensure that no person or private entity obtains an individual's personal information for commercial solicitation. For the purpose of that statute, "personal information" is defined to include, among others, the individual's name, home address, telephone number, date of birth, social security number, driver's identification number, photograph, bank account numbers, and financial status.

For these reasons, the Plaintiff is informed and believes that disclosure of her personal information as requested is unlawful, that its release is imminent, and without the issuance of a Temporary Restraining Order, immediate and irreparable injury loss and damage will occur before notice can be served and a hearing held on the issues herein.

THE LAW OFFICES OF WILLIAM H. JOHNSON, LLC

BY: 

William H. Johnson
411 North Brooks Street
Post Office Box 137
Manning, South Carolina 29102
(803) 435-0909 Telephone
(803) 435-2858 Facsimile
william@whjohnsonlaw.com

April 15, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jane Doe,)

Plaintiff,)

v.)

South Carolina Lottery Commission,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-40-2465

CERTIFICATE OF SERVICE

I, Jennifer E. Harrington, an employee of The Law Offices of William H. Johnson, LLC, attorneys for the Plaintiff, Jane Doe, does hereby certify that I have served a copy of the Civil Action Coversheet, Summons, Complaint for Temporary and Permanent Injunction and Notice of Motion and Motion for Temporary Restraining Order in this matter on the Defendant's attorney, Carl W. Stent, Esquire, Deputy Director, Legal Services, by personally placing a copy of said document(s) in the United States Mail, first-class postage affixed, and addressed as follows, on April 16, 2014:

Carl W. Stent, Esquire
Deputy Director, Legal Services
South Carolina Lottery Commission
Post Office Box 11949
Columbia, South Carolina 29211-1949

Jennifer E. Harrington
Jennifer E. Harrington
Legal Assistant to William H. Johnson

April 16, 2014
Manning, South Carolina

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW
930 RICHLAND STREET
P.O. BOX 8418
COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

April 25, 2014

Via Hand Delivery

Karl S. Bowers, Jr.
Bowers Law Office LLC
1419 Pendleton Street
Columbia, South Carolina 29201

Re: *John Doe v. South Carolina Lottery Commission*, C/A No. 2014-CP-40-2446

Dear Mr. Bowers:

Enclosed please find a file-stamped copy of the Form 4 along with the Order Granting Permanent Injunction and Declaratory Relief finally resolving this matter.

Thank you. If you have any questions, please call.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

Tracey C. Green

TCG/lg
Enclosure

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

) CIVIL ACTION NO. 2014-CP-40-2446

)

)

ORDER GRANTING PERMANENT
INJUNCTION

1

(

U.C.R. & S.

2014 APR 25 PM 12:15

Introduction

- 1

invasion of personal privacy and that the Lottery Commission should therefore not release Plaintiff's personal information to the public. Plaintiff further sought an injunction against the release of that information.

4. A Temporary Restraining Order was entered on April 15, 2014, restraining Defendant Lottery Commission from releasing any personal information regarding Plaintiff John Doe. The TRO remained in effect through April 25, 2014.

5. At a hearing on April 25, 2014, the Court ordered that the TRO be continued in full force and effect with the consent of all parties until issuance of a Permanent Injunction.

Legal Background

6. A person may apply to a court to declare their rights under the statutory law of this state. S.C. Code Ann. § 15-53-20.

7. The standards for a permanent injunction are substantially the same as those for issuing a preliminary injunction, except that the plaintiff must show actual success on the merits. *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 546 n.12 (1987).

8. Therefore, to obtain a permanent injunction, the applicant must show the following:

(1) he has succeeded on the merits;

(2) he will suffer immediate, irreparable harm without the injunction;

and

(3) he has no adequate remedy at law.

Compton v. S. Carolina Dep't of Corrections, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

9. The Court also is required to balance the equities in the case. *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427, 429 (1995); see also *Shaw v. Coleman*, 373 S.C. 485, 645 S.E.2d 252 (Ct. App. 2007) (affirming grant of permanent injunction based on balancing of equities).

Analysis

10. FOIA exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40 (a)(2).

11. The SCEL Winner Claim Form submitted by Plaintiff contains not only Plaintiff's name, but also Plaintiff's mailing address, phone number, Social Security Number ("SSN") and date of birth ("DOB"). Compl. ¶13. The Lottery Commission agrees with this allegation.

12. The disclosure of Plaintiff's name or other information that could be used to identify Plaintiff ("personal identifying information"), including, but not limited to, mailing address, phone number, SSN, or DOB would constitute an unreasonable invasion of Plaintiff's personal privacy. Compl. ¶14.

Declaratory Judgment

13. The right to privacy is the right to be let alone, or "the right to live without one's name, picture or statue, or that of a relative, made public against his

will." *Holloman v. Life Ins. Co. of Virginia*, 192 S.C. 454, 458, 7 S.E.2d 169, 171 (1940).

14. The South Carolina Constitution expressly recognizes the right to privacy. S.C. Const. art. I § 10. At a minimum, the state constitution therefore protects Plaintiff against invasions of privacy resulting from state action, including the release of personal information that would result in an unreasonable invasion of Plaintiff's personal privacy.

15. A prominent example of the concern regarding the improper public release of personal information is the public concern and outcry that arose following the breach of the South Carolina Department of Revenue's computer system and network, resulting in the suspected compromise of millions of taxpayers' personal identifying information.

16. Recognizing the potential for harmful use of this personal information that was wrongfully accessed, the State of South Carolina has contracted for credit monitoring for affected taxpayers for two years.

17. The Courts also have taken steps to address this concern. Just recently, the South Carolina Supreme Court issued an order requiring the redaction of personal identifying information from documents filed with an appellate court, including but not limited to social security number, taxpayer identification numbers, driver's license numbers, passport numbers, or other personal identifying numbers; names of minor children; financial account numbers; home addresses of minors, sexual assault and abuse and neglect victims; and non-parties; and date of

birth. *In re Revised Order Concerning Pers. Identifying Info. & Other Sensitive Info. in Appellate Court Filings*, 2013-002681, 2014 WL 1464413 (S.C. Apr. 15, 2014).

18. The federal courts likewise recognize a similar need for privacy in court filings, generally requiring the redaction of information like Plaintiffs' personal identifying information. Fed. R. Civ. P. 5.2.

19. Plaintiffs' personal identifying information has remained private and the release of that information will result in an unreasonable invasion of Plaintiffs' personal privacy.

20. The release of Plaintiffs' personal identifying information is not required by and would not further the purpose of FOIA.

21. The purpose of FOIA is not to expose individuals to unwarranted invasions of privacy, but to "prevent the government from acting in secret." *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001). Plaintiffs' personal identifying information has nothing to do with the government operating in secret. The fact that the Lottery Commission pays lottery winnings—the only part that involves government action—already is a matter of public knowledge. Plaintiffs' identity as the recipient of those winnings does not pertain to government activity in secret and involves personal privacy and personal identifying information. Enjoining the release of Plaintiffs' personal identifying information therefore is consistent with the purposes and provisions of FOIA.

22. Disclosure of Plaintiff's personal identifying information would invade the privacy of Plaintiff and Plaintiff's family, subject Plaintiff and Plaintiff's family to unreasonable publicity, expose Plaintiff and Plaintiff's family to threats against their safety, and otherwise be an unreasonable intrusion into Plaintiff's life and daily affairs.

23. The invasion of privacy that would result from the release of Plaintiff's Personal Identifying Information also would be unreasonable.

24. Plaintiffs' allegations are further supported by recognized instances of harm or the threat of harm befalling lottery winners.

25. Such threats against the safety of lottery winners and their families, as well as actual harm to them, including death, are well documented in case law.

See, e.g., People v. Bennett, 2013 WL 967583 (Mich. App. March 7, 2013)

(unpublished) (defendant robbed a home, murdered one person, shot and severely injured another person, and physically assaulted a ten year old child in an attempt to steal a lottery ticket worth \$2,700.00); *State v. Bradford*, 2003 WL 21372743 (Iowa App. June 13, 2003) (unpublished) (person who purchased and cashed several winning lottery tickets was choked until she passed out and suffered injuries requiring hospitalization when she was robbed for cash received from the winning tickets).

26. There also are numerous media reports regarding threats of and actual harm to lottery winners. Rebecca Nelson, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Jan. 9, 2013 (<http://newsfeed.time.com/2012/11/28/500->

million-powerball-jackpot-the-tragic-stories-of-the-lotterys-unluckiest-winners/)

(lottery winner's death from cyanide the day after his lump sum check was issued treated as homicide); JuJu Kim, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Nov. 27, 2012 <http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lotterys-unluckiest-winners/> (lottery winner murdered in robbery plot); Andy Campbell, *Killer of Lottery Winner Abraham Shakespeare Can't Keep his Home, Judge Rules*, HUFFINGTON POST CRIME, Oct. 4, 2013 (http://www.huffingtonpost.com/2013/10/04/abraham-shakespeare-murdered-lottery-winner_n_4042811.html) (woman who befriended lottery winner to take control of his wealth convicted of first-degree murder in his death); Ron Dicker, *Virginia Lottery Winner Who Uses Wheelchair Robbed After Cashing Ticket*, HUFFINGTON POST CRIME, Feb. 7, 2013 (http://www.huffingtonpost.com/2013/02/07/virginia-lottery-winner-wheelchair-robbed-ticket_n_2638978.html) (wheelchair-bound lottery winner robbed while leaving store after cashing ticket).

27. If Plaintiff's personal identifying information is released at any time, Plaintiff and Plaintiff's family will be subject to unreasonable publicity, exposing Plaintiff and Plaintiff's family to threats against their safety, and unreasonably intruding into and invading Plaintiff's life and daily affairs.

28. Plaintiff therefore is entitled to a declaratory judgment that the release of all or any part of Plaintiff's personal identifying information, such as

Plaintiff's name, would result in an unreasonable invasion of Plaintiff's personal privacy in accordance with Section 30-4-40(a)(2).

Immediate, Irreparable Harm

29. Plaintiff will suffer immediate, irreparable harm to Plaintiff's personal privacy and safety without the entry of a permanent injunction.

30. As noted above, the South Carolina Constitution expressly protects Plaintiff against invasions of privacy resulting from state action.

31. By granting an applicable exemption from releasing information under FOIA, Section 30-4-40(a)(2) recognizes that there are situations in which the release of information will result in an unreasonable invasion of that person's privacy, and accordingly exempts that information from disclosure.

32. Plaintiff therefore has constitutional and statutory protections against any unreasonable invasion of Plaintiff's personal privacy and against any release of Plaintiff's personal identifying information by the Lottery Commission in response to an FOIA request.

33. The disclosure of Plaintiff's personal identifying information would invade the privacy of Plaintiff and Plaintiff's family, subject Plaintiff and Plaintiff's family to unreasonable publicity, expose Plaintiff and Plaintiff's family to threats against their safety, and otherwise be an unreasonable intrusion into Plaintiff's life and daily affairs.

34. The recognized instances of harm or the threat of harm befalling lottery winners discussed above with respect to the unreasonableness of the

invasion of Plaintiff's privacy also demonstrate that irreparable harm that would ensue from the release of Plaintiff's personal identifying information.

35. The release of the Plaintiff's personal identifying information would subject Plaintiff and Plaintiff's family to unreasonable publicity, exposing Plaintiff and Plaintiff's family to threats against their safety, and unreasonably intruding into and invading Plaintiff's life and daily affairs.

No Adequate Remedy at Law

36. Finally, Plaintiff has no adequate remedy at law. An adequate remedy at law is defined as a legal remedy that is "as certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity." *Santee Cooper Resort, Inc. v. South Carolina Public Svc. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

37. Given the privacy-related nature of the claims, Plaintiff could not be made whole if Plaintiff's privacy is impaired at this or any stage. It also would be difficult if not impossible for Plaintiff to be fully compensated through damages if Plaintiff's privacy or safety is impaired. Privacy is not like a physical asset that can be restored if it is damaged or rebuilt if it is destroyed. Rather, once impaired, Plaintiff's privacy cannot be recovered. Because of its nature, it would be difficult if not impossible to calculate the damages to Plaintiff for any impairment of Plaintiff's privacy. This renders it possible that Plaintiff could not be fully compensated in an action at law because he might be able to recover only nominal damages. *See Bethel M. E. Church v. City of Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947).

Moreover, because a state agency would be the entity releasing that information, the South Carolina Tort Claims Act would further limit the Plaintiff's ability to recover monetary damages.

38. In sum, there is no legal remedy that will provide Plaintiff with the same relief as the granting of an injunction.

Balancing of the Equities

39. As more fully explained and described above, the potential harm to the Plaintiff if a permanent injunction is not granted is great through the unreasonable invasion of Plaintiff's personal privacy and the threat of physical harm to the Plaintiff and Plaintiff's family.

40. In contrast, the potential harm to the Lottery Commission is not substantial because neither its day-to-day operations nor its purposes will be impaired by the issuance of a permanent injunction.

41. Moreover, granting the injunction may assist the Lottery Commission in its operations by authorizing it to refuse to disclose personal information about persons who win the lottery without their consent, thereby protecting those persons' right to privacy and protecting their safety, and further encouraging persons to play the lottery without a fear that personal information will be released without their consent.

42. As discussed above, granting the permanent injunction is not inconsistent with the purposes of FOIA to prevent the government from acting in secret—the existence of the lottery and payouts are known—and in fact furthers the

purpose of the express exemption from disclosing matters that may lead to an unreasonable invasion of personal privacy.

43. Therefore, the balancing of the equities weighs in favor of granting a permanent injunction.

Conclusion

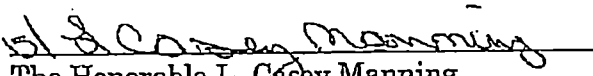
44. Plaintiff is entitled to a declaratory judgment that the release of Plaintiff's personal identifying information would constitute an unreasonable invasion of personal privacy within the meaning of Section 30-4-40(a)(2).

45. Plaintiff is entitled to a permanent injunction because Plaintiff (1) is entitled to a declaratory judgment and, thus, has prevailed on the merits of Plaintiff's claims; (2) Plaintiff has established immediate and irreparable harm; and (3) Plaintiff has no adequate remedy at law.

46. Therefore, it is ORDERED that Defendant South Carolina Lottery Commission is PERMANENTLY restrained and enjoined from releasing any and all information regarding Plaintiff in response to the FOIA request of Mr. George Glassmeyer or any other FOIA request.

47. This Order concludes the above-captioned lawsuit and judgment is entered for Plaintiff as set forth above. Each party is to bear its own costs.

IT IS SO ORDERED.


The Honorable L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

April 25, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John Doe, —

Plaintiff,

vs.

South Carolina Lottery Commission

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION COVERSHEET

2014-CP - 40- 2446

Submitted By: Mitchell Willoughby, Tracey C. Green, and
Elizabeth Ann Loadholt Carroll
Address: Willoughby & Hoefler, P.A.
930 Richland Street
P.O. Box 8416
Columbia, SC 29202

SC Bar #: 6161 (MW) 9342 (TCG)
7046 (EAC)
Telephone #: 803-252-3300
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E-mail: mwilloughby@willoughbyhoefler.com
tgreen@willoughbyhoefler.com
ecarroll@willoughbyhoefler.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

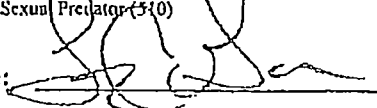
- Administrative Law/Relief**
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Sexual Predator (510)

- ☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☒ Other (699) DECLARATORY
JUDGMENT

Submitting Party Signature: 

Date: 4/15/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John Doe,

Plaintiff,

v.

South Carolina Lottery Commission,

Defendants.

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

C/A NUMBER: 2014-CP-40-

SUMMONS

APR 15 11:51

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 by delivery to his office at 930 Richland Street, Fourth Floor, Columbia, South Carolina 29201 or Post Office Box 8416, 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.



Mitchell Willoughby, Esquire
Tracey Green, Esquire
Elizabeth Ann Loadholt Carroll, Esquire
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202
Telephone Number: 803-252-3300
mwilloughby@willoughbyhoefer.com
tgreen@willoughbyhoefer.com
ecarroll@willoughbyhoefer.com

April 15, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John Doe,

Plaintiff,

v.

South Carolina Lottery Commission,

Defendant.

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

CIVIL ACTION NO. 2014-CP-40 _____

VERIFIED COMPLAINT

FILED IN CLERK'S OFFICE
JAN 15 2015

The Plaintiff comes before the Court seeking a declaratory judgment and injunctive relief pursuant to S.C. Code Ann. § 30-4-10, *et seq.* (the South Carolina Freedom of Information Act or "FOIA") and S.C. Code Ann. § 15-53-10, *et seq.* (the Uniform Declaratory Judgments Act). Plaintiff seeks an order from this Court: 1) declaring that certain "information of a personal nature" regarding Plaintiff is exempt from public disclosure pursuant to Section 30-4-40(a)(2) of FOIA because public disclosure thereof would constitute an unreasonable invasion of the Plaintiff's personal privacy, and 2) enjoining Defendant South Carolina Lottery Commission (the "Commission") from disclosing said "information of a personal nature" in response to any request made pursuant to FOIA or otherwise.

THE PARTIES

1. Plaintiff John Doe is a citizen and resident of the State of South Carolina.
2. Defendant South Carolina Lottery Commission ("Commission") is a public body as that term is defined by FOIA and an instrumentality of the State of South Carolina. The Commission administers the South Carolina Education Lottery ("SCEL").

JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to S.C. Code Ann. § 15-53-30 and S.C. Code Ann. § 30-4-100.

4. Venue for this action is proper in Richland County because S.C. Code Ann. § 59-150-30(A) establishes that venue for the Commission is in Richland County.

BACKGROUND

5. On or about September 18, 2013, a ticket purchased by Plaintiff was chosen as a Powerball Drawing winner in the SCEL.

6. On September 23, 2013, Plaintiff submitted a claim form to Commission in connection with the Powerball Drawing.

7. As part of this process of claiming the Powerball Drawing proceeds, Plaintiff indicated to Commission that he wished to remain anonymous.

8. On information and belief, on March 31, 2014, SCEL received a request for information pursuant to FOIA from George Glassmeyer requesting the name, address, telephone number(s), amount of claim, date of claim, and copy of any forms of identification obtained from claimants who have a claim in excess of \$1,000,000.00 from the SCEL.

9. Mr. Glassmeyer's March 31, 2014 FOIA request to the SCEL implicates Plaintiff, as Plaintiff's Powerball Drawing proceeds exceed \$1,000,000.00.

10. Commission informed Plaintiff on April 1, 2014 via email and letter that, in accordance with Commission's "policy on release of this type of information," SCEL intends to release the requested information unless Plaintiff files a petition for an injunction to prohibit the release of the information within fifteen (15) days of the date of the letter.

11. This lawsuit seeks to enjoin the release of any public record in the possession of, or retained by, Commission and/or SCEL that identifies or could be used in connection with other information to identify Plaintiff. It further seeks a declaration that the release of such information would constitute an unreasonable invasion of Plaintiff's personal privacy.

APPLICABLE LAW

12. FOIA exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40 (a)(2)

CAUSES OF ACTION

Equitable and Injunctive Relief Pursuant to FOIA

13. The SCEL Winner Claim Form submitted by Plaintiff contains not only Plaintiff's name, but also Plaintiff's mailing address, phone number, Social Security Number ("SSN") and date of birth ("DOB").

14. The disclosure of Plaintiff's name or other information that could be used to identify Plaintiff ("personal identifying information"), including, but not limited to, mailing address, phone number, SSN, or DOB would constitute an unreasonable invasion of Plaintiff's personal privacy.

15. In the context of Plaintiff being the winner of the Powerball Drawing on September 18, 2013, disclosure of Plaintiff's personal identifying information would subject Plaintiff and Plaintiff's family to unreasonable publicity, expose Plaintiff and Plaintiff's family to threats against their safety, and otherwise be an unreasonable intrusion into Plaintiff's life and daily affairs.

16. Plaintiff has taken reasonable steps to protect Plaintiff's personal privacy in connection with the Powerball claim.

17. Plaintiff requests that the Court enjoin Commission from disclosing Plaintiff's personal identifying information in response to any FOIA request pursuant to S.C. Code Ann. § 30-4-100.

Declaratory Judgment

21. There exists a real and actual controversy among the parties as to Plaintiff's right to personal privacy in connection with Plaintiff's claim to the proceeds of the Powerball Drawing.

22. Plaintiff is informed and believes that Plaintiff's right to personal privacy in the circumstances presented by this action outweighs any need or desire by the public to know Plaintiff's personal identifying information.

23. A declaratory judgment defining the rights, privileges and duties of and between the parties is appropriate pursuant to S.C. Code § 15-53-10, *et seq.*, and the Plaintiff requests that the Court declare as follows:

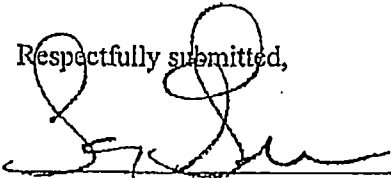
a. The public disclosure of Plaintiff's personal identifying information would constitute an unreasonable invasion of Plaintiff's personal privacy;

b. Any public record pertaining to Plaintiff's claim to the Powerball Drawing proceeds containing Plaintiff's personal identifying information is exempt from public disclosure pursuant to S.C. Code Ann. § 30-4-40(a)(2); and

c. Such other declarations consistent with the applicable law.

WHEREFORE, Plaintiff prays that this Court hear this action, grant such injunctive and declaratory relief as the circumstances justify, and for such other and further relief that this Court may deem just and proper.

Respectfully submitted,



Mitchell Willoughby, Esquire
Tracey Green, Esquire
Elizabeth Ann Loadholt Carroll, Esquire
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202
Telephone Number: 803-252-3300
mwilloughby@willoughbyhoefer.com
tgreen@willoughbyhoefer.com
ccarroll@willoughbyhoefer.com

Attorneys for Plaintiff

April 15, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John Doe,

Plaintiff,

v.

South Carolina Lottery Commission,

Defendant.

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

) CIVIL ACTION NO. 2014-CP-40_____

) VERIFICATION

I, [REDACTED] first duly sworn, state on my oath that I am the Plaintiff in the above-referenced action. I have personal knowledge of the matters stated in this Verified Complaint, and I know the facts stated to be true and correct to the best of my knowledge and belief, except as to those matters stated on information and belief and as to those matters I believe them to be true.

Sworn to and subscribed before me
on April 11, 2014

[REDACTED]

Carolina

My Commission expires [REDACTED]

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John Doe,

Plaintiff,

v.

South Carolina Lottery Commission,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2014-CP-40- 2446

ORDER GRANTING TEMPORARY
RESTRAINING ORDER

2014 APR 15 AM 11:54
JENNIFER L. MANNING
CLERK OF COURT

RICHLAND COUNTY
FILED

This matter comes before the Court on a Motion for Temporary Restraining Order filed by Mitchell Willoughby, Esquire, Tracey Green, Esquire and ElizabethAnn Loadholt Carroll, Esquire, Attorneys for Plaintiff. After the Court's consideration of the underlying facts and supporting legal arguments, it is hereby

ORDERED, ADJUDGED, and DECREED that a hearing on Plaintiff's Motion for Preliminary Injunction be and hereby is scheduled for April 25, 2014 at 10:00 a.m at the Richland County Judicial Center, Courtroom 2B, before the Honorable L. Casey Manning; it is further

ORDERED, ADJUDGED AND DECREED that, without prejudice to the Defendant, I find that immediate and irreparable injury, loss, or damage will result to the Plaintiff if a temporary restraining order is not entered to enjoin the release of Plaintiff's personal information. If Plaintiff's personal information is released at this stage of the litigation, the injury alleged in his Complaint cannot be remedied at a later date. Therefore, the Plaintiff's Motion for Temporary Restraining Order enjoining the Defendant South Carolina Lottery Commission from responding to the Freedom of Information Act request of Mr. George Glassmeyer or any other

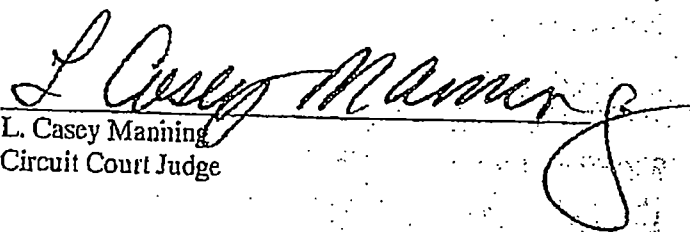
Freedom of Information Act request is hereby granted until April 25, 2014; it is further

ORDERED, ADJUDGED, and DECREED that Plaintiff is not required to give security at this time because I find is not necessary to support the granting of this Temporary Restraining Order, it is further

ORDERED, ADJUDGED, and DECREED that Plaintiff may be required to give security at a later time upon further order of the Court; it is further

ORDERED, ADJUDGED AND DECREED that counsel for Plaintiff shall provide notice of the hearing to counsel for Defendants.

IT IS SO ORDERED.


L. Casey Manning
Circuit Court Judge

April 15, 2014
Columbia, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John Doe,

Plaintiff,

v.

South Carolina Lottery Commission,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2014-CP-40246

ORDER GRANTING MOTION TO
PROCEED ANONYMOUSLY

FILED
APR 15 2014
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
COLUMBIA, SC

This matter comes before the Court pursuant to Plaintiff's Motion to Proceed Anonymously, in which Plaintiff seeks an order of the Court allowing Plaintiff to pursue this action anonymously, without disclosing Plaintiff's true name.

In the case of *Doe v. Howe*, 362 S.C. 212, 217-218, 607 S.E.2d 354 (2004), the South Carolina Supreme Court provided guidance on whether a litigant in a civil proceeding should be allowed to proceed anonymously. The question turns upon the following factors:

- a. whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature;
- b. whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties;
- c. the ages of the persons whose privacy interests are sought to be protected;

- d. whether the action is against a governmental or private party; and
- e. the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Id.

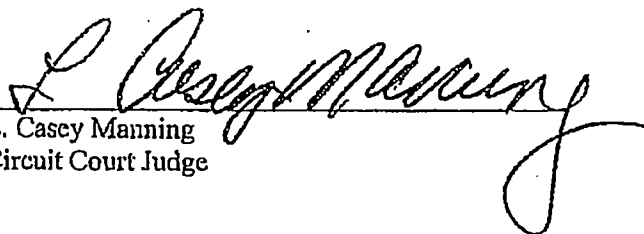
2. With respect to the first prong of the test, the sole reason for Plaintiff's request is to "preserve privacy in a matter of sensitive and highly personal nature." The issue in this matter is whether Plaintiff's identity is protected from public disclosure by Section 30-4-40(a)(2) of the Act. Based on the Verified Complaint and the affidavit and other materials submitted in this matter, I find that Plaintiff is not trying to avoid the "annoyance and criticism that may attend any litigation," but rather merely to preserve the basis for its filing.

3. I find that the second, third and fourth prongs of the test are not implicated in this case, although the Plaintiff's core contention is that the disclosure of Plaintiff's identity by the Commission will constitute an unreasonable invasion of Plaintiff's personal privacy.

4. With respect to the fifth prong of the test, I find that there is no risk of unfairness to the Commission in this case in the event the Court allows Plaintiff to proceed anonymously. The sole issue before the Court is whether or not Plaintiff's identity is exempt from disclosure pursuant to Section 30-4-40(a)(2) of the Act. I find that protecting Plaintiff's anonymity while the Court determines whether Plaintiff is entitled to that anonymity under the Act will not prejudice any party in this action.

5. For these reasons, I find that allowing Plaintiff to proceed anonymously pending a determination of whether Plaintiff's identity remains private is warranted.

IT IS SO ORDERED.


L. Casey Manning
Circuit Court Judge

April 15, 2014
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

John Doe,

Plaintiff,

v.

South Carolina Lottery Commission,

Defendant.

CIVIL ACTION NO. 2014-CP-40-2446

ORDER GRANTING MOTION TO SEAL

FILED
CLERK OF COURT
SOUTH CAROLINA
APR 11 2014
AM 11:54

This matter comes before the Court on a Motion to Seal filed by the Plaintiff pursuant to Rule 41.1, SCRCF. As set out in the Motion, Defendant South Carolina Lottery Commission consents to the relief sought in the Motion. For the reasons set out herein, the Court grants Plaintiff's Motion.

BACKGROUND

1. A ticket purchased by Plaintiff was chosen as a Powerball Drawing winner in the South Carolina Education Lottery ("SCEL").
2. Plaintiff has filed this case seeking to protect Plaintiff's name and other information that could be used to identify Plaintiff (Plaintiff's "identity"), citing the "personal privacy" exemption found in S.C. Code Ann. § 30-4-40(a)(2) of the Freedom of Information Act ("FOIA").
3. Plaintiff has separately filed a Motion seeking allowance to proceed anonymously in this case.
4. Plaintiff has filed a Motion for Temporary Restraining Order and Preliminary Injunction with this Court, pursuant to Rule 65, SCRCF, seeking to enjoin Defendant South

Carolina Lottery Commission from disclosing Plaintiff's personal identifying information in response to FOIA requests by Mr. George Glassmeyer.

5. Rule 65, SCRCF, requires the Plaintiff to demonstrate its entitlement to injunctive relief "by affidavit or by verified complaint" A Verification requires the Plaintiff's true name.

6. Accordingly, Plaintiff has requested that this Court seal the Plaintiff's Verification of the Complaint.

7. In accordance with the requirements of Rule 41.1, SCRCF, Plaintiff has provided the Court with a separately sealed attachment labeled "Confidential Information to be Submitted to the Court in Connection with the Motion to Seal," and containing the executed and notarized Verification.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Court concludes that sealing the Verification is necessary for Plaintiff to maintain the confidentiality of the information contained in the Verification while satisfying the requirements of Rule 65, SCRCF.

9. Less drastic alternatives to sealing will not afford adequate protection, as the Verification must contain the Plaintiff's true name (pursuant to Rule 65, SCRCF), and filing the Verification with the Clerk of Court would make the Plaintiff's true name available to the public.

10. The Court concludes that the factors set out in Rule 41.1(b), SCRCF, support sealing the Verification in this case:

a. *The need to ensure a fair trial.* Sealing the Plaintiff's Verification will preserve the issue raised by Plaintiff's lawsuit for determination by the Court.

b. *The need for witness cooperation.* This factor is not triggered in this case.

c. *The reliance of the parties upon expectations of confidentiality.* The Plaintiff has an expectation that that the Plaintiff's identity will not be disclosed publically (if at all) until a final ruling has been issued in this case.

d. *The public or professional significance of the lawsuit.* The justification for sealing the Verification is self-evident and therefore detached from any public or professional significance associated with this case.

e. *The perceived harm to the parties from disclosure.* If the information Plaintiff seeks to protect in Verification is subject to public disclosure, any such public disclosure will moot this action.

f. *Why alternatives other than sealing the Verification are not available to protect legitimate interests as identified by this Rule.* The Court concludes that no alternative to sealing the Verification is available to protect the confidentiality of the Plaintiff's name.

g. *Why the public interest, including, but not limited to, the public health and safety, is best served by sealing the Verification.* Sealing the Verification in order to preserve this issue for consideration by the Court will best serve the public interest. This case does not present issues with regard to "the public health and safety."

11. The Court concludes that sealing the Verification will not prejudice any party in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT Plaintiff's Motion to Seal the Verification is GRANTED. The Verification shall not be filed in the docket of this case, but shall remain in possession of the Court for purposes of any necessary *in camera* review.

IT IS SO ORDERED.


L. Casey Manning
Circuit Court Judge

April 15, 2014
Columbia, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John Doe,

vs.

South Carolina Lottery Commission

Defendant.

Plaintiff,

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40- 2446

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

Mitchell Willoughby, Bar No. 6161
Tracey C. Green, Bar No. 9342
Elizabeth Ann Loadholt Carroll, Bar No. 7046
Address:
Willoughby & Hoefer, P.A.
930 Richland Street
P.O. Box 8416
Columbia, SC 29202
Phone: 803-252-3300 Fax: 803-256-8062
E-mail: mwilloughby@willoughbyhoefer.com
tgreen@willoughbyhoefer.com
ecarroll@willoughbyhoefer.com

Defendant's Attorney:

Address:

Phone:

E-mail:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Temporary Restraining Order and for Preliminary Injunction

Estimated Time Needed: 15 minutes

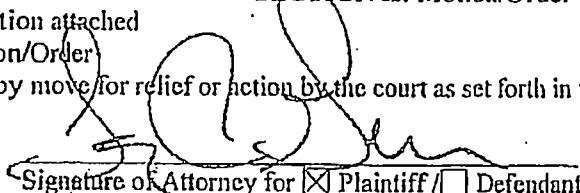
Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff/☐ Defendant

April 14, 2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

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

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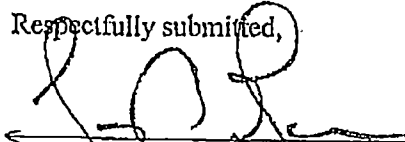
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Respectfully submitted,



Mitchell Willoughby, Esquire
Tracey Green, Esquire
Elizabeth Ann Loadholt Carroll, Esquire
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
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April 15, 2014

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
John Doe,	)	C/A NO. 2014-CP-40_____
Plaintiff,	)	
v.	)	AFFIDAVIT
South Carolina Lottery	)	
Commission,	)	
Defendant.	)	

2014 SEP 15 AM 11:52

PERSONALLY appeared before me, Mitchell Willoughby, who, being duly sworn, deposes and states as follows:

1. I am an attorney admitted to practice law in the State of South Carolina, a partner in the law firm of Willoughby & Hoefer, P.A., and I am an attorney of record for the Plaintiff in this case.
2. I am over the age of 18 and competent to make this Affidavit.
3. As the Plaintiff's attorney of record, I am authorized to make any affidavits and verifications on Plaintiff's behalf pursuant to South Carolina Rule of Civil Procedure 11(c).
4. I make this affidavit on behalf of Plaintiff in support of the application for a Motion for Temporary Restraining Order pursuant to South Carolina Rule of Civil Procedure 65(b) seeking to restrain the South Carolina Lottery Commission ("Commission") from disclosing the Plaintiff's identity or any other personal

information regarding Plaintiff that it may have in its file or on record ("Personal Information").

5. I make this affidavit based on personal knowledge unless otherwise indicated.

6. The Plaintiff has provided to me a written document entitled "Verification," signed in the Plaintiffs' own name and before a notary public, stating as follows:

I have personal knowledge of the matters stated in the Complaint and I know the facts stated to be true and correct to the best of my knowledge and belief, except as to those matters stated on information and belief and as to those matters I believe them to be true.

7. A redacted copy of this Verification is attached to the Complaint.

8. I have reviewed a letter from the Commission dated April 1, 2014 advising that it has received a Freedom of Information Act request ("FOIA Request") seeking the name, address, telephone number(s), amount of claim, date of claim, and copy of any forms of identification obtained from claimants who have a claim in excess of \$1,000,000.00 from the SCEL.

9. The FOIA Request implicates the Plaintiff, because Plaintiff's Powerball Drawing proceeds exceed \$1,000,000.00.

10. The Commission stated in that letter that it intends to release that information unless a petition to prohibit the release of that information is filed in the Court of Common Pleas within 15 days of the date of the letter.

11. Plaintiff therefore has retained my law firm and me to file an action in the South Carolina Court of Common Pleas to prohibit the release of the Personal Information.

12. The Plaintiff is very concerned that the release of the Personal Information will result in unreasonable publicity, expose Plaintiff and Plaintiff's family to threats against their safety, and otherwise be an unreasonable intrusion into Plaintiff's life and daily affairs.

13. The Plaintiff states that Plaintiff has gone to great lengths to maintain the personal privacy of Plaintiff and Plaintiff's family after winning the Powerball Drawing proceeds.

14. Plaintiff has previously requested that the Commission not release the Personal Information.

15. Plaintiff previously has instituted an action against the Commission to enjoin release of the Personal Information in response to prior requests pursuant to FOIA, and thus has taken steps as necessary and appropriate to maintain the personal privacy of Plaintiff and Plaintiff's family.

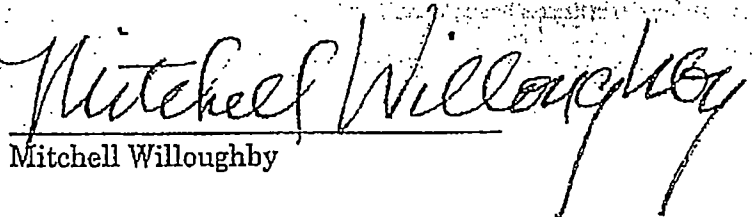
16. The Plaintiff believes that the release of the Personal Information would constitute an unreasonable invasion of personal privacy of the Plaintiff and Plaintiff's family.

17. If the Court does not enjoin the release of Plaintiff's Personal Information and Plaintiff's name is released at this stage of the litigation, Plaintiff

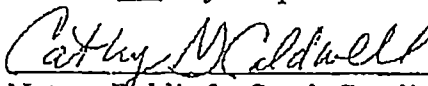
will suffer an irreparable injury and will be unable to recover Plaintiff's personal privacy once the Personal Information is released.

18. A temporary restraining order therefore is necessary in order to protect Plaintiff's Personal Information and ensure that the relief sought does not become moot pending an adjudication of this litigation on the merits. *See City of Romulus v. Wayne Cnty.*, 634 F.2d 347, 349 (6th Cir. 1980) ("Therefore, we apply the familiar principle that an action is moot where the activities sought to be enjoined have already occurred and can no longer be prevented.") (citing cases)

19. Plaintiff therefore seeks a temporary restraining order enjoining the Commission from releasing the Personal Information, and ultimately seeks a permanent injunction against the Commission's release of the Personal Information.


Mitchell Willoughby

Sworn to and subscribed before me
On this 15th day of April 2014


Cathy McDowell
Notary Public for South Carolina
My Commission expires 1/28/2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John Doe,

vs.

South Carolina Lottery Commission

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-2446

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:
Mitchell Willoughby, Bar No. 6161
Tracey C. Green, Bar. No. 9342
ElizabethAnn Loadholt Carroll, Bar. No. 7046
Address:
Willoughby & Hoefer, P.A.
930 Richland Street
P.O. Box 8416
Columbia, SC 29202
Phone: 803-252-3300 Fax: 803-256-8062
E-mail: mwilloughby@willoughbyhoefer.com
tgreen@willoughbyhoefer.com
ecarroll@willoughbyhoefer.com

Defendant's Attorney:

Address:

Phone:

E-mail:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Allow the Plaintiff to Proceed Anonymously

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/ ☐ Defendant

April 14, 2014

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John Doe,

Plaintiff,

v.

South Carolina Lottery Commission,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2014-CP-40-____

MOTION TO ALLOW THE PLAINTIFF TO
PROCEED ANONYMOUSLY

SEP 15 11:53

Plaintiff John Doe hereby moves this Court for an order allowing Plaintiff to proceed anonymously during the pendency of this action. In support of this Motion, Plaintiff would show this Court the following:

1. The numbers on a ticket purchased by Plaintiff for the September 17, 2013 Powerball Drawing matched the numbers selected to win the jackpot prize. A retailer licensed by the South Carolina Education Lottery ("SCEL") sold the ticket; Plaintiff submitted the winning ticket and a claim form, and SCEL proceeded to validate the claim and to process the claim for payment.

2. Plaintiff has filed a lawsuit to protect Plaintiff's name and other information that could be used to identify Plaintiff, citing the "personal privacy" exemption found in S.C. Code Ann. § 30-4-40(a)(2) of the Freedom of Information Act ("FOIA").

3. Consequently, any requirement to include Plaintiff's name in the Summons, Complaint, or other publically available documents filed with this Court would moot Plaintiff's lawsuit in its entirety.

4. Plaintiff seeks an order of the Court allowing Plaintiff to pursue this action anonymously, without disclosing Plaintiff's true name.

5. In the case of *Doe v. Howe*, 362 S.C. 212, 217-218, 607 S.E.2d 354 (2004), the South Carolina Supreme Court provided guidance on whether a litigant in a civil proceeding should be allowed to proceed anonymously. The question turns upon the following factors:

a. whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature;

b. whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties;

c. the ages of the persons whose privacy interests are sought to be protected;

d. whether the action is against a governmental or private party; and

e. the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Id.

6. With respect to the first prong of the test, the sole reason for Plaintiff's request is to "preserve privacy in a matter of sensitive and highly personal nature." The issue in this matter is whether Plaintiff's identity is protected from public disclosure by Section 30-4-40(a)(2) of the Act. Clearly Plaintiff is not trying to avoid the "annoyance and criticism that may attend any litigation," but rather merely to preserve the basis for its filing.

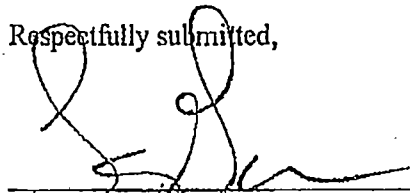
7. The second, third and fourth prongs of the test are not implicated in this case, although the Plaintiff's core contention is that the disclosure of Plaintiff's identity by the Commission will constitute an unreasonable invasion of Plaintiff's personal privacy.

8. With respect to the fifth prong of the test, there is no risk of unfairness to the Commission in this case in the event the Court allows Plaintiff to proceed anonymously. The sole issue before the Court is whether or not Plaintiff's identity is exempt from disclosure pursuant to Section 30-4-40(a)(2) of the Act. Protecting Plaintiff's anonymity while the Court determines whether Plaintiff is entitled to that anonymity under the Act will not prejudice any party in this action.

9. Therefore, allowing Plaintiff to proceed anonymously pending a determination of whether Plaintiff's identity remains private is warranted.

WHEREFORE, having set forth the basis for its Motion, the Plaintiff requests that the Court issue an order allowing the Plaintiff to proceed anonymously during this action, and grant such other relief as is just and proper.

Respectfully submitted,



Mitchell Willoughby, Esquire
Tracey Green, Esquire
Elizabeth Ann Loadholt Carroll, Esquire
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ecarroll@willoughbyhoefer.com

Attorneys for Plaintiff

April 15, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John Doe,

vs.

South Carolina Lottery Commission

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-2446

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:
Mitchell Willoughby, Bar No. 6161
Tracey C. Green, Bar. No. 9342
ElizabethAnn Loadholt Carroll, Bar. No. 7046
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E-mail: mwilloughby@willoughbyhoefer.com
tgreen@willoughbyhoefer.com
ecarroll@willoughbyhoefer.com

Defendant's Attorney:

Address:

Phone:
E-mail:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Seal

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant

April 15, 2014
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
John Doe,)
Plaintiff,)
v.)
South Carolina Lottery Commission,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2014-CP-40-_____

MOTION TO SEAL

2014 SEP 15 11:52

Plaintiff John Doe hereby moves this Court, pursuant to Rule 41.1, SCRCP, for an order sealing the document described herein. In support of Plaintiff's motion, Plaintiff would show the following:

1. The numbers on a ticket purchased by Plaintiff for the September 17, 2013 Powerball Drawing matched the numbers selected to win the jackpot prize. A retailer licensed by the South Carolina Education Lottery ("SCEL") sold the ticket; Plaintiff submitted the winning ticket and a claim form, and SCEL proceeded to validate the claim and to process the claim for payment.

2. Plaintiff has filed a lawsuit to protect Plaintiff's name and other information that could be used to identify Plaintiff, citing the "personal privacy" exemption found in S.C. Code Ann. § 30-4-40(a)(2) of the Freedom of Information Act ("FOIA").

3. Consequently, any requirement to include Plaintiff's name in any publically available document filed with this Court would moot Plaintiff's lawsuit in its entirety.

4. In connection with a Motion for Temporary Restraining Order and Preliminary Injunction, Rule 65, SCRCP, requires a Plaintiff to demonstrate its entitlement to injunctive

relief "by affidavit or by verified complaint" Accordingly, although Plaintiff also seeks to proceed anonymously in this action (as described in a Motion previously filed in this case), Rule 65's requirement appears to require the Plaintiff to submit Plaintiff's real name via Verification or sworn affidavit.

5. Accordingly, Plaintiff requests that the court seal the Plaintiff's Verification of the Complaint. This Verification is the Plaintiff's executed and notarized attestation that the facts alleged in the Complaint are true.

6. In accordance with the requirements of Rule 41.1, SCRCP, a separately sealed attachment labeled "Confidential Information to be Submitted to the Court in Connection with the Motion to Seal," and containing the executed Verification will be provided to the Court.

7. The Plaintiff requests that the Court review this document *in camera* to confirm Plaintiff's compliance with Rule 65, SCRCP.

8. Sealing the Verification is necessary for Plaintiff to satisfy the requirements of Rule 65, SCRCP, and maintain its action for injunctive relief. Less drastic alternatives to sealing will not afford adequate protection, as there appears to be no alternative way to submit a valid Verification in this case without that document becoming a public document disclosing Plaintiff's name.

9. Submitting an unsealed Verification would present Plaintiff with a classic "Catch-22": in order to demonstrate that Plaintiff's name should not be subject to public disclosure, Rule 65 would require Plaintiff to disclose Plaintiff's name publically.

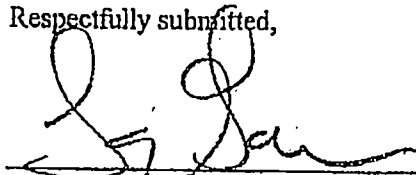
10. Addressing the factors set out in Rule 41.1(b), SCRCP, it is clear that sealing the Verification is warranted in this case:

- a. *The need to ensure a fair trial.* Sealing the Plaintiff's Verification is the only way the sole issue before this Court- whether Plaintiff's identity will be disclosed pursuant to the Act- can be preserved for determination.
- b. *The need for witness cooperation.* This factor is not triggered in this case.
- c. *The reliance of the parties upon expectations of confidentiality.* The Plaintiff clearly is relying on an expectation that the Plaintiff's identity will not be disclosed publically (if at all) until a final ruling has been issued in this case.
- d. *The public or professional significance of the lawsuit.* Although the justification for sealing the Verification is self-evident, (and thus detached from any public or professional significance associated with this case), this matter appears to be a case of first impression in South Carolina.
- e. *The perceived harm to the parties from disclosure.* If the information Plaintiff seeks to protect via sealing the Verification is disclosed, this entire action will be mooted. Therefore, the *actual* harm to the Plaintiff from disclosure, for purposes of the basis of this lawsuit, will be irreparable.
- f. *Why alternatives other than sealing the Verification are not available to protect legitimate interests as identified by this Rule.* There is simply no other way for the Plaintiff to comply with Rule 65 and remain anonymous absent sealing the Verification.
- g. *Why the public interest, including, but not limited to, the public health and safety, is best served by sealing the Verification.* As described above, sealing the Verification in order to preserve this issue for consideration by the Court will best serve the public interest. This case does not present issues with regard to "the public health and safety."

11. Moreover, sealing this Verification will not prejudice any party in this case.

WHEREFORE, Plaintiff requests that the Court grant the Motion to Seal as described herein, and grant such other relief as is just and proper.

Respectfully submitted,



Mitchell Willoughby, Esquire
Tracey Green, Esquire
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tgreen@willoughbyhoefer.com
ecarroll@willoughbyhoefer.com

Attorneys for Plaintiff

April 15, 2014

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP- 40-2446

John Doe

South Carolina Lottery Commission

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Mitchell Willoughby, Esquire; Tracey Green, Esquire;
and ElizabethAnn Loadholt Carroll, Esquire

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; ☐ See Page 2 for additional information.
- ☐ 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 Granting Permanent Injunction is attached.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)
Not applicable		\$
		\$
		\$

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.

Stacy Manning
Circuit Court Judge (Honorable L. Casey Manning)

2014
Judge Code

4/25/14
Date

~~Mitchell Willoughby, Esquire~~
~~Tracey Green, Esquire~~
~~ElizabethAnn Loadholt Carroll, Esquire~~
ATTORNEY(S) FOR THE PLAINTIFF(S)

Karl "Butch" Bowers, Jr., Esquire
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter: _____

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

1

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

John Doe,

) CIVIL ACTION NO. 2014-CP-40-2446
)

Plaintiff,

)

v.

)

ORDER GRANTING PERMANENT
INJUNCTION

South Carolina Lottery
Commission,

)

)

)

Defendant.

)

)

C.C.P. & C.S.

2014 APR 25 PM 12:15

Plaintiff initiated this case seeking declaratory and injunctive relief with respect to the release of personal information regarding Plaintiff in response to a Freedom of Information Act ("FOIA") request. The Court grants the requested declaratory relief and enters a permanent injunction for the reasons set forth below.

Introduction

1. A ticket purchased by Plaintiff was chosen as a Powerball Drawing winner in the South Carolina Education Lottery ("SCEL").

2. Plaintiff has filed this case seeking to protect Plaintiff's name and other information that could be used to identify Plaintiff (Plaintiff's "identity"), citing the "personal privacy" exemption found in S.C. Code Ann. § 30-4-40(a)(2) of FOIA.

3. In the Verified Complaint, Plaintiff sought declaratory relief that the release of Plaintiff's personal information would constitute an unreasonable

invasion of personal privacy and that the Lottery Commission should therefore not release Plaintiff's personal information to the public. Plaintiff further sought an injunction against the release of that information.

4. A Temporary Restraining Order was entered on April 15, 2014, restraining Defendant Lottery Commission from releasing any personal information regarding Plaintiff John Doe. The TRO remained in effect through April 25, 2014.

5. At a hearing on April 25, 2014, the Court ordered that the TRO be continued in full force and effect with the consent of all parties until issuance of a Permanent Injunction.

Legal Background

6. A person may apply to a court to declare their rights under the statutory law of this state. S.C. Code Ann. § 15-53-20.

7. The standards for a permanent injunction are substantially the same as those for issuing a preliminary injunction, except that the plaintiff must show actual success on the merits. *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 546 n.12 (1987).

8. Therefore, to obtain a permanent injunction, the applicant must show the following:

(1) he has succeeded on the merits;

(2) he will suffer immediate, irreparable harm without the injunction;

and

(3) he has no adequate remedy at law.

Compton v. S. Carolina Dep't of Corrections, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

9. The Court also is required to balance the equities in the case. *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427, 429 (1995); *see also Shaw v. Coleman*, 373 S.C. 485, 645 S.E.2d 252 (Ct. App. 2007) (affirming grant of permanent injunction based on balancing of equities).

Analysis

10. FOIA exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40 (a)(2).

11. The SCEL Winner Claim Form submitted by Plaintiff contains not only Plaintiff's name, but also Plaintiff's mailing address, phone number, Social Security Number ("SSN") and date of birth ("DOB"). Compl. ¶13. The Lottery Commission agrees with this allegation.

12. The disclosure of Plaintiff's name or other information that could be used to identify Plaintiff ("personal identifying information"), including, but not limited to, mailing address, phone number, SSN, or DOB would constitute an unreasonable invasion of Plaintiff's personal privacy. Compl. ¶14.

Declaratory Judgment

13. The right to privacy is the right to be let alone, or "the right to live without one's name, picture or statue, or that of a relative, made public against his

will." *Holloman v. Life Ins. Co. of Virginia*, 192 S.C. 454, 458, 7 S.E.2d 169, 171 (1940).

14. The South Carolina Constitution expressly recognizes the right to privacy. S.C. Const. art. I § 10. At a minimum, the state constitution therefore protects Plaintiff against invasions of privacy resulting from state action, including the release of personal information that would result in an unreasonable invasion of Plaintiff's personal privacy.

15. A prominent example of the concern regarding the improper public release of personal information is the public concern and outcry that arose following the breach of the South Carolina Department of Revenue's computer system and network, resulting in the suspected compromise of millions of taxpayers' personal identifying information.

16. Recognizing the potential for harmful use of this personal information that was wrongfully accessed, the State of South Carolina has contracted for credit monitoring for affected taxpayers for two years.

17. The Courts also have taken steps to address this concern. Just recently, the South Carolina Supreme Court issued an order requiring the redaction of personal identifying information from documents filed with an appellate court, including but not limited to social security number, taxpayer identification numbers, driver's license numbers, passport numbers, or other personal identifying numbers; names of minor children; financial account numbers; home addresses of minors, sexual assault and abuse and neglect victims; and non-parties; and date of

birth. *In re Revised Order Concerning Pers. Identifying Info. & Other Sensitive Info. in Appellate Court Filings*, 2013-002681, 2014 WL 1464413 (S.C. Apr. 15, 2014).

18. The federal courts likewise recognize a similar need for privacy in court filings, generally requiring the redaction of information like Plaintiff's personal identifying information. Fed. R. Civ. P. 5.2.

19. Plaintiff's personal identifying information has remained private and the release of that information will result in an unreasonable invasion of Plaintiff's personal privacy.

20. The release of Plaintiff's personal identifying information is not required by and would not further the purpose of FOIA.

21. The purpose of FOIA is not to expose individuals to unwarranted invasions of privacy, but to "prevent the government from acting in secret." *Quality*

Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001).

Plaintiff's personal identifying information has nothing to do with the government operating in secret. The fact that the Lottery Commission pays lottery winnings—the only part that involves government action—already is a matter of public knowledge. Plaintiff's identity as the recipient of those winnings does not pertain to government activity in secret and involves personal privacy and personal identifying information. Enjoining the release of Plaintiff's personal identifying information therefore is consistent with the purposes and provisions of FOIA.

22. Disclosure of Plaintiff's personal identifying information would invade the privacy of Plaintiff and Plaintiff's family, subject Plaintiff and Plaintiff's family to unreasonable publicity, expose Plaintiff and Plaintiff's family to threats against their safety, and otherwise be an unreasonable intrusion into Plaintiff's life and daily affairs.

23. The invasion of privacy that would result from the release of Plaintiff's Personal Identifying Information also would be unreasonable.

24. Plaintiffs' allegations are further supported by recognized instances of harm or the threat of harm befalling lottery winners.

25. Such threats against the safety of lottery winners and their families, as well as actual harm to them, including death, are well documented in case law. See, e.g., *People v. Bennett*, 2013 WL 967583 (Mich. App. March 7, 2013) (unpublished) (defendant robbed a home, murdered one person, shot and severely injured another person, and physically assaulted a ten year old child in an attempt to steal a lottery ticket worth \$2,700.00); *State v. Bradford*, 2003 WL 21372743 (Iowa App. June 13, 2003) (unpublished) (person who purchased and cashed several winning lottery tickets was choked until she passed out and suffered injuries requiring hospitalization when she was robbed for cash received from the winning tickets).

26. There also are numerous media reports regarding threats of and actual harm to lottery winners. Rebecca Nelson, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Jan. 9, 2013 (<http://newsfeed.time.com/2012/11/28/500->

million-powerball-jackpot-the-tragic-stories-of-the-lottervs-unluckiest-winners/

(lottery winner's death from cyanide the day after his lump sum check was issued treated as homicide); JuJu Kim, *The Tragic Stories of the Lottery's Unluckiest Winners*, TIME, Nov. 27, 2012 [http://newsfeed.time.com/2012/11/28/500-million-](http://newsfeed.time.com/2012/11/28/500-million-powerball-jackpot-the-tragic-stories-of-the-lottervs-unluckiest-winners/)

powerball-jackpot-the-tragic-stories-of-the-lottervs-unluckiest-winners/ (lottery

winner murdered in robbery plot); Andy Campbell, *Killer of Lottery Winner Abraham Shakespeare Can't Keep his Home, Judge Rules*, HUFFINGTON POST CRIME,

Oct. 4, 2013 ([http://www.huffingtonpost.com/2013/10/04/abraham-shakespeare-](http://www.huffingtonpost.com/2013/10/04/abraham-shakespeare-murdered-lottery-winner_n_4042811.html)
murdered-lottery-winner_n_4042811.html (woman who befriended lottery winner to

take control of his wealth convicted of first-degree murder in his death); Ron Dicker,

Virginia Lottery Winner Who Uses Wheelchair Robbed After Cashing Ticket,

HUFFINGTON POST CRIME Feb. 7, 2013

([http://www.huffingtonpost.com/2013/02/07/virginia-lottery-winner-wheelchair-](http://www.huffingtonpost.com/2013/02/07/virginia-lottery-winner-wheelchair-robbed-ticket_n_2638978.html)
robbed-ticket_n_2638978.html) (wheelchair-bound lottery winner robbed while

leaving store after cashing ticket).

27. If Plaintiff's personal identifying information is released at any time, Plaintiff and Plaintiff's family will be subject to unreasonable publicity, exposing Plaintiff and Plaintiff's family to threats against their safety, and unreasonably intruding into and invading Plaintiff's life and daily affairs.

28. Plaintiff therefore is entitled to a declaratory judgment that the release of all or any part of Plaintiff's personal identifying information, such as

Plaintiff's name, would result in an unreasonable invasion of Plaintiff's personal privacy in accordance with Section 30-4-40(a)(2).

Immediate, Irreparable Harm

29. Plaintiff will suffer immediate, irreparable harm to Plaintiff's personal privacy and safety without the entry of a permanent injunction.

30. As noted above, the South Carolina Constitution expressly protects Plaintiff against invasions of privacy resulting from state action.

31. By granting an applicable exemption from releasing information under FOIA, Section 30-4-40(a)(2) recognizes that there are situations in which the release of information will result in an unreasonable invasion of that person's privacy, and accordingly exempts that information from disclosure.

32. Plaintiff therefore has constitutional and statutory protections against any unreasonable invasion of Plaintiff's personal privacy and against any release of Plaintiff's personal identifying information by the Lottery Commission in response to an FOIA request.

33. The disclosure of Plaintiff's personal identifying information would invade the privacy of Plaintiff and Plaintiff's family, subject Plaintiff and Plaintiff's family to unreasonable publicity, expose Plaintiff and Plaintiff's family to threats against their safety, and otherwise be an unreasonable intrusion into Plaintiff's life and daily affairs.

34. The recognized instances of harm or the threat of harm befalling lottery winners discussed above with respect to the unreasonableness of the

invasion of Plaintiff's privacy also demonstrate that irreparable harm that would ensue from the release of Plaintiff's personal identifying information.

35. The release of the Plaintiff's personal identifying information would subject Plaintiff and Plaintiff's family to unreasonable publicity, exposing Plaintiff and Plaintiff's family to threats against their safety, and unreasonably intruding into and invading Plaintiff's life and daily affairs.

No Adequate Remedy at Law

36. Finally, Plaintiff has no adequate remedy at law. An adequate remedy at law is defined as a legal remedy that is "as certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity." *Santee Cooper Resort, Inc. v. South Carolina Public Svc. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

37. Given the privacy-related nature of the claims, Plaintiff could not be made whole if Plaintiff's privacy is impaired at this or any stage. It also would be difficult if not impossible for Plaintiff to be fully compensated through damages if Plaintiff's privacy or safety is impaired. Privacy is not like a physical asset that can be restored if it is damaged or rebuilt if it is destroyed. Rather, once impaired, Plaintiff's privacy cannot be recovered. Because of its nature, it would be difficult if not impossible to calculate the damages to Plaintiff for any impairment of Plaintiff's privacy. This renders it possible that Plaintiff could not be fully compensated in an action at law because he might be able to recover only nominal damages. *See Bethel M. E. Church v. City of Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947).

Moreover, because a state agency would be the entity releasing that information, the South Carolina Tort Claims Act would further limit the Plaintiff's ability to recover monetary damages.

38. In sum, there is no legal remedy that will provide Plaintiff with the same relief as the granting of an injunction.

Balancing of the Equities

39. As more fully explained and described above, the potential harm to the Plaintiff if a permanent injunction is not granted is great through the unreasonable invasion of Plaintiff's personal privacy and the threat of physical harm to the Plaintiff and Plaintiff's family.

40. In contrast, the potential harm to the Lottery Commission is not substantial because neither its day-to-day operations nor its purposes will be impaired by the issuance of a permanent injunction.

41. Moreover, granting the injunction may assist the Lottery Commission in its operations by authorizing it to refuse to disclose personal information about persons who win the lottery without their consent, thereby protecting those persons' right to privacy and protecting their safety, and further encouraging persons to play the lottery without a fear that personal information will be released without their consent.

42. As discussed above, granting the permanent injunction is not inconsistent with the purposes of FOIA to prevent the government from acting in secret—the existence of the lottery and payouts are known—and in fact furthers the

purpose of the express exemption from disclosing matters that may lead to an unreasonable invasion of personal privacy.

43. Therefore, the balancing of the equities weighs in favor of granting a permanent injunction.

Conclusion

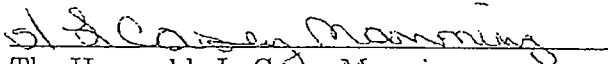
44. Plaintiff is entitled to a declaratory judgment that the release of Plaintiff's personal identifying information would constitute an unreasonable invasion of personal privacy within the meaning of Section 30-4-40(a)(2).

45. Plaintiff is entitled to a permanent injunction because Plaintiff (1) is entitled to a declaratory judgment and, thus, has prevailed on the merits of Plaintiff's claims; (2) Plaintiff has established immediate and irreparable harm; and (3) Plaintiff has no adequate remedy at law.

46. Therefore, it is ORDERED that Defendant South Carolina Lottery Commission is PERMANENTLY restrained and enjoined from releasing any and all information regarding Plaintiff in response to the FOIA request of Mr. George Glassmeyer or any other FOIA request.

47. This Order concludes the above-captioned lawsuit and judgment is entered for Plaintiff as set forth above. Each party is to bear its own costs.

IT IS SO ORDERED.


The Honorable L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

April 25, 2014
Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-2926

South Carolina Lottery Commission,

Plaintiff,

vs.

George S. Glassmeyer,

Defendant.

ANSWER AND COUNTERCLAIM

RICHLAND COUNTY
FILED
2014 JUN -9 PM 3:22
JEANNETTE MCBRIDE
C.C.P. & S.S.

The Defendant, in answer to the Plaintiff's Complaint and as counterclaim, answers and alleges as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraph 1 of the Complaint, the Defendant admits the same to the extent the allegations are consistent with the law and denies the same to the allegations are inconsistent with the law.

3. Answering the allegations of paragraph 2 of the Complaint, the Defendant admits the same.

4. Answering the allegations of paragraph 3 of the Complaint, the Defendant admits the same to the extent the allegations are consistent with the law and denies the same to the allegations are inconsistent with the law.

5. Answering the allegations of paragraphs 4 and 5 of the Complaint, the Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

6. Answering the allegations of paragraph 6 of the Complaint, the Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

7. Answering the allegations of paragraph 7 of the Complaint, the Defendant admits the same to the extent that the allegations of the paragraph accurately state the content of the Defendant's request under the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, *et seq.* (hereinafter "FOIA"), the language of which request speaks for itself.

8. Answering the allegations of paragraph 8 of the Complaint, the Defendant admits the same to the extent that the allegations of the paragraph accurately state the content of the Defendant's request under FOIA, the language of which request speaks for itself.

9. Answering the allegations of paragraph 9 of the Complaint, the Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

10. Answering the allegations of paragraph 10 of the Complaint, the Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

11. Answering the allegations of paragraph 11 of the Complaint, the Defendant denies that such instances are truly numerous, particularly in light of the aggregate number of lottery winners; rather, what the Plaintiff cites are at most isolated instances of unfortunate occurrences.

12. Answering the allegations of paragraph 12 of the Complaint, the Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

13. Answering the allegations of paragraph 13 of the Complaint, the Defendant admits the Plaintiff sent the response but, as to the remaining allegations of the paragraph, lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

Further, the response provided by the Plaintiff did not provide the requested information and only provided information with regard to 37 of 43 lottery claimants. Information as to another three lottery claimants was provided only after FOIA's 15-day deadline.

14. Answering the allegations of paragraph 14 of the Complaint, the Defendant answers that the Plaintiff's referenced response states what it states, but the Defendant denies that the content of that response has or had the legal effect(s) claimed by the Plaintiff and denies that the information requested is exempt from disclosure under FOIA.

15. Answering the allegations of paragraph 15 of the Complaint, the Defendant admits that the correspondence he sent states what it states and asserts that the responses of the Plaintiff to each of the Defendant's FOIA requests have not satisfied the Plaintiff's obligations under FOIA to respond to the requests by disclosing all non-exempt information.

16. Answering the allegations of paragraph 16 of the Complaint, the Defendant admits that the referenced order states what it states but denies that the order has any effect on the Defendant's rights to receive the information he has requested from the Plaintiff under FOIA.

The Defendant further denies that the existence of the order in any way provides or contributes to the Plaintiff having grounds to bring the instant suit. The order is apparently the product of collusive conduct or what is tantamount to collusion. As shown by attachments to the Plaintiff's own Complaint, the Plaintiff invited the lawsuit that resulted in the order, as well other lawsuits, including those reflected by pleadings attached to the complaint, by asking the plaintiffs in those suits to sue the Plaintiff and seek the relief sought in those cases. The Plaintiff wanted and wants the plaintiffs in those lawsuits to win those suits. The Plaintiff did not and does not plan to substantively oppose the relief sought by the plaintiffs in those lawsuits. Those lawsuits do not and did not represent actual live controversies; rather, the Plaintiff (the defendant in those suits)

desired and desires the same outcome sought in those suits by the plaintiffs therein. To the extent the order purports to adjudicate the Defendant's right to receive the information he has requested from the Plaintiff under FOIA, the order is void and of no effect; the Defendant was not a party to the suit that produced the order, and no one in that suit advocated for the Defendant's rights or position as to the matters involved in that suit. The same is true for all the other suits invited by the Plaintiff in this regard. Further, the order reaches an incorrect conclusion and makes incorrect findings, likely as a result of the Plaintiff's failure to actually defend the suit that created the order.

17. No further response is required to the allegations of paragraph 17 of the Complaint.

18. Answering the allegations of paragraph 18 of the Complaint, the Defendant admits that the Plaintiff seeks what the Plaintiff seeks but denies that the Plaintiff is entitled to what the Plaintiff seeks.

19. Answering the allegations of paragraph 19 of the Complaint, the Defendant denies the same.

20. Answering the allegations of paragraph 20 of the Complaint, the Defendant denies the same as stated. The referenced Supreme Court order is inapposite and inapplicable to the instant case.

21. Answering the allegations of paragraph 21 of the Complaint, the Defendant admits that S.C. Const. art I § 10 states what it states. The Defendant denies and disagrees with the Plaintiff's characterization of the meaning of an applicability of S.C. Const. art I § 10.

22. Answering the allegations of paragraph 22 of the Complaint, the Defendant admits that the Plaintiff requests what the Plaintiff requests but denies that the Plaintiff is entitled to what the Plaintiff requests.

23. No further response is required to the allegations of paragraph 23 of the Complaint.

24. Answering the allegations of paragraph 24 of the Complaint, the Defendant denies the same.

25. Answering the allegations of paragraph 25 of the Complaint, the Defendant denies the same.

26. Answering the allegations of paragraph 26 of the Complaint, the Defendant admits that a purpose of FOIA is to prevent the government from acting in secret and that exposing individuals to unwarranted invasions of privacy is not a purpose of FOIA, and the Defendant denies the remaining allegations of the paragraph.

27. Answering the allegations of paragraph 27 of the Complaint, the Defendant admits that the Plaintiff requests what the Plaintiff requests but denies that the Plaintiff is entitled to what the Plaintiff requests.

28. No answer to the prayer in the Complaint is required.

FOR A SECOND DEFENSE

29. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

30. The Complaint fails to state facts sufficient to constitute a cause of action.

31. This failure includes, but is not necessarily limited to, failure in the following particulars to state facts sufficient to constitute a cause of action:

- a. The Complaint purports to seek relief under FOIA that is not available under FOIA, the law of the State of South Carolina, the South Carolina Constitution, federal law, or the Constitution of the United States.

- i. The Complaint prays for a judgment to declare the Plaintiff's release of information such as the name, complete address, telephone numbers and other forms of information submitted to Plaintiff by lottery winners would be an unreasonable invasion of the winner's personal privacy and thus must be withheld under FOIA.
- ii. South Carolina law, and specifically FOIA, does not afford a public body subject to the Act, such as the Plaintiff, the right to prospectively prohibit the disclosure of certain information through the prosecution of a lawsuit against a person seeking the information.
- iii. The exclusive procedure under South Carolina law for the relief Plaintiff seeks is the denial of a FOIA request for information and the defense of a later FOIA action, if any, brought by the requester.

b. The Complaint fails to state facts sufficient to entitle it to an injunction.

- i. Even if they were proven to be true (which Defendant denies will occur), the allegations of the Complaint could not establish that Plaintiff has suffered or is likely to suffer irreparable harm.
- ii. Even if they were proven to be true (which Defendant denies will occur), the allegations of the Complaint could not establish that Plaintiff possesses no adequate remedy at law.

c. The Complaint fails to assert facts sufficient to entitle it to any relief in this matter, as the Plaintiff lacks standing.

- i. The Plaintiff has alleged no injury to the Plaintiff.
- ii. Plaintiff is a public body subject to the requirements of FOIA.

iii. The exclusive remedy for a court determination that Plaintiff must not disclose certain information, outside the scope of FOIA, would be to deny a request for such information and then defend a later FOIA action brought by the requester.

iv. As alleged in the complaint, Defendant made such a request in this case and the request was denied; however the Defendant did not bring a later action alleging a violation of FOIA. Instead Plaintiff asks the Court to order the prospective defeat of a suit that had never been brought at the time this action was commenced.

v. Were they proven to be true, the allegations of the Complaint could not establish a ripe justiciable controversy, capable of judicial action.

vi. Were they proven to be true, the allegations of the Complaint could not establish statutory grounds for standing, constitutional grounds for standing, or an interest of such public importance as to require its resolution for future guidance. What the Plaintiff alleges as the purported irreparable harm would be the disclosure of information that is identifying information of lottery winners, who are not the Plaintiff.

d. If a public body such as the Plaintiff were permitted to bring a lawsuit such as this one, that would violate the public policy of the State of South Carolina and would have a chilling effect on the public and the free flow of information, all in violation of the spirit of and the policy behind FOIA.

32. As the Plaintiff has no rights that are at issue in this suit, the Plaintiff has no claim to bring.

33. The information the Plaintiff seeks to have an order authorizing it to withhold is not information that is exempt from disclosure under FOIA.

34. The Complaint should be dismissed.

35. The dismissal should be with prejudice.

FOR A THIRD DEFENSE

36. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

37. The Plaintiff has engaged in such conduct with respect to the matters subject of this action as to make the Plaintiff's hands unclean with regard to the matters subject of this action.

38. This conduct includes, but is not necessarily limited to, the conduct described above concerning the other lawsuits and proceedings therein discussed above, including those shown by attachments to the Plaintiff's complaint.

39. This conduct by the Plaintiff relates directly to the subject matter of this action.

40. The Plaintiff's said conduct has proximately caused the Defendant prejudice and injury.

41. Unclean hands bars the Plaintiff's claims in this case.

FOR A FOURTH DEFENSE

42. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

43. Attached hereto is a copy of a South Carolina Education Lottery Winner Claim Form that was authored by and is (or at least at times material to this case was) used by the Plaintiff for lottery winners to submit claims to the Plaintiff.

44. This form specifically states that the information the lottery winner provides on the form may be subject to disclosure under FOIA.

45. Even if the information sought by the Defendant concerning the lottery winners at issue had at one time been private information exempt from disclosure under FOIA (which the Defendant denies), the lottery winners made that information not be in that category any more once they submitted the information on this form or one containing or accompanied by a similar disclosure.

46. The lottery winners knowingly, intelligently, and voluntarily relinquished any ability they may have had to claim that the subject information about them was exempt from disclosure under FOIA.

47. The Plaintiff knowingly, intelligently, and voluntarily relinquished any ability it may have had to claim that such information was exempt from disclosure under FOIA.

48. These waivers bar the Plaintiff from success on its claims in this case.

FOR A FIFTH DEFENSE AND AS COUNTERCLAIM

49. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

50. The Plaintiff is a public body.

51. The Plaintiff is a part of the government of South Carolina.

52. The Defendant is a citizen of the State of South Carolina.

53. The Defendant applies herein to the circuit court for a judgment declaring that the information he has requested from the Plaintiff subject of this case is not exempt from disclosure under FOIA and enjoining the Plaintiff to provide him with such information.

54. The Plaintiff's conduct has amounted to multiple (at least three) violations of FOIA with regard to the Defendant's FOIA requests.

55. The information withheld by the Plaintiff from its responses to the Defendant's FOIA requests is not exempt from disclosure under FOIA.

56. The information sought by the Defendant is important to the public, though FOIA does not require requested information to have any particular importance to the public to make it subject to mandatory disclosure by a public body. The information sought by the Defendant has the potential to expose government corruption or other malfeasance.

57. For each violation by the Plaintiff of FOIA, the court should order equitable relief as it considers appropriate (including enjoining the Plaintiff to provide the Defendant with such of the requested information as is not exempt from FOIA).

58. The Defendant is entitled to an award of reasonable attorney's fees and his costs of this litigation.

FOR A SIXTH DEFENSE AND AS COUNTERCLAIM

59. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

60. The Plaintiff has acted with an ulterior purpose in bringing this lawsuit against the Defendant, such including to discourage him from seeking information from the Plaintiff under FOIA.

61. The collateral objective of coercing the Defendant into making no more FOIA requests for information about lottery winners from the Plaintiff was the Plaintiff's objective in bringing this lawsuit.

62. The Plaintiff has acted with an ulterior purpose in inviting the other lawsuits discussed above to be brought against it and in its conduct in those suits, particularly when it had and has no intention of opposing the claims of the plaintiffs in those suits and in fact desired and desires that those plaintiffs win those suits.

63. The collateral objective of bolstering its position so as to attempt a better outcome in the instant case and to be in a better position to coerce the Defendant into making no more FOIA requests for information about lottery winners from the Plaintiff was the Plaintiff's objective in inviting the other lawsuits discussed above to be brought against it and in its conduct in those suits.

64. The Plaintiff's actions are a willful abuse of process.

65. The Defendant has been damaged by the Plaintiff's abuses of process.

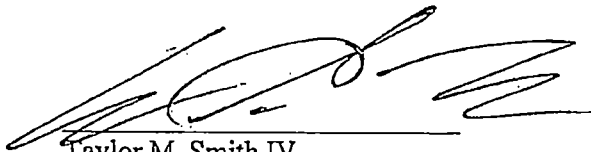
66. The Defendant is entitled to recover for the damages he has sustained as a result of the Plaintiff's abuses of process.

WHEREFORE, the Defendant prays for the Court to:

- (a) Issue an Order dismissing the Complaint with prejudice;
- (b) Deny the Plaintiff the relief it seeks in this action;
- (c) Render judgment for the Defendant against the Plaintiff for all relief available under FOIA;
- (d) Render judgment against the Plaintiff and for the Defendant for actual and punitive damages;
- (e) Render judgment against the Plaintiff and for the Defendant for reasonable attorney's fees in this action;

- (f) Award the Defendant the costs and expenses of this action; and
- (g) Grant the Defendant such other and further relief as the court deems just and proper.

Respectfully submitted,



Taylor M. Smith IV
Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@harrisonfirm.com (email)
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ATTORNEYS FOR DEFENDANT

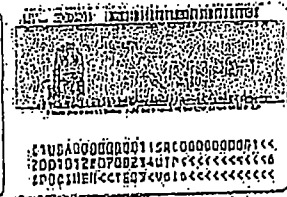
Columbia, South Carolina

June 8, 2014

South Carolina Education Lottery Winner Claim Form

1. NAME: Mr. ☐ Ms. ☐
 2. MAILING ADDRESS:
 3. CITY: 4. STATE: 5. ZIP:
 6. PHONE NUMBER: - - 7. DATE OF BIRTH: - -
 8. SOCIAL SECURITY NUMBER: - -

9. TAX STATUS: ☐ US Citizen - Two primary sources of citizenship: Birthright citizenship in which a person is presumed to be a citizen provided that he or she is born within the territorial limits of the United States, and naturalization, a process in which an immigrant applies for citizenship and is accepted.
☐ Resident Alien - Must have Alien Registration card, also known as "green card". Your card must state PERMANENT RESIDENT. SEE EXAMPLE TO RIGHT.
☐ Non-Resident - Not US Citizen. Country of citizenship must be provided.



COUNTRY:

Knowingly presenting a counterfeit, altered, or stolen lottery ticket or knowingly filing a claim based on facts that are untrue is in violation of South Carolina Law. Debts owed to South Carolina or its political subdivisions may be deducted from winnings. Multiple tickets presented at the same time will be combined. If the total winnings exceed \$500, applicable taxes will be withheld. Under penalty of perjury, I declare to the best of my knowledge and belief all information provided on this form, such as my name, address, and Social Security number is correct. You must check "Yes" or "No" for each of the following:

- Yes ☐ No ☐
- ☐ I am the only person entitled to any part of this payment. Claimants receiving more than \$500 will receive a W-2G.
- ☐ I am claiming the prize as a member of a winning group designated on the attached IRS Form 5754. Only one check will be issued. For more information or to obtain IRS Form 5754, call (803) 253-4004 or visit the IRS website at www.irs.gov.
- ☐ I authorize the South Carolina Education Lottery (SCEL) to use any photographic or video-graphic replication of my likeness or any audio replication of my voice, in any medium (newspaper, television, radio or Internet) for purposes of advertising or trade of SCEL. I agree not to hold SCEL or its employees responsible for any unauthorized use or misuse of my likeness by third parties.

INFORMATION FROM THIS FORM MAY BE SUBJECT TO DISCLOSURE UNDER THE S.C. FREEDOM OF INFORMATION ACT (FOIA). I release SCEL from all liability or claims relating to information provided to or used by a party obtaining information pursuant to FOIA.

By signing this form, I attest that I am at least eighteen (18) years of age and that I am eligible to claim a lottery prize pursuant to the laws and regulations governing the operation of the Lottery and that all information provided (including the boxes checked to the left and above) is true and accurate.

CLAIMANT'S SIGNATURE _____

DATE _____

PRIZE AMOUNT: \$, , .

TYPE OF I.D.: _____

NUMBER: _____

AUTHORIZED SIGNATURE: _____

CLAIM NUMBER PROVIDED BY
S.C. EDUCATION LOTTERY:

DATE: - -

OFFICIAL'S NAME: _____
(Please Print)

CLAIMANT-COMPLETETHIS SECTION

OFFICIAL USE ONLY

South Carolina Education Lottery

CLAIM FORM



Columbia Claims Center

1309 Assembly Street

Columbia, SC 29201

Phone: (803) 253-4004

8:30 a.m. - 5 p.m. (M-F)

(EXCEPT CERTAIN STATE HOLIDAYS)

Players should arrive by 4 p.m. to allow
time to verify winning ticket(s).

Claims in excess of \$500 must include:
(1) this form and (2) a copy of an identification card (driver's license, passport, military, or state I.D.) that includes a photo and date of birth.

INSTRUCTIONS:

1. Complete the form on the reverse side entirely. Use one character per box;
2. Sign and date the reverse side of this form;
3. Sign and attach the Winning Ticket(s) to this form.

Mailing Address:

S.C. Education Lottery

P.O. Box 11039

Columbia, SC 29211-1039

The risk of mailing ticket(s) remains with the claimant. Winnings greater than \$100,000 must be redeemed in person at the Columbia Claims Center.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Lottery Commission,

Plaintiff,

vs.

George S. Glassmeyer,

Defendant.

IN THE COURT OF COMMON PLEAS

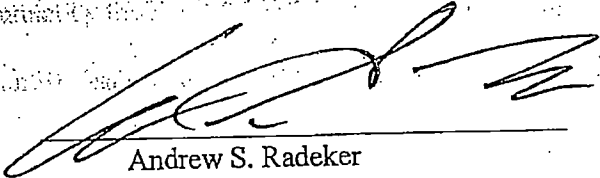
CASE NO. 2014-CP-40-2926

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2014 JUN -9 PM 1:25
JEANNETTE W. MCRIE
C.C.P. & G.S.

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., Attorney for Plaintiff, do hereby certify and say that I have, on this the 8th day of June, 2014, served the foregoing document in the above-captioned action by depositing the same in the United States Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows:

Karl S. Bowers, Esq.
P.O. Box 50549
Columbia, SC 29250



Andrew S. Radeker

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

South Carolina Lottery Commission,) Civil Action No. 2014-CP-40-2926
)
Plaintiff,)
) REPLY TO COUNTERCLAIM
vs.)
)
George S. Glassmeyer,)
)
Defendant.)
_____)

Plaintiff South Carolina Lottery Commission hereby files this Reply to the Counterclaim of Defendant George S. Glassmeyer and would respectfully show to this honorable Court as follows:

1. Each and every allegation contained in the Counterclaim which is not hereinafter specifically admitted is hereby denied.

2. The allegations of paragraph 49 of the Counterclaim are denied.

3. The allegations of paragraphs 50 – 52 of the Counterclaim are admitted.

4. The allegations of paragraphs 53 – 66 are denied and strict proof is demanded thereof.

5. The allegations and prayer for relief contained in the “Wherefore” clause are denied and strict proof is demanded thereof.

WHEREFORE, having fully replied to the Counterclaim of the Defendant, the Plaintiff South Carolina Lottery Commission prays that same be dismissed and the relief sought by the Plaintiff in its Complaint be granted.

SIGNATURE PAGE ATTACHED

BOWERS LAW OFFICE LLC

By: Butch Bowers

Karl S. Bowers, Jr.

SC Bar No. 16141

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Attorney for the South Carolina Lottery Commission

July 14, 2014

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-2926

South Carolina Lottery Commission,

Plaintiff,

vs.

George S. Glassmeyer,

Defendant.

MOTION TO DISMISS

RICHLAND COUNTY
FILED
2014 JUN -9 11 43 AM
JEANNETTE W. MCBRIDE
C.C.P. & L.S.

YOU WILL PLEASE TAKE NOTICE that the Defendant hereby moves before this Court pursuant to Rule 12(b)(6), SCRCP, for an Order dismissing the Complaint and each cause of action purported or attempted to be asserted therein.

The Defendant so moves on the following grounds:

1. The Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP, as it fails to state facts sufficient to constitute a cause or causes of action, including, but not necessarily limited to, in the following particulars:

a. The Complaint purports to seek relief under the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, *et. seq.*, (hereinafter "FOIA"), that is not available under FOIA, the law of the State of South Carolina, the South Carolina Constitution, federal law, or the Constitution of the United States.

i. The Complaint prays for a judgment to declare the Plaintiff's release of information such as the name, complete address, telephone numbers and other forms of information submitted to Plaintiff by lottery winners, would be an unreasonable invasion of the winner's personal privacy and thus must be withheld under FOIA.

- ii. South Carolina law, and specifically FOIA, does not afford a public body subject to the Act, such as the Plaintiff, the right to prospectively prohibit the disclosure of certain information through the prosecution of a lawsuit against a person seeking the information.
 - iii. The exclusive procedure under South Carolina law for the relief Plaintiff seeks is the denial of a FOIA request for information and the defense of a later FOIA action, if any, brought by the requester.
- b. The Complaint fails to state facts sufficient to entitle it to an injunction.
- i. Even if they were proven to be true (which Defendant denies will occur), the allegations of the Complaint could not establish that Plaintiff has suffered or is likely to suffer irreparable harm.
 - ii. Even if they were proven to be true (which Defendant denies will occur), the allegations of the Complaint could not establish that Plaintiff possesses no adequate remedy at law.
- c. The Complaint fails to assert facts sufficient to entitle it to any relief in this matter, as the Plaintiff lacks standing. As the Plaintiff has no rights that are at issue in this suit, the Plaintiff has no claim to bring.
- i. The Plaintiff has alleged no injury to the Plaintiff.
 - ii. Plaintiff is a public body subject to the requirements of FOIA.
 - iii. The exclusive remedy for a court determination that Plaintiff must not disclose certain information, outside the scope of FOIA, would be to deny a request for such information and then defend a later FOIA action brought by the requester.

iv. As alleged in the complaint, Defendant made such a request in this case and the request was denied; however the Defendant did not bring a later action alleging a violation of FOIA. Instead Plaintiff asks the Court to order the prospective defeat of a suit that had never been brought at the time this action was commenced.

v. Were they proven to be true, the allegations of the Complaint could not establish a ripe justiciable controversy, capable of judicial action.

vi. Were they proven to be true, the allegations of the Complaint could not establish statutory grounds for standing, constitutional grounds for standing, or an interest of such public importance as to require its

resolution for future guidance. What the Plaintiff alleges as the purported

irreparable harm would be the disclosure of information that is identifying

information of lottery winners, who are not the Plaintiff.

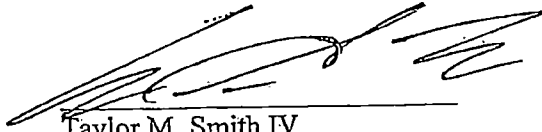
d. The information the Plaintiff seeks to have an order authorizing it to withhold is not information that is exempt from disclosure under FOIA.

e. If a public body such as the Plaintiff were permitted to bring a lawsuit such as this one, that would violate the public policy of the State of South Carolina and would have a chilling effect on the public and the free flow of information, all in violation of the spirit of and the policy behind FOIA.

2. This motion is also based upon applicable statutory law, case law, common law, and the Complaint in this action.

Pursuant to Rule 11, SCRPC, there is no duty of consultation prior to this motion, as this is a motion to dismiss.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

June 8, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-40-2926

South Carolina Lottery Commission,

Plaintiff,

vs.

George S. Glassmeyer,

Defendant.

MOTION TO STRIKE

RICHLAND COUNTY
FILED
2014 JUN -5 PM 4:02
JEANNETTE W. MORRIS
C.C.P. & C.S.

YOU WILL PLEASE TAKE NOTICE that Defendant George S. Glassmeyer hereby moves before this Court pursuant to Rule 12(f), SCRCP, for an Order striking insufficient, immaterial, and impertinent matter from the Complaint.

The Defendant so moves on the following grounds:

1. Pursuant to Rule 12(f), SCRCP, the Court should strike a certain prayer for relief from the Complaint, as the Complaint contains insufficient, immaterial, and impertinent matter including, but not necessarily limited to, in the following particulars:

a. The Complaint seeks relief in its prayer, for attorney's fees, that is unavailable to a litigant who is successful in proving the causes of action asserted or attempted to be asserted in the Complaint.

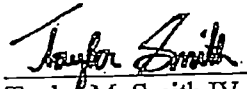
b. Each and every statement in this motion supportive of this ground is incorporated herein.

2. This motion is also based upon applicable statutory law, case law, common law, and the Complaint in this action.

Pursuant to Rule 11, SCRCP, undersigned consulted with counsel for the Plaintiff in a good faith effort to resolve the matter subject of this motion.

Respectfully submitted,

HARRISON & RADEKER, P.A.



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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

June 5, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Lottery Commission,

Plaintiff,

vs.

George S. Glassmeyer,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-2926

MOTION TO RECONSIDER

2015 DEC -2 PM 2:13
JEANETTE M. MCBRIDE
C.P. & G.S.
RICHLAND COUNTY
FILED

YOU WILL PLEASE TAKE NOTICE that the Defendant George S. Glassmeyer moves before this court pursuant to Rules 52(b) and 59(e), SCRCP, as well as pursuant to all other applicable law, for an order in the above-captioned action that reconsiders, alters, amends, and/or clarifies the court's order¹ that granted Plaintiff South Carolina Lottery Commission declaratory and injunctive relief in this action.

The grounds for the Defendant's motion are as follows:

1. The arguments and reasons noted in Plaintiff's Memorandum in Support of Motion to Reconsider, attached hereto, which memorandum is incorporated herein by reference as if here set forth verbatim.
2. Arguments made in the aforesaid memorandum in support of one ground that also support another ground are made in favor of all grounds that they support.
3. Those made in motions or memoranda previously filed in this case and those made at prior hearings in this case, as well as the content of the proposed order submitted by

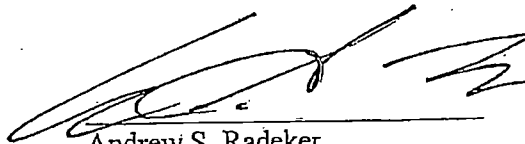
¹ The Defendant received written notice of the entry of this order on that same day, November 17, 2015. Because November 27, 2015, was the day after Thanksgiving and, thus, a state holiday, this motion is timely made. S.C. Code Ann. § 53-5-10; Rule 6(a), SCRCP.

the Defendant on December 22, 2014, all of which are incorporated herein by reference as if here set forth verbatim.

4. This motion is also based upon all other applicable law, the record, and any further memoranda or arguments that the Defendant has submitted or may submit.

Pursuant to Rule 11, SCRCP, there is no duty of consultation prior to this motion.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
November 30, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Lottery Commission,

Plaintiff,

vs.

George S. Glassmeyer,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-2926

MEMORANDUM
IN SUPPORT OF
MOTION TO RECONSIDER

2015 DEC -2 PM 2:13
JEANNETTE M. MCBRIDE
C.S.
RICHLAND COUNTY
FILED

The Defendant submits this memorandum in support of his motion for the court to reconsider, alter, amend, and/or clarify its order filed on November 17, 2015¹, in the above-captioned action. Argument asserted under one heading in this memorandum is not limited to that heading but applies however it supports the Defendant's motion.

The court's order is procedurally incorrect and frightening in the implications of its substance. It granted a declaratory judgment to a government body in a suit that body brought simply because a citizen requested some information under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.*, (hereinafter "FOIA"), even though FOIA permits only a citizen of South Carolina to bring such a suit. It granted an injunction against a citizen that is shockingly broad, an injunction to which the Plaintiff Lottery Commission was not entitled and which serves no lawful purpose. Indeed, the injunction issued does not even serve the purposes for which the order states it was granted.

This is a case in which the Plaintiff, the South Carolina Lottery Commission, a public body, sued the Defendant, George S. Glassmeyer, a citizen of South Carolina, seeking a declaration that

¹ The Defendant received written notice of the entry of this order on that same day, November 17, 2015. Because November 27, 2015, was the day after Thanksgiving and, thus, a state holiday, this motion is timely made. S.C. Code Ann. § 53-5-10; Rule 6(a), SCRCP.

certain information the Defendant had sought through two requests made under FOIA is exempt from mandatory disclosure under FOIA and requesting the issuance of a permanent injunction preventing the Defendant from seeking to obtain that information. The information concerned lottery winners who claimed prizes of or over a million dollars over a period of time, including their full names, addresses, telephone numbers, and forms of identification that they presented to the Plaintiff to claim their lottery prizes.

The Plaintiff also sought an award of attorney's fees against the Defendant.

The Defendant answered, denying that the Plaintiff was entitled to any relief and asserting various defenses, among them that he was entitled to the dismissal of the Plaintiff's claims for failure of the complaint to state facts sufficient to constitute a cause of action. The Defendant also asserted counterclaims against the Plaintiff, seeking a declaration that the Plaintiff had violated FOIA, seeking an order directing the Plaintiff to comply with FOIA with regard to his requests, and asserting a claim against the Plaintiff for abuse of process.

QUESTIONS NOT ADDRESSED IN THE ORDER AND QUESTIONS IT CREATES

Questions that were before the court but are not addressed in the order, as well as questions that have now come into existence because of the court's order, include the following, upon which the court should rule in its order on the instant motion:

- 1) On what motion or motions did the court rule? This case was not tried. All that was heard were pre-trial motions directed at the pleadings, specifically a) the Plaintiff's motion for judgment on the pleadings, which Plaintiff's counsel expressly clarified was directed only at the Plaintiff's claims, b) the Defendant's motion to dismiss the Plaintiff's claims, and c) the Defendant's motion to strike the Plaintiff's prayer for attorney's fees. The court should address all of these motions, deny the Plaintiff's motion for judgment on the pleadings,

grant the Defendant's motion to dismiss, and, failing that, grant the Defendant's motion to strike the Plaintiff's prayer for attorney's fees. Regardless, given the posture of the case and the motions that were before the court, the court should recognize that the Defendant's counterclaims remain for adjudication. This is further discussed below.

2) Given that the court ruled for the Plaintiff and all the Plaintiff sought at the time was a motion for judgment on the pleadings, why does the order make findings of fact as to things that the Plaintiff did not admit in his answer and counterclaim? The order should not do so.

3) Since all that was before the court were motions directed at the pleadings, why does the order speak of evidence and the failure to offer evidence, when each party's motions were the sort that had to assume the truth of the facts alleged by the other party and on which it would have been improper to offer evidence? The order should not do so.

4) Because of the procedural posture of this case, everything factual that is stated in the court's order is perforce something that the court determined to be true *as a matter of law*. The court makes numerous assertions that, even if they could possibly be determined to be true as a matter of fact after a trial, are certainly not true *as a matter of law*. The order should not make such findings.

5) The court makes a number of blanket statements as findings and conclusions that are either overbroad, erroneous, or both. Among them are:

- a. The order states that the Defendant submitted "a long line of FOIA requests" to the Plaintiff; however, the Defendant submitted three FOIA requests to the Plaintiff in this case. Three of something is not a long line; it is barely a line at all. The order tries to paint Mr. Glassmeyer as though he had engaged in abusive conduct in

making FOIA requests of the Lottery Commission, but there is nothing in the record to indicate that he did.

- b. "The release of a claimant's personal identifying information will result in an unreasonable invasion of a claimant's personal privacy. The release of such personal identifying information is not required by and would not further the purpose of the FOIA." That is not true, and it is certainly not true as a matter of law.
- c. "An individual's personal identifying information has nothing to do with the government operating in secret." Really? Never? Is the court saying there can never be any overlap between information that tends to identify someone and information that tends to indicate whether government is operating in secret? That is not true, and it is certainly not true as a matter of law.
- d. "A lottery claimant's identity as the recipient of those winnings does not pertain to government activity in secret and involves personal privacy and personal identifying information." Is the court saying there can never be any overlap between information that tends to identify someone as a lottery winner and information that tends to indicate whether government is operating in secret? That is not true, and it is certainly not true as a matter of law. Further, just because some information implicates personal privacy and personal identifying information does not make it exempt from disclosure under FOIA.
- e. "Disclosure of claimants' personal identifying information would invade the privacy of the claimants and their families, subject claimants and their families to unreasonable publicity, expose claimants and their families to threats against their

safety, and otherwise be an unreasonable intrusion into the life and daily affairs of claimants.” That is not true, and it is certainly not true as a matter of law.

f. “The invasion of privacy that would result from the release of claimants’ personal identifying information also would be unreasonable.” That is not true, and it is certainly not true as a matter of law.

g. The court apparently found as facts six unfortunate reported incidents of crime against lottery winners. Not only was it error to find these facts just because the Plaintiff alleged them to be, no trial was had, so that they could be examined in an appropriate context. How many lottery winners are there per year in, say, the United States? In South Carolina? Perhaps these six incidents represent tiny fractions of some very large numbers.

h. The Plaintiff “has demonstrated” – *how*, since there was no trial? – “that its claimants will suffer immediate, irreparable harm to their personal privacy and safety without the entry of a permanent injunction.” That is not true as a matter of fact and certainly not true as a matter of law. Further, as discussed below, even if this had been demonstrated, it would be irrelevant.

i. “[T]he direct harm to the [Lottery Commission] from the release of its claimants’ personal identifying information would be the likely erosion of public confidence in the lottery and the [Lottery Commission] and the reduction in the number of players, thereby harming the [Commission] and its ability to effectively carry out its mission[,]” and “the release of its claimants’ person identifying information would also likely create legal exposure for the [Commission], thereby further harming the agency.” That is not true, and it is certainly not true as a matter of law.

That is not the sort of thing that could be decided on the basis of the pleadings unless the Defendant admitted to the truth of such allegations in his responsive pleading, which the Defendant did not do. Like so many other findings in the order, this appears to have been either plucked from the air or accepted on faith from the arguments made by Plaintiff's counsel. Arguments of counsel are not evidence. Trivelas v. S.C. Dept. of Transportation, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001); Higgins v. MUSC, 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997); Historic Charleston Foundation v. Krawcheck, 313 S.C. 500, 508 n. 7, 443 S.E.2d 401, 406 n. 7 (Ct. App. 1994); Gilmore v. Ivey, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986). Further, *on what legal theory would the lottery claimants*

have any claim against the Lottery Commission for releasing their information under FOIA? No such claim exists.

j. "[T]he potential harm to the Defendant is minimal, if at all, because he is able to confirm the legitimacy of lottery winnings and payouts and to ensure that the

[Lottery Commission] is not acting in secret." No. A violation of Mr. Glassmeyer's rights under FOIA "must be considered to be an irreparable injury for which no adequate remedy at law exists." S.C. Code Ann. § 30-4-100(a).

k. "And even though there were bald allegations and oblique, unsubstantiated references to public corruption made by Defendant at the hearing on this matter, there is absolutely no evidence or any other credible information to suggest that the [Lottery Commission] has engaged in any corrupt activity, nor were there any allegations of any sort of corruption or improper conduct regarding the payment of claims raised by the Defendant in his counterclaim." These were motions directed

at the pleadings. It would have been outside the scope of the motions and indeed improper to attempt to offer evidence. Further, it is not incumbent upon Mr. Glassmeyer to prove that there has been any corruption. He does not have to have a reason for wanting the information from the Lottery Commission. At trial, it would have been incumbent upon the Lottery Commission to prove an exemption to mandatory disclosure under FOIA. If the Commission is allowed to withhold its information in the absence of proving that an exemption applies, how would Mr. Glassmeyer be able to go about discovering *whether* there was any such corruption?

1. In paragraph 46 of the order, the court alludes to the protection of claimants from disclosure about their personal information without their consent. A look at the transcript of the motions hearing held on December 5, 2014, that resulted in this order reveals that Plaintiff's counsel stated at the hearing that the purpose of the Plaintiff's form (a copy of which is attached to the Defendant's answer and counterclaim) that lottery winnings claimants submit to it is for the claimants to give informed consent. Given what the form states, that informed consent is to the very disclosure the court apparently believes, somehow, that the lottery claimants have not consented.

m. More of these findings are discussed below in the context of specific arguments.

- 6) Why were these findings made in the absence of a factual record? This was error.
- 7) The court should explicitly note that the Plaintiff clarified that it was bringing its declaratory judgment claim under the Declaratory Judgments Act and not FOIA.
- 8) The court should clarify whether it issued an injunction against the Defendant under FOIA or other law and, if under other law, then the court should state what law that is.

9) The order does not address, and does not address the effect of, the fact (a fact for our purposes, as it was pled by the Defendant) that the claimants who claim their lottery winnings from the Plaintiff Lottery Commission do so by completing a form that explicitly informs them that the information they submit may be subject to release under FOIA. That form also releases the Lottery Commission from any liability to a claimant for disclosing information on the form pursuant to a FOIA request.

10) Virtually throughout, the court's order appears to equate "personal identifying information" with information that it would constitute an unreasonable invasion of personal privacy to disclose. These concepts are far from identical. If the court is equating any information that serves to identify a person with the very different concept of information that it would constitute an unreasonable invasion of privacy to disclose, that is an error that appears to have infected the court's entire analysis in this case. Plenty of information that serves to identify a person is not something of which disclosure would constitute an unreasonable invasion of privacy.

11) Names and addresses are not very private information, anyway. Among their inherent purposes are to identify a person to those who do not know him well. Is the court ruling that names and addresses are the sort of very private information that falls under FOIA's unreasonable invasion of privacy exemption? If so, this is error. The court should clarify its position in this regard.

12) The scope of the injunction against the Defendant is frighteningly broad. The court did not enjoin him from obtaining certain information from the Lottery Commission. The court did not enjoin him from making FOIA requests of the Lottery Commission for certain information. No, the court "ORDERED that Defendant is PERMANENTLY restrained

and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants." Period. Of all lottery winners and claimants, whether their status as such is known to Mr. Glassmeyer or not. Whether that information is sought from *any source*. Forever. Is that what the court meant to do? The court should clarify that. This is certainly not a proper case for an injunction against Mr. Glassmeyer, but, even if it were, *this* injunction would be impermissibly broad.

13) All the Plaintiff has to do if it determines that Mr. Glassmeyer has requested some exempt information it would like to withhold is to respond to his FOIA request and tell him so.

That is not irreparable harm, to anyone. That is writing a letter. The order fails to link up the harm it envisions in the absence of an injunction to how the issuance of the injunction is *necessary* to prevent that harm. The court has appeared to equate a perceived harm from *disclosure* of the information at issue with *asking for* the information at issue. But that equation does not make sense.

Many of these and other issues subject of the instant motion are addressed below.

CLARIFYING WHAT WAS AND WAS NOT HEARD AND GETTING RULINGS ON EVERYTHING THAT WAS HEARD

While both the Plaintiff and the Defendant were ready for trial, both parties argued oral pleadings-directed motions before the trial was to commence. As the court took these motions under advisement, the case did not proceed to trial that day. The order ignores that no trial ever took place in this case, and what was before the court were three motions: the Plaintiff's motion for judgment on the pleadings, the scope of which the Plaintiff's counsel expressly limited to the Plaintiff's claims only, the Defendant's motion to dismiss the Plaintiff's claims, and the Defendant's motion to strike the Plaintiff's prayer for attorney's fees. The parties were ready for

trial; however, after hearing these motions, the court took them under advisement and told the parties he would let them know the outcome of the motions and whether a trial would be necessary or not.

The transcript of the hearing shows that the Plaintiff, after some apparent initial confusion, limited its motion for judgment on the pleadings to only its own claims, not the Defendant's counterclaims. The Defendant moved to dismiss the Plaintiff's claims. No one moved to dismiss or for judgment of any sort on the Defendant's counterclaims. No matter what the outcome of the motions that were heard, the Defendant's counterclaims, as a matter of proper procedure, had to proceed.

Not only does the court's order not rule on the Defendant's motions, it fails to describe what motions were heard at all and acts as though this case were tried. It was not. This needs correcting.

IMPORTANT APPLICABLE STANDARDS AND BURDENS

The ruling on a motion to dismiss under Rule 12(b)(6), SCRCP, for failure to state facts sufficient to constitute a cause of action must be based solely upon the allegations set forth in the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). Where the factual allegations of a complaint do not entitle a plaintiff to relief on any theory of the case, a 12(b)(6) motion is properly granted. Id. In deciding a 12(b)(6) motion, a court deems all of the complaint's well pleaded factual allegations as true for the purposes of deciding the motion; however, conclusions of law and other summary, conclusory allegations stated in the complaint are not deemed admitted for the motion's purposes. See Fields v. The Melrose Ltd. Partnership, 312 S.C. 102, 104, 439 S.E.2d 283, 284 (Ct. App. 1993); Carolina Winds Owners Ass'n. v. Joe Harden Builder, 297 S.C. 73, 76, 374 S.E.2d 897, 899 (Ct. App. 1988).

“A motion to dismiss a counterclaim must be based solely on the allegations set forth in the counterclaim.” Charleston County Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 559 S.E.2d 362 (Ct. App. 2001). “A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [complainant] to any relief on any theory of the case.” Stiles, 318 S.C. at 300. The question is whether in the light most favorable to the defendant asserting the counterclaim, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The counterclaim should not be dismissed merely because the trial court doubts the counterclaiming defendant will prevail in the action. Id.

Rule 12(c), SCRCP, provides for a judgment on the pleadings in a proper case. The standard of whether such a motion should be granted is the same as for a motion under Rule 12(b)(6), SCRCP, and the appellate court applies the same standard to the review of an order granting such a motion. See Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000); Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990). In deciding a motion for judgment on the pleadings, the trial court may not consider matters outside the allegations of the pleadings. Falk, 341 S.C. at 281; Firemen's Ins. Co., 302 S.C. at 234.

Rule 12(f), SCRCP, provides that the Court “may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.”

Under FOIA, “the exemptions [from mandatory disclosure by the public body] should be narrowly construed to not provide a blanket prohibition of disclosure in order to ‘guarantee the public reasonable access to certain activities of the government.’” Evening Post Publishing Co. v. Berkeley Cnty. Sch. Dist., 392 S.C. 76, 83, 708 S.E.2d 745 (2011) (quoting Fowler v. Beasley,

322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996)). "The burden of proving that an exemption exists lies with the government." Id. "The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis, and the exempt and non-exempt material shall be separated and the nonexempt material disclosed." Id. at 82.

The analysis of a case involving the potential application of FOIA's unreasonable-invasion-of-personal-privacy exemption involves balancing an individual's privacy interest against the need or desire of the public generally to have access to the type of information in question. Burton v. York County Sheriff's Dept., 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004). The interest in the information that is subject of the inquiry is not that of the individual requester, it is the public's "general interest" in being able to access information of the type at issue. Id. The reason that the particular citizen who made the request wants the information is usually irrelevant. See id.; S.C. Code Ann. §§ 30-4-40, -50.

The balancing under this test is not done on equally weighted scales. The test is, and is supposed to, favor the inapplicability of the exemption. See Evening Post, 392 S.C. at 83; Fowler, 322 S.C. at 468. FOIA is to be liberally construed to carry out the purpose mandated by the legislature, which is essentially open access to information about the activities of their government in all areas. S.C. Code Ann. § 30-4-15; Campbell v. Marion Cnty. Hosp. Dist., 354 S.C. 274, 281, 580 S.E.2d 163, 166 (Ct. App. 2003). The scales are weighted more heavily in favor of this openness than they are toward privacy concerns. See id. After all, for the unreasonable-invasion-of-personal-privacy exemption to apply, the public body has to prove not just that the information is of a personal nature and not just that disclosing it would constitute an invasion of privacy; rather, the public body must prove that disclosure of the information would – not *could*, but *would* – result in an *unreasonable* invasion of personal privacy. S.C. Code Ann. § 30-4-40(a)(2).

If the material sought by a FOIA request is not exempt from disclosure under S.C. Code Ann. § 30-4-40, the public body receiving the request must disclose the information, period. S.C. Code Ann. § 30-4-30(a) & (c). The requesting citizen has a *right* to get the information. S.C. Code Ann. § 30-4-30(a).

WHY THE INJUNCTION AGAINST THE DEFENDANT IS IMPROPER

Absent specific authority deviating from the general rule (such as that for citizen suits under S.C. Code Ann. § 30-4-100), the standard for the issuance of a permanent injunction is substantially the same as that for the issuance of a preliminary injunction, except that the plaintiff must show actual success on the merits rather than a likelihood of success on the merits. Amoco Prod. Co. v. Village of Gambell, 480 U.S. 546 n. 12 (1987). The party must show that 1) he has succeeded on the merits, 2) he will suffer immediate, irreparable harm unless the injunction is issued, and 3) he has no adequate remedy at law. Id.

Here, the Plaintiff lacks any standing to seek the injunction that the court granted it. "Standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'" Powell ex rel. Kelley v. Bank of America, 665 S.E.2d 237, 241 (Ct. App. 2008) (quoting Black's Law Dictionary 1413 (7th ed. 1999)). Standing goes to the question of a party's right to bring a proceeding. Baird v. Charleston Cnty., 333 S.C. 519, 530 & 530 n. 7, 511 S.E.2d 69 (1999). It is fundamental that only a party with standing may maintain an action.

Standing "consists of the following three elements" as noted by the South Carolina Supreme Court:

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result

of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. Natural Resources, 345 S.C. 594, 601, 550 S.E.2d 287 (2001) (internal quotation and quotation-related punctuation marks omitted). “The first element requires *the plaintiff* to suffer an injury in fact, or a particularized harm.” *Id.* (emphasis added).

Even if they were proven to be true, the allegations of the complaint could not establish that Plaintiff has suffered or is likely to suffer irreparable harm. The Plaintiff’s complaint alleges no injury or threatened injury to the Plaintiff. In its complaint, the Plaintiff states “[b]ecause of Defendant’s relentless efforts to obtain personal information related to South Carolina lottery winners, SCLC believes that there is a significant, immediate risk of irreparable harm to the personal privacy and safety of lottery winners and their families in South Carolina without the entry of injunctive relief.” What the Plaintiff alleges as the purported irreparable harm would be the disclosure of information that is identifying information of lottery winners, who are not the Plaintiff. The Plaintiff has failed to allege that *it* would suffer *any* harm absent an injunction. The Plaintiff has not alleged that *it* has suffered an injury or is in danger of suffering a prospective injury concerning the matters subject of this case. Regardless of the merits of the underlying question about how private the information involved is, the Plaintiff’s claim for injunctive relief must fail, when the law is applied, because the Plaintiff cannot seek an injunction to prevent threatened harm to someone else.

Even assuming the facts as pled by Plaintiff are true, there is no indication that the South Carolina Lottery Commission or even South Carolina lottery winners will suffer irreparable harm without an injunction. Without an injunction, other citizens may continue to make FOIA requests

seeking information from the Plaintiff along the same lines. No public body of South Carolina suffers harm by performing its legislated responsibilities under FOIA. A public body can be compensated for its efforts in searching for and compiling the requested information under FOIA. See S.C. Code Ann. § 30-4-30(b). If a FOIA request for information is denied, no search for or compilation of the information is required, so no harm is done. The notion that the Plaintiff would somehow be harmed by disclosing the information, as the order found, does not make sense. Why, the lottery claimants have even released the Commission from any liability for disclosing their information in response to a FOIA request.

Even if they were proven to be true, the allegations of the complaint could not establish that Plaintiff has no adequate remedy at law. Without an injunction, other citizens may continue to make FOIA requests seeking information from Plaintiff along these same lines. Plaintiff's adequate remedy at law is to receive such requests and deny them if the Plaintiff believes the information requested is exempt from disclosure under FOIA. Assuming, for the sake of argument, that the Plaintiff could even have standing to assert a claim based upon a perceived harm suffered by an unidentified group of lottery winners, the Plaintiff still stands in a unique position to protect lottery winners as the administrator of the South Carolina Education Lottery and a public body under FOIA: simply deny a written request for what Plaintiff deems is exempt information and then, if the requesting citizen brings a lawsuit, defend on that basis. There is no allegation in Plaintiff's complaint or statement in the court's order that the statutorily prescribed procedure for litigating a FOIA claim (which is being circumvented here) is defective in any manner.

Further, as noted above, the injunction the court imposed on Mr. Glassmeyer is extremely broad in scope. It would be too broad even if *an* injunction were proper (which it of course is not). An injunction should never be issued that is broader in scope than what is necessary to stop the

harm it is designed to prevent. Goldberg v. Trakas, 206 F.Supp. 867 (E.D.S.C. 1962); see Gibbs v. Kimbrell, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993) (injunction precluding violation of covenants should not extend beyond date that covenants would expire by their terms).

Here, the court "ORDERED that Defendant is PERMANENTLY restrained and enjoined from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants." It applies to all lottery winners and claimants, whether their status as such is known to Mr. Glassmeyer or not. Mr. Glassmeyer could unwittingly run afoul of this injunction. It applies regardless of the source from which that information is sought. A lottery winner could call Mr. Glassmeyer and want to give him this information, but would Mr. Glassmeyer dare ask for it, lest he violate this court's order? Not the way the order is written. Further, this injunction lasts forever, so that, no matter what else ever happens, no matter how much the situation changes, Mr. Glassmeyer will be bound never to seek any of this information from any source, under any circumstances, for the rest of his days. The order fails to connect the harm it envisions in the absence of an injunction to how the issuance of this or any injunction is *necessary* to prevent that harm. The court appears to have equated a perceived harm from *disclosure* of the information at issue with *asking for* the information. This supposed "harm," though, is something that the court's order relates to the Plaintiff's disclosure of the information, not to Mr. Glassmeyer seeking the information – yet the latter is what the court has enjoined. Asking for the information, which is the enjoined activity, is not what causes or even could cause the "harm" perceived by the court.

Further, S.C. Code Ann. § 30-4-100(a) allows only a citizen of this state, which is not what the Plaintiff is, to seek an injunction concerning an issue of FOIA compliance.

Not only should the court not have granted the Plaintiff an injunction, it should have granted the Defendant's motion to dismiss the Plaintiff's claim seeking one.

**WHY THE DECLARATORY JUDGMENT
AGAINST THE DEFENDANT IS IMPROPER**

The complaint prays for a judgment to declare that the Plaintiff's release of information such as the name, complete address, telephone numbers and forms of identification submitted to Plaintiff by lottery winners would be an unreasonable invasion of the winners' personal privacy and thus may be withheld under FOIA under S.C. Code Ann. § 30-4-40(a)(2). At the hearing, the Plaintiff clarified that it is seeking this relief under the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.* The court's order seems to agree that the Plaintiff sought this relief under the Declaratory Judgments Act.

That is fatal to the Plaintiff's declaratory judgment claim, however, because FOIA defines the scope of who may seek a declaratory judgment about its application to a set of facts. S.C. Code Ann. § 30-4-100(a).

"The general rule of statutory construction is that a specific statute prevails over a more general one." Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). "Generally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation." Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993); State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993) (same). Where there is a conflict between statutes, the more recent and specific legislation controls. Porter v. S.C. Pub. Serv. Comm'n., 327 S.C. 220, 224 n. 3, 489 S.E.2d 467, 469 n. 3 (1997). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." Gardner v. Biggart, 308 S.C. 331, 333, 417

S.E.2d 858, 859 (1992) (quoting Hay v. S.C. Tax Comm'n, 273 S.C. 269, 273, 255 S.E.2d 837, 840 (1979)).

Here, S.C. Code Ann. § 30-4-100(a) is more specific than the Uniform Declaratory Judgments Act. It limits those who “may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter” to “citizen[s] of the State.” S.C. Code Ann. § 30-4-100(a). In so doing, “[t]he legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both.” Freemantle v. Preston, 398 S.C. 186, 195, 728 S.E.2d 40, 45 (2012). “Citizen” is not defined in FOIA, so we turn to its normal and customary meaning. See Branch v. City of Myrtle Beach, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000) (“When faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning.”) Webster’s defines *citizen* as “a member of a state or nation who owes allegiance to it by birth or naturalization and is entitled to certain rights, as the right to vote, etc.” Webster’s New World Dictionary & Thesaurus 105 (1996); accord Black’s Law Dictionary 100 (2d Pocket Ed. 2009) (“citizen, *n.*, 1. A person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges.”) The word *citizen* comes from the Latin *civis*, “townsman.”

The Plaintiff acknowledges and alleges in its complaint that it is a public body and part of the government of South Carolina and that Defendant is a citizen of South Carolina. The Plaintiff is “a public commission and an instrumentality of the State.” S.C. Code Ann. § 59-150-30.

Two reported decisions in South Carolina have featured public bodies as plaintiffs in actions that sought a declaratory judgment under FOIA. City of Columbia v. American Civil

Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996); South Carolina Tax Commission v. Gaston Copper Recycling Corporation, 316 S.C. 163, 447 S.E.2d 843 (1994).

Neither of those decisions discuss any issue concerning the standing of a public body to bring such a suit; hence, neither case holds that a public body may bring an action under FOIA. Id. ("Appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991).) Accordingly, the question appears to be a novel one under South Carolina case law; however, application of the principles of statutory construction discussed above reveals that the Plaintiff, which is a part of the government of South Carolina, is not a citizen and cannot bring a suit under FOIA. While the exact limits of who or what is a citizen for FOIA purposes may include a private corporation, see, e.g., Evening Post, 392 S.C. 76, it is not logical that the term *citizen* was intended by the General Assembly to include a part of the government. This would not be consistent with the general understanding of the word *citizen*.

Also, the Uniform Declaratory Judgments Act was enacted in 1948, as noted in Williams Furniture Corp. v. So. Coatings & Chem. Co., 216 S.C. 1, 56 S.E.2d 576, 577 (1949). FOIA was enacted in 1978. As FOIA is the more recent statute, its provision stating that it is "[a]ny *citizen of the State* [who] may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce" FOIA controls over broader, less specific, and older language in the Uniform Declaratory Judgments Act.

Further, embodied in FOIA "is the principle of an open, transparent system of government, vital to maintaining an informed electorate and preventing the secret exercise of power with its potential corruption." Disaboto v. S.C. Assn. of Sch. Administrators, 404 S.C. 433, 439, 746 S.E.2d 329, 332 (2013). It would fit poorly with the legislative mandate that the provisions of

FOIA "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" for FOIA to permit the government operated by those public officials to bring suit against a person because he has made a FOIA request. S.C. Code Ann. § 30-4-15. FOIA is to be liberally construed to carry out the purpose mandated by the legislature. Campbell, 354 S.C. at 281. To construe FOIA as permitting government entities to bring suits against those who make FOIA requests would have the chilling effect of discouraging citizens from making such requests; thus, it would run counter to FOIA's purpose and the mandate of how it is to be interpreted.

Because only a citizen of South Carolina may bring an action seeking relief under FOIA, the Plaintiff, a part of South Carolina government and not a citizen, may not do so.

The court's order is also incorrect in its substance on this point. The information the court decided the Plaintiff is authorized to withhold is not information that is exempt from disclosure under FOIA.

FOIA was enacted based on the General Assembly's finding "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," S.C. Code Ann. § 30-4-15. Accordingly, the FOIA's essential purpose is to protect the public from secret government activity. Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). Because FOIA is remedial in nature, it should be liberally construed to carry out the purpose mandated by the legislature. Campbell, 354 S.C. at 281.

"A public body may but is not required to exempt from disclosure the following information: ... (2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40(a)(2). "Information of a personal nature shall include, but not be limited to ... information relating to public records which include the name, address, 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."² S.C. Code Ann. § 30-4-40(a)(2). "This provision must not be interpreted to restrict access by the public and press to information contained in public records." S.C. Code Ann. § 30-4-40(a)(2).

The court was wrong to determine that the information sought by Mr. Glassmeyer was "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40(a)(2) (emphasis added).

The only right a person has regarding privacy under the South Carolina Constitution is the right to be free from *unreasonable invasions* of privacy, not *all* invasions of privacy. S.C. Const. art. I, § 10 ("Searches and seizures; invasions of privacy"). "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained." *Id.*

Past case law has not shed much light on this provision of the South Carolina constitution, with its close language to S.C. Code Ann. § 30-4-40(a)(2). Earlier this year, however, our state

² There is no indication that any of the lottery winners whose information falls within the scope of Mr. Glassmeyer's requests were handicapped, and the Commission did not contend that any were.

Supreme Court decided State v. Counts, Op. No. 27546 (S.C. Ct. App. filed July 8, 2015) (Shearouse Adv. Sh. No. 26 at 75), in which the Court stated that physical intrusions into "the privacy interests in one's home are precisely what our state constitutional provision was intended to protect." Id. at 92 n. 7. Not only does providing the information in dispute here not cause any physical intrusion into a lottery claimants home or even tend to do so, the information sought by Mr. Glassmeyer was not what is going on in a lottery claimant's house but simply an address for the person, where that house is (or was at the time the claim form was filled out). Providing the information subject of this case is nowhere near as intrusive as what Counts determined to be what a prohibition on unreasonable invasions of privacy was designed to prevent. Id.

"The right of privacy is not an absolute right. Some limitations are essential for the protection of right of freedom of speech and of the press and the interests of the public in having free dissemination of news and information." Meetze v. Associated Press, 230 S.C. 330, 336 (1956). "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. 'At some point, the public interest in obtaining information becomes dominant over the individual's desire for privacy. It has been said that the truth may be spoken, written, or printed about all matters of a public nature, as well as matters of a private nature in which the public has a legitimate interest.'" Id. at 337 (citing 41 Am.Jur. Privacy § 14); accord Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313, 315 (1984) ("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").

"A person may by his acts, achievements or mode of life become a public character and lose to some extent the right of privacy that would otherwise be his. There are times when one, whether willing or not, becomes an actor in an occurrence of public or general interest. When this

takes place, he emerges from his seclusion and the publication of his connection with such occurrence is not an invasion of his right of privacy.” Meetze, 230 S.C. at 337.

The lottery claimants did not have to provide this information to the Lottery Commission. They chose to. They choose to do so under circumstances that made it abundantly clear to them that, whatever privacy interests they might have in that information that would allow it to be shielded from disclosure under FOIA were privacy interests they were giving up.

The court not only should not have ruled in favor of the Plaintiff on its declaratory judgment claim, the court should have granted the Defendant’s motion to dismiss it.

THE FAMILY PRIVACY PROTECTION ACT DOES NOT SAVE THE RULING

The Plaintiff did not advance any argument at the hearing that it is authorized to withhold the information sought by the Defendant under S.C. Code Ann. § 30-4-40(a)(4), which exempts from disclosure under FOIA “[m]atters specifically exempted from disclosure by statute or law.”

The Defendant thus presents this argument out of an abundance of caution.

The Family Privacy Protection Act provides that, “[e]xcept as provided in Sections 30-2-320 and 30-2-330 of this article, a public body, as defined in Section 30-1-10(B), may not... (e) intentionally communicate or otherwise make available to the general public an individual’s social security number or a portion of it containing six digits or more or other personal identifying information.” S.C. Code Ann. § 30-2-310(a)(1)(e). “Personal identifying information,” as used in this section, has the same meaning as “personal identifying information” in Section 16-13-510, except that it does not include electronic identification names, including electronic mail addresses, or parent’s legal surname before marriage.” S.C. Code Ann. § 30-2-310(a)(1)(e).

The text of S.C. Code Ann. § 16-13-510 provides that “personal identifying information” means the first name or first initial and last name in combination with and linked to any one or

more of the following data elements that relate to a resident of this state, when the data elements are neither encrypted nor redacted: (1) social security number; (2) driver's license number or state identification card number issued instead of a driver's license; (3) financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident's financial account; or (4) other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual. The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to general public. S.C. Code Ann. § 16-13-510(D).

In linking the interpretation of "personal identifying information" from the Family Privacy Protection Act to the definition in the Personal Financial Security Act, the General Assembly limited the meaning of the term, such that it cannot include information lawfully obtained from publicly available information. Public bodies subject to FOIA may, but are not required to, exempt information from disclosure if the public body determines an exemption applies. Because FOIA can only apply to information held by a public body, the interplay between FOIA and these statutes should be "liberally construed" towards disclosure, S.C. Code Ann. § 30-4-15, so as to "guarantee the public reasonable access to certain activities of the government," publicly available information covered by the Family Privacy Protection Act and Personal Financial Security Act should be construed towards providing the public such access when a FOIA request is made. Fowler, 322 S.C. at 468.

While Plaintiff's reliance (in its letter responses) on these statutes in denying Defendant's early request for names in conjunction with other identifying information was erroneous, the

Plaintiff's reliance on these statutes in not complying with Defendant's final request for only the names of lottery winners was entirely inapplicable. Further, the Plaintiff appears to have abandoned this as a basis for not providing the requested information.

WHY THE DEFENDANT'S COUNTERCLAIMS SHOULD SURVIVE

The most plain reason why the Defendant's counterclaims should survive is because no one made any motion for any sort of judgment on them and they have not yet been tried. The court needs to change its order to reflect this. Further, the counterclaims would have survived a motion to dismiss in any event.

FOIA plainly vests the Defendant with standing to bring a claim against the Plaintiff under FOIA, so that is not a concern. S.C. Code Ann. § 30-4-100(a). What is at issue here are the Defendant's allegations about whether the Plaintiff complied with FOIA with regard to his FOIA requests. Viewing the pleadings in the light most favorable to the Defendant, one must conclude that the Defendant's answer and counterclaim states a valid claim for relief.

The Defendant's answer and counterclaim attaches "a copy of a South Carolina Education Lottery Winner Claim Form that was authored by and is (or at least at times material to this case was) used by the Plaintiff for lottery winners to submit claims to the Plaintiff." "A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached thereto." Rule 10(c), SCRCP. The answer and counterclaim states that the "form specifically states that the information the lottery winner provides on the form may be subject to disclosure under FOIA[,] and the form indeed states that. The information the form requires to be disclosed on it includes the information sought by the Defendant in his FOIA requests involved in this case. The answer and counterclaim states that "if the information sought by the Defendant concerning the lottery winners at issue had at one time

been private information exempt from disclosure under FOIA (which the Defendant denies), the lottery winners made that information not be in that category any more once they submitted the information on this form or one containing or accompanied by a similar disclosure." It states that the "lottery winners knowingly, intelligently, and voluntarily relinquished any ability they may have had to claim that the subject information about them was exempt from disclosure under FOIA."

The Plaintiff made clear at the hearing on the subject motions that it was asserting S.C. Code Ann. § 30-4-40(a)(2) as the basis for claiming information it had not disclosed to the Defendant is exempt from disclosure under FOIA. As discussed above, that exemption does not apply.

The proponent of a FOIA claim does not have to plead around an exemption to mandatory disclosure under FOIA to state a claim. See Evening Post, 392 S.C. at 83 (quoting Fowler v., 322 S.C. at 468). "The burden of proving that an exemption exists lies with the government." Id. "The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis, and the exempt and non-exempt material shall be separated and the nonexempt material disclosed." Id. at 82. Mr. Glassmeyer pled that the way the Plaintiff responded and did not respond to his FOIA requests violated FOIA.

In the light most favorable to the Defendant, as the counterclaiming party, the allegations of the answer and counterclaim support the Defendant's contention that the lottery prize claimants, having provided information to the Plaintiff on a form that apprises them that the information about themselves they give on the form may be subject to disclosure under FOIA, have made that information such that providing it to a person making a FOIA request would not constitute an unreasonable invasion of their privacy. (As discussed above, disclosure of that information would

not be an unreasonable invasion of personal privacy, anyway.) Also, the attachments to the Plaintiff's complaint reveal that the Defendant's last FOIA request to the Plaintiff simply sought the names of lottery winners who had won prizes of one million dollars or more. Were the court to apply the law, it could not say as a matter of law that disclosing these names would amount to an unreasonable invasion of privacy, particularly since the lottery claimants had submitted their names on the form discussed above.

To comply with the FOIA requests and even a rather restrictive reading of the Family Privacy Protection Act (which the Defendant does not concede is a correct reading), all the Commission had to do in response to Mr. Glassmeyer's FOIA requests is, citing that Act and S.C. Code Ann. § 30-4-40(a)(4), not give him the addresses, redact the driver's license numbers off the

information submitted by the lottery claimants, and provide him with the remainder of the information he sought. That *certainly* would not have run afoul of any law or implicated any FOIA

exemption. The Lottery Commission withheld more information than that, though.

The elements of abuse of process are 1) an ulterior purpose and 2) a willful act in the use of the process not proper in the regular conduct of the proceedings. See, e.g., Broadmoor Apts. of

Charleston v. Horwitz, 306 S.C. 482, 486, 413 S.E. 2d 9, 11 (1991). "Our courts have noted that an abuse of process action may lie if a party prosecutes an entire lawsuit for collateral purposes."

D.R. Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2002) (citing Food Lion, Inc. v. United Food & Commercial Workers Int'l. Union, 351 S.C. 65, 73, 567 S.E.2d 251, 255 (Ct. App. 2002)). In such a case, acts furthering the suit or other process satisfy the "willful act" requirement. See Broadmoor Apts., 306 S.C. at 487 (filing *lis pendens* constituted willful act where purpose of filing was to gain collateral objective). While the "willful

act" often takes the form of a coercive act, coercion is not a necessary component of this element.

See id.

The Defendant alleged the following:

The Plaintiff has acted with an ulterior purpose in bringing this lawsuit against the Defendant, such including to discourage him from seeking information from the Plaintiff under FOIA.

The collateral objective of coercing the Defendant into making no more FOIA requests for information about lottery winners from the Plaintiff was the Plaintiff's objective in bringing this lawsuit.

The Plaintiff has acted with an ulterior purpose in inviting the other lawsuits discussed above to be brought against it and in its conduct in those suits, particularly when it had and has no intention of opposing the claims of the plaintiffs in those suits and in fact desired and desires that those plaintiffs win those suits.

The collateral objective of bolstering its position so as to attempt a better outcome in the instant case and to be in a better position to coerce the Defendant into making no more FOIA requests for information about lottery winners from the Plaintiff was the Plaintiff's objective in inviting the other lawsuits discussed above to be brought against it and in its conduct in those suits.

The Plaintiff's actions are a willful abuse of process.

The Defendant has been damaged by the Plaintiff's abuses of process.

Speaking of an order in another suit the Plaintiff attached to its complaint and attempted to use to bolster its case, the Defendant alleged the following:

Answering the allegations of paragraph 16 of the Complaint, the Defendant admits that the referenced order states what it states but denies that the order has any effect on the Defendant's rights to receive the information he has requested from the Plaintiff under FOIA. The Defendant further denies that the existence of the order in any way provides or contributes to the Plaintiff having grounds to bring the instant suit. The order is apparently the product of collusive conduct or what is tantamount to collusion. As shown by attachments to the Plaintiff's own Complaint, the Plaintiff invited the lawsuit that resulted in the order, as well other lawsuits,

including those reflected by pleadings attached to the complaint, by asking the plaintiffs in those suits to sue the Plaintiff and seek the relief sought in those cases. The Plaintiff wanted and wants the plaintiffs in those lawsuits to win those suits. The Plaintiff did not and does not plan to substantively oppose the relief sought by the plaintiffs in those lawsuits. Those lawsuits do not and did not represent actual live controversies; rather, the Plaintiff (the defendant in those suits) desired and desires the same outcome sought in those suits by the plaintiffs therein. To the extent the order purports to adjudicate the Defendant's right to receive the information he has requested from the Plaintiff under FOIA, the order is void and of no effect; the Defendant was not a party to the suit that produced the order, and no one in that suit advocated for the Defendant's rights or position as to the matters involved in that suit. The same is true for all the other suits invited by the Plaintiff in this regard. Further, the order reaches an incorrect conclusion and makes incorrect findings, likely as a result of the Plaintiff's failure to actually defend the suit that created the order.

That meets the elements of abuse of process.

The Defendant's counterclaims would have survived a motion directed at the way they were pled, if someone had made one.

**WHY THE DEFENDANT'S MOTION TO STRIKE
SHOULD HAVE BEEN GRANTED**

The court should have granted the Defendant's motion to strike the Plaintiff's prayer for attorney's fees. That would have been consistent with the court's order not finding that the Plaintiff was entitled to any relief under FOIA. Regardless of the ultimate outcome of this case, the Plaintiff cannot achieve a judgment against the Defendant for the Plaintiff's attorney's fees. While the Plaintiff prayed for attorney's fees in this case, no contract or statute authorizes the recovery of attorney's fees for the claims brought by the Plaintiff. While S.C. Code Ann. § 30-4-100(b) authorizes the recovery of attorney's fees, by the statute's plain language it applies only to suits brought under S.C. Code Ann. § 30-4-100(a), which limits those who have standing to bring

such a suit to citizens of South Carolina and does not permit such a suit to be brought by a government entity.

In addition to the plain language of the statute, the language in the following sentence from Society of Professional Journalists, 324 S.E.2d at 316, illustrates the South Carolina Supreme Court's position that the purpose of the fee-shifting provision of FOIA is to motivate public bodies to comply with citizens' FOIA requests, not to punish citizens for making FOIA requests by requiring them to foot the bill for a case *brought by a public body because a citizen made a FOIA request*. "The trial judge did not abuse his discretion in awarding fees *to encourage agencies to comply with FOIA requests*." Society of Professional Journalists, 324 S.E.2d at 316.

Neither the Declaratory Judgments Act nor the common law of injunctions authorizes an award of attorney's fees. Granting the Defendant's motion to strike the Plaintiff's prayer for the same would not even contravene anything the court determined in its order.

**WHY GLASSMEYER v. CITY OF COLUMBIA IS NOT DISPOSITIVE,
BUT IS ALSO WRONG**

The Defendant expects that the Plaintiff will rely at least in part on the Court of Appeals' recent opinion in Glassmeyer³ v. City of Columbia, Op. No. 5347 (S.C. Ct. App. filed Sept. 2, 2015) (Shearouse Adv. Sh. No. 34 at 53), probably primarily for the contention that disclosure of the lottery claimants' names and addresses would constitute an unreasonable invasion of their personal privacy. The Plaintiff (and the court) would be wrong to do so, for a number of reasons.

First, the Defendant notes that a petition for certiorari has been filed with the Supreme Court of South Carolina in that case. The Court of Appeals' decision in the City of Columbia may not be the final word on what that opinion discusses.

³ The Defendant recognizes the oddity of his being a party in both that case and this one, but they are otherwise unrelated.

Second, the Court of Appeals' decision in that case ought to be reversed or overruled.

Information of a "personal nature," standing alone, is not what is exempt from mandatory disclosure in response to a FOIA request under S.C. Code Ann. § 30-4-40(a)(2). For the exemption to apply, the invasion of personal privacy that would accompany disclosure of the information would have to so heavily outweigh the public's substantial interest in being able to know the activities of its government that the disclosure necessarily *would* "constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40(a)(2).

The Court of Appeals' sweeping City of Columbia holding, which seems to bolster a reading that a person's name and address are within this exemption, runs counter to the scant South Carolina case law we have that deals with this exemption. In Society of Professional Journalists, 283 S.C. 563, our Supreme Court held that death certificates, which contain much more information of a personal nature than that sought by Mr. Glassmeyer in this case or in City of Columbia, did not fall within the unreasonable-invasion-of-personal-privacy exemption. In City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, the Court rejected the proposition that "internal investigation reports of law enforcement agencies are *per se* exempt because they contain personal information." In Burton, 358 S.C. 339, the Court of Appeals held that allegations concerning the sexual practices of off-duty deputy sheriffs constituted the sort of information that could fall within this exemption. Names and addresses do not make the cut of the unreasonable-invasion-of-personal-privacy exemption. This is no more than what may usually be found in a telephone book. Names and addresses are too public, not private enough.

No decision of our state Supreme Court has considered whether information provided by those who voluntarily submit an application or claim to the government in an attempt to obtain a

government employment position or government funds falls within the unreasonable-invasion-of-personal-privacy exemption.

Legislative intention as to what information does fall within this exemption can be seen by looking at FOIA as a whole. FOIA provides in a section regarding "matters declared public information" that "home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to [FOIA] may not be used *for commercial solicitation purposes*." S.C. Code Ann. § 30-4-50 (emphasis added). FOIA also deems as exempt from disclosure "information relating to public records which include the name, address, and telephone number . . . 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*." S.C. Code Ann. § 30-4-40(a)(2). The natural interpretation to take from this is that the legislature intended that home addresses and telephone numbers are the type of information that, under ordinary circumstances, are to be disclosed in response to a FOIA request. At least two other states' appellate courts have held that home addresses, while "information of a personal nature," were not exempt from disclosure under those states' freedom of information acts. Webb v. Shreveport, 371 So.2d 316 (La. App. 1979); Warden v. Bennett, 340 So.2d 977 (Fla. Dist. Ct. App. 1976).

In City of Columbia, the Court of Appeals relied on inapposite statutory schemes that have also been interpreted according to their own bodies of jurisprudence, away from the principles that underlie South Carolina's body of FOIA case law. These were the U.S. Freedom of Information Act, 5 U.S.C. § 552, *et seq.* ("US FOIA"), and the Michigan Freedom of Information Act, M.C.L.A. § 15.231, *et seq.* ("Michigan FOIA"). Both of US FOIA and Michigan FOIA differ from South Carolina's FOIA in their wording and their interpretation. Indeed, the Supreme Court

of South Carolina has unambiguously stated that "federal case law interpreting the US FOIA is not binding in this state because the exemptions contained in [US FOIA] are more expansive than those contained in South Carolina's FOIA." Newberry Pub. Co., Inc. v. Newberry County Commn. On Alcohol & Drug Abuse, 308 S.C. 352, 354 n. 4, 417 S.E.2d 870, 872 n. 4 (1992). Cases interpreting US FOIA and Michigan FOIA should not be seen as persuasive authority in a case about South Carolina's FOIA. See id. It was not proper for the Court of Appeals to rely on such authority.

The Court of Appeals' opinion in City of Columbia conflicts with Burton, Society of Professional Journalists, and Meetze, all of which held 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." The information in City of Columbia that was at issue was of public interest, just as the information sought in this case is, *because it has the potential to reveal corruption*, among other reasons.

But even if none of that persuades the court, the court should not a big difference between the facts of City of Columbia and the instant case: in the instant case, the individuals who submitted their information to the government did so on a form that explicitly told them that the information might be disclosed in response to a FOIA request. Being informed of that, they chose to submit the information anyway. They gave up any right to claim that disclosure of that information in response to a FOIA request would constitute an unreasonable invasion of their personal privacy. They could have kept any right they might have had to assert such a position; however, they took the money instead.

WHAT THE PLAINTIFF WANTS IS A NEW FOIA EXEMPTION

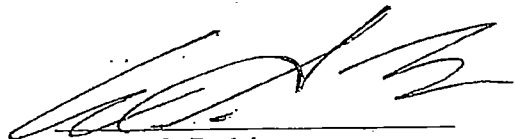
What the Plaintiff really wants is a new FOIA exemption, one concerning lottery winners. To create such an exemption is not the job of this court and indeed runs counter to this court's duties. That should be sought from the General Assembly. The question of whether the law should be changed to create such an exemption is one for the branch of government that concerns itself with promulgating and changing laws, not the one whose province is "to say what the law is." Marbury v. Madison, 5 U.S. 137, 138 (1803); accord State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) (generally discussing separation of powers).

THINGS SHOULD CHANGE
EVEN IF THE SUBSTANTIVE DECISION STAYS THE SAME

The court should note that the Plaintiff did not respond timely to all of the Defendant's FOIA requests, thus entitling the Defendant to attorney's fees.

The undersigned is willing to assist the court in preparing a proposed order that would address each of the motions that were before the court and note the present procedural posture of the case, as well as take other direction from the court in that regard.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
November 30, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-2926

South Carolina Lottery Commission,

Plaintiff,

vs.

George S. Glassmeyer,

Defendant.

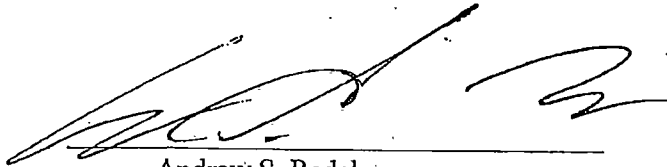
CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2015 DEC -2 PM 2:15
JEANETTE W. MCBRIDE
C.C.P. & G.S.

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., Attorney for Plaintiff, do hereby certify and say that I have, on this the 30th day of November, 2015, served the foregoing document in the above-captioned action by depositing the same in the United States Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows:

The Hon. L. Casey Manning
Circuit Judge, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202

Karl S. Bowers, Esq.
P.O. Box 50549
Columbia, SC 29250



Andrew S. Radeker

IN THE CIVIL COURT

TRANSCRIPT OF RECORD
14-CP-40-2926

13 | B E F O R E:

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

L: COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

1 to a citizen, to a person making a request. It doesn't
2 track the federal language, which is clearly one-sided.

3 Second, the Supreme Court, South Carolina
4 Supreme Court, case of Sloan versus Friends of the
5 Hunley, that is Opinion Number 26986, June 13, 2011. In
6 that case the Court said:

7 While the statute does not define prevailing
8 party -- the statute referring to FOIA -- this Court has
9 previously stated that a prevailing party is one who
10 successfully prosecutes an action or successfully
11 defends against it.

12 Well, Judge, who else but a public body can
13 defend against a FOIA request? No one. We are not
14 trying to stand, in contrary to defendant's argument, we
15 are not trying to stand the statute on its head. We are
16 not suing Mr. Glassmeyer for not turning over public
17 documents. That would be absurd.

18 But the Supreme Court has said a prevailing
19 party under FOIA is one who successfully prosecutes an
20 action or successfully defends against it, prevailing on
21 the main issue.

22 Judge, we think clearly that the request for
23 attorney's fees is legitimate. Again, under the
24 12(b)(6) standard, they have to take it as true. And if
25 he wants to move to strike later on, that's fine; but

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
2 COUNTY OF RICHLAND) COURT
3)
4 SC LOTTERY COMMISSION,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 GEORGE S. GLASSMEYER,) 2014-CP-40-2926
9 DEFENDANT.)

10

11 DECEMBER 18, 2014

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 MR. BOWERS, ESQ.

20

21 FOR THE DEFENDANT:

22 MR. RADEKER, ESQ.

23

24

25

1	I-N-D-E-X	
2		PG.
3	MOTION:	3
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5	PLEA:	52
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7	SENTENCE:	81
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1 (The following proceedings were held on
2 December 5, 2014.)

3 THE COURT: All right. I'm ready for your motion,
4 Mr. Bowers.

5 MR. BOWERS: Yes, sir. May it please the Court.
6 Judge, thank you for hearing us today. My name is Butch
7 Bowers, I'm here on behalf of the Plaintiff, South Carolina
8 Lottery Commission. For the record, with me is Hogan Brown,
9 the director of legal services and chief counsel at the
10 lottery. Mr. Carl Stiff, who is his deputy and one of the
11 attorneys at the lottery commission, and, of course, the
12 esteemed, Ms. Paula Harper Bethea, deputy director of the
13 agency.

14 We're here today to try this case bench trial on a
15 very straightforward issue. It's a purely question of law.
16 And that is this, does the release of the personally
17 identifying information -- and I will use the acronym PII
18 from this point if it's okay with the Court, Your Honor.
19 Does the release of PII of lottery winners constitute an
20 unreasonable invasion of personal privacy within the meaning
21 of South Carolina code 30-4-40(A)(2) of the Freedom of
22 Information Act.

23 By way of very brief background, this is a DJ
24 action brought to determine the rights and obligations of
25 the lottery commission, visa vie Mr. Glassmeyer, the

1 Defendant, under the FOIA. And as the Court is well aware,
2 the declaratory judgment act authorizes a party, such as the
3 lottery commission, to have cited any questions of statutory
4 construction. And that's what we're doing here, Judge.

5 There really -- at least with our case in chief,
6 there aren't any material questions of fact. As I said
7 earlier, this is purely a question of law.

8 By way of brief background, Mr. Glassmeyer
9 submitted a FOIA request on March 31st, 2014, to the lottery
10 commission seeking the following information for all prizes
11 equal to or in excess of one million dollars for the
12 preceding year. That was the name of each winner, the
13 address of each such winner, the phone number of each such
14 winner, the date and amount of the claim, and the copy of
15 the form of ID obtained from the winner by the lottery
16 commission.

17 On April 16th, the lottery commission provided Mr.
18 Glassmeyer with the following information. And after some
19 back and forth and discussion, within the time limits
20 established by FOIA, they provided him with -- in writing --
21 the dates and gross dollar amounts of the claims during the
22 relevant time period, the hometown and state of residence of
23 each such winner, and then the game that was played that
24 earned -- that yielded the lottery winning.

25 And, Your Honor, just for the record, that is --

1 that response is included in our pleadings as part of
2 Exhibit A. And I'll -- it looks like this (indicating).

3 THE COURT: All right.

4 MR. BOWERS: Okay. That's what was provided.
5 That was on April 16th, Your Honor.

6 And then on April 17th, Mr. Glassmeyer objected in
7 writing, said, hey, I don't think this complies with FOIA.
8 You have not satisfactorily responded to my FOIA request.
9 So that made this matter ripe for adjudication.

10 And, Your Honor, you might ask yourself well, why
11 would the lottery commission bring this action. It's quite
12 simple, Judge. The commission and its leadership, including
13 Ms. --

14 THE COURT: Bethea.

15 MR. BOWERS: Bethea. I know her as Paula Harper.
16 We're both from Estill, South Carolina.

17 THE COURT: Okay.

18 MR. BOWERS: And this is -- this is really not
19 relevant, but I know Your Honor always like to know where
20 people are from and we're both natives of Hampton County.

21 THE COURT: Estill or --

22 MR. BOWERS: Estill. And even though Paula, or
23 Ms. Paula, as I used to call her, might not want to admit
24 it, she did used to babysit me. So that's a true story.

25 THE COURT: I don't know why you'd say that in

1 court.

2 MR. BOWERS: It's neither here nor there, but it's
3 an interesting fact of information.

4 Paula, is -- and the rest of the leadership, the
5 commissioners and so forth, they care equally about the
6 players of the lottery and the winners and they're concerned
7 about their safety and security. I mean, it's really that
8 simple. They don't have any hidden agenda. There's no
9 motive to try to operate in secret. That's just not even
10 close to the case. It's simply they're very concerned in
11 this day and age about invasion of privacy and the safety
12 and security of their winners.

13 So they instituted this action to determine --
14 because Mr. Glassmeyer, who seems like a very nice
15 gentleman. I've gotten to know him a little bit during the
16 pendency of this matter. Seems like a very nice man, but I
17 think even he would acknowledge he is relentless in his
18 effort to obtain this information.

19 THE COURT: Okay.

20 MR. BOWERS: So the commission determined it was
21 necessary to file this DJ action to declare, have the Court
22 declare what are their rights and obligations under the
23 FOIA.

24 THE COURT: All right.

25 MR. BOWERS: Fortunately, Your Honor, we have a --

1 and this is also attached as an exhibit to our complaint.
2 We have some guidance. And that's from Your Honor himself.
3 Back in April, this Court entered an order granting
4 permanent injunction against the lottery commission in a
5 John Doe case. It was a winner who was concerned about
6 these very same issues. So this precise legal issue --

7 THE COURT: He won the most money of anybody in
8 the history of the lottery or something?

9 MR. BOWERS: Well, correct.

10 THE COURT: A lot of money?

11 MR. BOWERS: A lot of money. I don't know if it
12 was the most, but it was a lot of money.

13 THE COURT: I think a gentleman a couple years
14 ago, maybe he won the largest amount. He was represented by
15 Isaac and Johnson, I think.

16 MR. BOWERS: Right.

17 THE COURT: That might be the one, but.

18 MR. BOWERS: You got it.

19 THE COURT: Just off the top of my head.

20 MR. BOWERS: That's exactly right.

21 And so, Judge, we think that the order that Your
22 Honor entered back in April in the John Doe case, that was
23 civil action number 40-2446. It sets forth exactly what the
24 law is in this matter. And that this is -- this PII is
25 protected under FOIA and is exempt. And there are a litany

1 of examples of situations, not just in South Carolina, but
2 nationwide about lottery winners who have been threatened,
3 who have been harmed physically, who have been cheated.

4 In fact, we had a situation here with one of those
5 really high lottery winners where he was scammed. You know,
6 the phishing. I don't know computer lingo, but phishing,
7 P-H-I, phishing situation where they were trying to get his
8 information so they could --

9 THE COURT: I specifically remember back during
10 this case where I looked at several cases -- and I hate to
11 do things off the top of my head, but somebody was killed in
12 Missouri.

13 MR. BOWERS: That's correct.

14 THE COURT: I still have that information, but I'm
15 just talking off the top of my head, my recollection. But I
16 had the same concerns that you raise now back then. That's
17 why --

18 MR. BOWERS: Yes, sir.

19 THE COURT: -- the order I issued is what I issued
20 then.

21 MR. BOWERS: Yes, Your Honor.

22 And so, Judge, that's the case. They have filed a
23 counterclaim to -- for -- bad faith claim that we brought
24 this case in bad faith.

25 THE COURT: Any cites in the statute, Mr. Radeker,

1 that says that that's not exactly the case, I will let you
2 make your position known on the record in just a moment.

3 Yes, sir.

4 MR. BOWERS: So, Your Honor, I will close with
5 this, we're happy to put Ms. Bethea on the stand. But at
6 this point, we would like for the record to make a 12(C)
7 motion for judgment on the pleadings. We believe that the
8 law is clear and we believe that we're entitled to a
9 judgment as a matter of law on the pleadings.

10 THE COURT: Thank you, sir.

11 All right. Mr. Radekar.

12 MR. RADEKER: Thank you, Your Honor. In response
13 to the Plaintiff's motion, I would just note that as to
14 the -- they sought two things. They sought the declaratory
15 judgment that the information that they did not disclose to
16 Mr. Glassmeyer in response to his FOIA request is exempt
17 under FOIA, and they sought an injunction to prevent him
18 from seeking the information.

19 I will take the easiest one first, and that's the
20 injunction. And I will just go ahead and say we would move
21 to dismiss their claims. And it might be best to kind of
22 argue this all together.

23 THE COURT: All right.

24 MR. RADEKER: For a party to prevail receiving a
25 permanent injunction, which is what they're seeking here,

1 they have to show that they have succeeded on the merits,
2 that that party will suffer immediate irreparable harm
3 unless the injunction is issued and that that party has no
4 adequate remedy of law.

5 THE COURT: When you say the true party interest
6 are the individuals not the lottery commission?

7 MR. RADEKER: Well, that's one thing --

8 THE COURT: I can only give you ammunition.

9 MR. RADEKER: You know, what they allege would be
10 harm would be harm not to the lottery commission, but to
11 other parties who are not parties.

12 THE COURT: Like citizens --

13 MR. RADEKER: Lottery members.

14 THE COURT: Yeah.

15 MR. RADEKER: And so they don't even allege that
16 they would suffer any harm. You know, they've got to have
17 standing to bring a claim seeking an injunction. Also, do
18 they have an adequate remedy of law? Their remedy under the
19 Freedom of Information Act, if they believe that information
20 sought under a FOIA request is exempt and they don't want to
21 disclose it is to deny the FOIA request. Tell the person
22 we're not going to give you the information. So they've got
23 an adequate remedy.

24 THE COURT: So you're saying they made a mistake
25 by giving you some of the information, but not all of the

1 information?

2 MR. RADEKER: So -- well, they did make a mistake
3 in giving us some of the information, but not all of the
4 information, but let's look at what they're entitled to --
5 what they must show in order for them to prevail on their
6 injunction claim. One of those things is that they don't
7 have an adequate remedy of law. Their remedy if someone
8 sends a Freedom of Information Act request to -- and they
9 think they're not -- they're not obligated to disclose
10 information and they don't want to do it is to send a letter
11 saying we don't think you're entitled to the information and
12 here's why. You know, that's not irreparable harm, for one
13 thing, and that's an adequate remedy to take care of the
14 situation.

15 If that person, the requestor, later brings a
16 lawsuit, they can defend on that basis. And that's a remedy
17 for them to take care of that situation. And, also, the
18 only harm they allege to be suffered by anybody is not the
19 Plaintiff, but other people. And so they lack standing to
20 assert that claim.

21 On the merits of their declaratory judgment claim,
22 first of all, the specific controls the general and you've
23 got a specific statute about who can bring claims for
24 declaratory relief under the Freedom of Information Act.
25 And that's 30-4-100. And it says that that can be brought

1 by any citizen of the state, can apply for declaratory
2 judgment or for injunction relief. And if a person seeking
3 such relief in a suit by a citizen prevails, then this is
4 what they get. They can get declaratory relief, injunctive
5 relief and their attorney's fees if they win.

6 The specific control is general. The declaratory
7 judgment act does not permit a government body, a public
8 body, as that term is understood under FOIA, to
9 prospectively bring a suit against someone for a declaration
10 that the information they seek is not subject to the Freedom
11 of Information Act. And so we would note that it would be
12 proper for the Court to dismiss both of their claims.

13 Also, on the merits of the issue of whether, you
14 know, the information that was sought, actually, is exempt
15 from disclosure. We will concede some of the information
16 sought by Mr. Glassmeyer in his first request was exempt
17 from disclosure.

18 THE COURT: What you mean, like the name,
19 telephone numbers, address, identifying information? What,
20 specifically, are you referring to?

21 MR. RADEKER: Well, I'll tell you. It's,
22 certainly, not information that is so private that the
23 disclosure of it would be an unreasonable invasion of
24 privacy because when you make a claim for lottery winnings
25 with the lottery commission --

1 THE COURT: It's not making a claim, it's how much
2 money you have and where you live. That's the concern. Not
3 just -- I mean, when I apply for something, I don't waive
4 all my rights and put my name and image and everything out
5 for the public consumption, do I? Having bought a lottery
6 ticket, does that give up everything else in terms of who I
7 am, where I live, my wife, my children, my grandparents, my
8 nieces and nephews? I mean, if I go to apply for a lottery
9 ticket, does that mean I waive any rights to privacy I might
10 have in any situation from here to eternity?

11 MR. RADEKER: No one is forced to make a claim for
12 lottery money.

13 THE COURT: No, I mean -- you haven't really
14 answered my question. If I go buy a lottery ticket, does
15 that mean, is it your position that I automatically waive
16 all of my rights to who I am, how old I am, where I live, my
17 children, my parents, my grandchildren, my nieces and
18 nephews?

19 MR. RADEKER: No.

20 THE COURT: Okay.

21 MR. RADEKER: I'm not saying anything near that.

22 THE COURT: All right.

23 MR. RADEKER: But I am saying that the information
24 that you put on a lottery claim form, which tells the
25 applicant the information from this form may be subject to

1 discloser under the South Carolina Freedom of Information
2 Act.

3 THE COURT: Uh-huh.

4 MR. RADEKER: That to disclose that information,
5 given that --

6 THE COURT: It says may, not I shall.

7 MR. RADEKER: Well, that's true. That's true.

8 THE COURT: Okay.

9 MR. RADEKER: But given that the person knows
10 that, they voluntarily give the information. Discloser of
11 it would not constitute an unreasonable invasion of their
12 personal privacy. And that's what the statute says. It's
13 not any invasion, but an unreasonable invasion.

14 THE COURT: All right.

15 MR. RADEKER: When you give the information up,
16 you know, because the lottery commission tells you, we might
17 have to give this information out, you still want to give it
18 to us.

19 THE COURT: So you think that your client,
20 Mr. Glassmeyer, would be entitled to any and everybody that
21 buys a lottery ticket?

22 MR. RADEKER: So --

23 THE COURT: Because they fill out the form?

24 MR. RADEKER: They --

25 THE COURT: If I go fill out a form and buy a

1 lottery ticket, whether I win or not, is that information
2 automatically a discloser to the public if anybody wants to
3 see it under a FOIA request?

4 MR. RADEKER: At least, your name. Because going
5 to the argument that, you know --

6 THE COURT: Well, I don't even win. I go apply
7 for a ticket --

8 MR. RADEKER: No, no.

9 THE COURT: Well, help me out.

10 MR. RADEKER: This is a claim for when you've won.

11 THE COURT: All right.

12 MR. RADEKER: To turn in a winning ticket. You
13 know, that information that you put there, you know it could
14 be subject to disclosure, but you gave it up anyway.

15 THE COURT: You say the statute says may?

16 MR. RADEKER: Well, the form says may.

17 THE COURT: All right. The form.

18 MR. RADEKER: The statute doesn't say anything
19 about what they've got to put on the form, they just do it.
20 So as far as information that is statutorily exempt to
21 comply with the request, what they ought to have done is
22 given the most information that he asked for and still
23 comply with the law as far as what it is that they can't
24 disclose, would be to give him the name and not the driver's
25 license number, so they'd have to redact the pictures of

1 driver's licenses and redact the address. Because the
2 definition that's in 30-2-310, which talks about what public
3 bodies can't disclose except under certain circumstances
4 comes from still another statute. You've got statutes that
5 refer to statutes that refer to statutes. And that's
6 16-3-510.

7 THE COURT: All right.

8 MR. RADEKER: The only things that are implicated
9 by that statute that were involved here are driver's license
10 numbers or state identification card numbers that are issued
11 instead of a driver's license, current or former names,
12 including first and last names, but only when the names are
13 used with and linked to other identifying information
14 provided in the section. Current or former addresses, but
15 only when the addresses are used in combination with and
16 linked to other identifying information provided in the
17 section.

18 So to comply with the request, all they had to do
19 is not give them the addresses, redact the driver's license
20 numbers, give them the remainder of the information. That
21 would have complied with FOIA and 30-2-310, which talks
22 about what it is that they can't disclose. Instead, they
23 gave them only the gross dollar amount of the claim --

24 THE COURT: What does your client want in the
25 first place?

1 MR. RADEKER: Well, most importantly for FOIA, he
2 didn't want --

3 THE COURT: No, no, no. I'm asking you this, why
4 did he want this information in the first place? I'm just
5 curious.

6 MR. RADEKER: One, he's a member of the public,
7 he's entitled to it. Two, he's looking into whether there's
8 corruption or embezzlement, interested in that, at the
9 lottery commission.

10 THE COURT: Does he know Ms. Landis or Mr. Sloan?

11 MR. RADEKER: I don't know whether he knows either
12 of those individuals. But in any event, they're, certainly,
13 not entitled for judgment on the pleadings. We're entitled
14 to dismissal of their claims.

15 THE COURT: All right.

16 MR. RADEKER: We've, also, got a motion to strike
17 their pray for attorney's fees, even if you don't agree with
18 us, that we're entitled to a dismissal of their claims.
19 There's no authority -- even if this Court believes that the
20 declaratory judgment action could be brought by a public
21 body to determine whether information is exempt under FOIA,
22 there's no authority for a public body in such a suit to
23 recover attorney's fees. 30-4-100 provides that it's
24 citizens who can bring lawsuits under FOIA and that it's --

25 THE COURT: Do you have a case on point

1 interpreting that statute or position you maintain?

2 MR. RADEKER: The cases that discuss it say any
3 citizen can bring a suit, any citizen can bring a suit.

4 THE COURT: Well, that wasn't exactly a response
5 to my question, but that's okay.

6 MR. RADEKER: Secondly -- well, I guess there
7 isn't a case that specifically rejected their position, but
8 it's totally at odds with the text of the statute. It's at
9 odds with 30-4-15, which talks about what the purpose of the
10 statute is and the way that it is to be constructed.

11 THE COURT: That's the language in the statute,
12 but not an interpretation of the language of the statute.

13 MR. RADEKER: It's at odds both with the language
14 and with an interpretation if the Court feels that the
15 language isn't plain.

16 THE COURT: No, I'm saying is there a court of
17 appeals case or supreme court case that supports your
18 position?

19 MR. RADEKER: That specifically says that a public
20 body cannot bring a declaratory judgment action?

21 THE COURT: Yes.

22 MR. RADEKER: No, there's not.

23 THE COURT: Okay. All right.

24 MR. RADEKER: But there's not one that stands for
25 the opposite proposition either.

1 THE COURT: Okay.

2 MR. RADEKER: So it's just -- you know, to some
3 extent, the question hasn't been addressed yet.

4 THE COURT: So the trees haven't fell and the land
5 hasn't been plowed?

6 MR. RADEKER: Indeed, Your Honor.

7 THE COURT: Okay.

8 MR. RADEKER: But if you look at what the purpose
9 of the statute is, it's to be construed in accordance with
10 members of the public being able to get information at a
11 minimum cost or delay. For the Court to interpret this
12 provision as allowing a public body to bring a suit against
13 someone because he made a FOIA request -- and that's it,
14 that's the only thing that they allege Mr. Glassmeyer did,
15 was make a FOIA request, that would be at odds with that.

16 How would it be a minimum cost or delay for a
17 citizen to have to defend a suit by a public body? Probably
18 have to go hire a lawyer. You know, they argue they're
19 entitled to their attorney's fees if they win. How does
20 that serve the purposes of the statute? You know, all that
21 Mr. Glassmeyer did, all that anyone in his position would do
22 in this case, is ask for something. That's it.

23 I don't think in light of 30-4-15 and logic and
24 common sense that this Court can interpret that is entitling
25 the government to get attorney's fees if you make a FOIA

1 request of them. And so we would note that the Court should
2 dismiss their claims, grant our motion to strike and deny
3 their motion.

4 THE COURT: Anything further?

5 MR. RADEKER: No, Your Honor.

6 THE COURT: All right.

7 Anything further?

8 MR. BOWERS: Very briefly, Your Honor. I did not
9 hear anything about his counterclaim.

10 MR. RADEKER: Certainly.

11 MR. BOWERS: And I think by his failure to mention
12 it, he's waived that argument, correct?

13 MR. RADEKER: Let me address that.

14 THE COURT: Go ahead.

15 MR. RADEKER: What the motivation of the
16 commission is can't be determined by looking at the
17 pleadings. I mean, that would have to be determined by
18 proof, you know, evidence, direct or circumstantial. So
19 their motion for judgment on the pleadings just would not be
20 proper.

21 THE COURT: All right.

22 MR. BOWERS: All right. I still didn't hear any
23 argument in support of his counterclaim. I will say this
24 very briefly, our motion for judgment on the pleadings is
25 on -- is as to our case in chief. It's not to his

1 counterclaim. All right.

2 Couple of things real quick, and I'll take them in
3 reverse.

4 THE COURT: All right. Go ahead.

5 MR. BOWERS: The issue about the attorney's fees
6 under FOIA, we, actually, do have some authority.

7 THE COURT: All right.

8 MR. BOWERS: And it is in the statute, but there
9 are a couple of cases as well. I will get to them. Mr.
10 Radeker is correct, that under 30-4-100, the provision for
11 injunction relief cost or attorney's fees under FOIA that
12 subpart A refers to any citizen of the state. But then
13 subpart B says if a person or entity seeking such relief
14 prevails, he or it may be awarded reasonable attorney's fees
15 and other costs of litigation. So he's trying to narrowly
16 construe the word citizen to mean a human person. Well --

17 THE COURT: Well, I was going to mention the fact
18 that corporations and citizens, if I didn't get to that
19 point, was just solely colloquial in my mind. I don't know
20 whether or not it fits the same category as state agency,
21 but that was just rolling around somewhere.

22 MR. BOWERS: That's my point.

23 THE COURT: I think that's in the United States
24 constitution, too.

25 MR. BOWERS: I think that's correct as well. You

1 know, we did some research to determine if there's -- there
2 is no definition of --

3 THE COURT: Citizen.

4 MR. BOWERS: -- citizen or person under the FOIA.

5 THE COURT: All right.

6 MR. BOWERS: There is, however, in title 15, in
7 the interstate depositions and discovery act, 15-47-110,
8 person in that context means, obviously, an individual
9 human, but it, also, means government or government
10 subdivision, agency, or instrumentality.

11 So it's not crazy to think that under the FOIA
12 that a person or entity seeking such relief can be a
13 government agency.

14 Let me get to a couple of things here. I want to
15 make a distinction between a federal FOIA and the South
16 Carolina FOIA. The federal statute, which is 5 USC 552 --

17 THE COURT: Well, it's the theory of thinking that
18 the people of this state haven't thought very much of the
19 federal government.

20 MR. BOWERS: Correct. There's a federal Freedom
21 of Information Act regarding attorney's fees, that provision
22 is 5 USC 552(a)(4)(E), subpart little i. The Court may
23 assess against the United States reasonable attorney's fees
24 and other litigation costs reasonably incurred in any case
25 under this section against the United States. So it

1 specifies that it's got to be against the government.
2 Contrast that with what I just read about the South Carolina
3 FOIA, if a person or entity seeking subsequently prevails.
4 So it's not limited like the federal statute is.

5 And here's the couple of cases, one, Your Honor,
6 is Campbell V. Marion County Hospital District, it's a 2003
7 court of appeals case. And in that, the Court says the FOIA
8 provides for attorney's fees for prevailing party seeking
9 relief under the act. Under this section and only
10 prerequisite to an award of attorney's fees and costs is
11 that the party seeking relief must prevail in whole or in
12 part. The party seeking relief. It doesn't say the person,
13 you know, it's not limited. I also want to point out to the
14 Court Mr. Sloan's case against Friends of Hunley.

15 THE COURT: You know Mr. Sloan, Mr. Radeker?

16 MR. RADEKER: I know his name from reading it in
17 the appellate case.

18 MR. BOWERS: This is a 2011 South Carolina supreme
19 court case, okay. Friends of the Hunley case, while the
20 statute does not define prevailing party, this Court has
21 previously stated that the prevailing party is the one who
22 successfully prosecutes an action, or successfully defends
23 against -- prevailing on the main issue, and, even though
24 not to the extent of the original contention, and is the one
25 in whose favor a verdict is rendered and judgment entered.

1 So, clearly, Your Honor, if we are to prevail
2 here, the lotter commission, we believe, is entitled to
3 attorney's fees.

4 THE COURT: In that case you cited --

5 MR. BOWERS: Yes, sir.

6 THE COURT: -- how many times is the person at the
7 College of Charleston mentioned?

8 MR. BOWERS: Let's see, I have counted yet, but --

9 THE COURT: Just --

10 MR. BOWERS: I'd just say multiple times.

11 THE COURT: Okay. Multiple times, all right, sir.

12 MR. BOWERS: Mr. Radeker brought up a point -- and
13 I'll sit down in just a second about the claim form, where
14 the winner acknowledges that he or she may have to have
15 their personal information produced.

16 Two points on that. Number one, that's really
17 just sort of an informed consent. It's not like saying it
18 will be, it just says it may be. And that's not a statute,
19 it's just a form. More importantly, why is that information
20 obtained? Well, it's obtained by the commission so that
21 they can verify the legitimacy and validate the person is
22 who they say they are, okay. It's for the exact reason that
23 Mr. Radeker says his client is concerned about corruption,
24 it's to prevent a corruption. So that's why it's obtained.
25 It's not so that it can be disclosed publically.

1 So, Your Honor, that's all I have in response.

2 THE COURT: All right.

3 MR. BOWERS: Thank you for the opportunity.

4 THE COURT: Anything further?

5 MR. RADEKER: Yes, just briefly to address a few
6 points.

7 THE COURT: Take your time.

8 MR. RADEKER: First of all, on the federal Freedom
9 of Information Act, I note that notably, not long ago,
10 actually, in the -- case, the court of appeals and some
11 other cases talked about the fact that a public body under
12 FOIA is broader than the government, said it wouldn't be a
13 correct fit for us to put the State of South Carolina in the
14 statute.

15 In looking at the Campbell case, it says if a
16 person seeking relief in a suit under FOIA, you know, and
17 who can bring a suit under FOIA is a citizen. I, also, note
18 this, they're not a citizen. And in the evidence we'll put
19 up, assuming we get to that, in this case is their response
20 for request to admit in which they say we're in this by
21 statute and we say are you a citizen and they say we're not.
22 So, you know, they say they're not a citizen.

23 THE COURT: Does that mean they're right?

24 MR. RADEKER: They are right to say that they're
25 not a citizen as a matter of law because they're part of the

1 government and that can't be a citizen. You know, citizen
2 comes from the word civis in Latin, meaning townsman. It
3 originally meant only a natural person, but it's never been
4 extended to mean a government agency, commission or part of
5 the government to be a citizen. So I would just note that.

6 Also, I don't understand what this, you know,
7 depositions and discovery act and the definition of person,
8 which isn't even the same word under that, has to do with
9 what we're here about today.

10 THE COURT: All right. Y'all good?

11 MR. BOWERS: Yes, sir.

12 THE COURT: Let me take a break. I want to try to
13 think whether I just want to resolve this issue before we go
14 forward or not. This a lot to absorb considering -- I don't
15 know whether I want to hear your testimony today, so let me
16 talk to y'all. I make just take what I have, make a
17 decision on the legal issues and come back later if I have
18 to. Let's take a break.

19 MR. BOWERS: Thank you, judge.

20 END OF PROCEEDINGS

21

22

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-40-2926

South Carolina Lottery Commission,

Plaintiff,

vs.

George S. Glassmeyer,

Defendant.

DEFENDANT'S MEMORANDUM
OF LAW

RICHLAND COUNTY
FILED
2014 DEC -5 AM 10:12
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The Defendant submits this memorandum of law in the above-captioned action.

SUMMARY

The Defendant is entitled to the dismissal of the complaint in this case brought by the Plaintiff, the South Carolina Lottery Commission, or, in the alternative, the dismissal or striking of the Plaintiff's prayer for attorney's fees, and the Defendant is also entitled to prevail in establishing the records sought to be protected in this case are not exempt from disclosure for the following reasons:

- 1) The complaint purports to seek relief under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.*, (hereinafter "FOIA"), that is not available under FOIA, the law of the State of South Carolina, the South Carolina Constitution, federal law, or the Constitution of the United States.
- 2) The complaint fails to state facts sufficient to entitle the Plaintiff to an injunction.
- 3) Who may bring an action under FOIA is controlled by S.C. Code Ann. § 30-4-100(a), which provides that such an action may only be brought by a citizen of this state. The Plaintiff, which is a part of the government of South Carolina, is not a citizen.

- 4) The complaint fails to assert facts sufficient to entitle it to any relief in this matter, as the Plaintiff lacks standing. As the Plaintiff has no rights that are at issue in this suit, the Plaintiff has no claim to bring.
- 5) The information the Plaintiff seeks to have an order authorizing it to withhold is not information that is exempt from disclosure under FOIA.
- 6) If a public body such as the Plaintiff were permitted to bring a lawsuit such as this one, that would violate the public policy of the State of South Carolina and would have a chilling effect on the public and the free flow of information, all in violation of the letter of, the spirit of, and the policy behind FOIA. The interpretation of law that would be necessary for the Plaintiff to be able to prevail on its claims in this case is contrary to the statutory mandate of S.C. Code Ann. § 30-4-15, which controls how courts are to interpret FOIA.
- 7) Even if the Plaintiff were to have brought a cause of action the law recognizes, the Plaintiff could not recover attorney's fees in the event it prevailed.

STATUTORY PROVISIONS INVOLVED IN THIS CASE

Section 30-4-15. Findings and purpose.

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.

Section 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person.

(a) 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.

...

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

...

Section 30-4-100. Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

Section 30-4-40. Matters exempt from disclosure.

(a) A public body may but is not required to exempt from disclosure the following information:

...

(2) 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 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.

...

(4) Matters specifically exempted from disclosure by statute or law.

...

(b) 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.

Section 30-2-310. Collection of and maintenance and disposition of records containing social security numbers by public agencies.

(A)(1) Except as provided in Sections 30-2-320 and 30-2-330 of this article, a public body, as defined in Section 30-1-10(B), may not:

...

(e) intentionally communicate or otherwise make available to the general public an individual's social security number or a portion of it containing six digits or more or other personal identifying information. "Personal identifying information", as used in this section, has the same meaning as "personal identifying information" in Section 16-13-510, except that it does not include electronic identification names, including electronic mail addresses, or parent's legal surname before marriage;

...

Section 16-13-510. Financial identity fraud or identity fraud; penalty.

...

(D) "Personal identifying information" includes, but is not limited to:

- (1) social security numbers;
 - (2) driver's license numbers or state identification card numbers issued instead of a driver's license;
 - (3) checking account numbers;
 - (4) savings account numbers;
 - (5) credit card numbers;
 - (6) debit card numbers;
 - (7) personal identification (PIN) numbers;
 - (8) electronic identification numbers;
 - (9) digital signatures;
 - (10) dates of birth;
 - (11) current or former names, including first and last names, middle and last names, or first, middle, and last names, but only when the names are used in combination with, and linked to, other identifying information provided in this section;
-
- (12) current or former addresses, but only when the addresses are used in combination with, and linked to, other identifying information provided in this section; or
 - (13) other numbers, passwords, or information which may be used to access a person's financial resources, numbers, or information issued by a governmental or regulatory entity that uniquely will identify an individual or an individual's financial resources.

**THE PLAINTIFF CANNOT RECOVER ATTORNEY'S FEES
REGARDLESS OF THE MERITS**

Regardless of the outcome of this case, the Plaintiff cannot achieve a judgment against the Defendant for the Plaintiff's attorney's fees. No contract or statute authorizes the recovery of attorney's fees for the claims brought by the Plaintiff. While S.C. Code Ann. § 30-4-100(b) authorizes the recovery of attorney's fees, by the statute's plain language it applies only to suits brought under S.C. Code Ann. § 30-4-100(a), which limits those who have standing to bring such a suit to citizens of South Carolina and does not permit such a suit to be brought by a government entity.

In addition to the plain language of the statute, the language in the following sentence from Society of Professional Journalists v. Sexton, 324 S.E.2d 313, 316 (1984), illustrates the South Carolina Supreme Court's position that the purpose of the fee-shifting provision of FOIA is to motivate public bodies to comply with citizens' FOIA requests, not to punish citizens for making FOIA requests by requiring them to foot the bill for a case *brought by a public body because a citizen made a FOIA request*. "The trial judge did not abuse his discretion in awarding fees to encourage agencies to comply with FOIA requests." Society of Professional Journalists, 324 S.E.2d at 316.

THE PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED

The complaint prays for a judgment to declare that the Plaintiff's release of information such as the name, complete address, telephone numbers and forms of identification submitted to Plaintiff by lottery winners would be an unreasonable invasion of the winners' personal privacy and thus may be withheld under FOIA. Neither FOIA nor South Carolina law as a whole affords a public body subject to the Act, such as the Plaintiff, the right to prospectively prohibit the

disclosure of certain information through the prosecution of a lawsuit against a person seeking the information. Similarly, the law does not permit a declaratory judgment action outside Title 30 to enforce the provisions of FOIA. The exclusive procedure under South Carolina law for the relief Plaintiff seeks is the denial of a FOIA request for information and the defense of a later FOIA action, if any, brought by the requester. S.C. Code Ann. § 30-4-100.

"The general rule of statutory construction is that a specific statute prevails over a more general one." Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." Gardner v. Biggart, 308 S.C. 331, 333, 417 S.E.2d 858, 859 (1992) (quoting Hay v. S.C. Tax Comm'n., 273 S.C. 269, 273, 255 S.E.2d 837, 840 (1979)). Here, S.C. Code An. § 30-4-100(a) is more specific than the Uniform Declaratory Judgment Act.

Here, Plaintiff is "a public commission and an instrumentality of the State." S.C. Code Ann. § 59-150-30. The Plaintiff alleges this in its complaint. "The commission and its employees are subject to the South Carolina Consolidated Procurement Code, South Carolina Administrative Procedures Act, South Carolina Ethics Reform Act, and South Carolina Freedom of Information Act." Id. Plaintiff has the same rights and responsibilities as other public bodies subject to FOIA. FOIA requires public bodies to disclose public records upon request and defines public records 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. Once a citizen makes a written request for information pursuant to FOIA, the public body then has fifteen days to notify the requester of its determination and reasons for it. S.C. Code Ann. § 30-4-30. If the

citizen's FOIA request is denied, then the citizen requester may seek a declaratory judgment or injunctive relief from a circuit court that the public body must provide the information, pursuant to S.C. Code Ann. § 30-4-100. The South Carolina Legislature has afforded public bodies no right to seek a declaratory judgment or injunctive relief under FOIA, whether in the context of a citizen requestor's lawsuit under the chapter or in the context of a prospective action against a citizen who had previously filed a request but did not seek judicial review of its FOIA request denial.

While the Plaintiff may contend that an earlier denial of a motion to dismiss by the Defendant means this court should not now dismiss the Plaintiff's complaint, the denial of a motion to dismiss does not bar a later motion to dismiss, even on the same grounds. Our Supreme Court has held that "[t]he denial of a Rule 12(b)(6) motion does not establish the law of the case nor does it preclude a party from raising the issue at a later point or points in the case." Huntley v. Young, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995); accord McLendon v. S.C. Dept. of Hwys. & Pub Transp., 313 S.C. 525, 443 S.E.2d 539 (1994) (same).

Additionally, the Defendant notes that a motion to dismiss under Rule 12(b)(6) may be properly raised at trial, as the Supreme Court held in Inman v. Ken Hyatt Chrysler, 294 S.C. 240, 242, 363 S.E.2d 691, 692 (1988).

THE COMPLAINT FAILS TO STATE FACTS SUFFICIENT TO ENTITLE PLAINTIFF TO AN INJUNCTION

Even if they were proven to be true, the allegations of the Complaint could not establish that Plaintiff has suffered or is likely to suffer irreparable harm. In its Complaint, the Plaintiff states "[b]ecause of Defendant's relentless efforts to obtain personal information related to South Carolina lottery winners, SCLC believes that there is a significant, immediate risk of irreparable harm to the personal privacy and safety of lottery winners and their families in South Carolina

without the entry of injunctive relief.” Id. at 7. Even assuming the facts as pled by Plaintiff are true, there is no indication that the South Carolina Lottery Commission or South Carolina lottery winners will suffer irreparable harm without an injunction. Without an injunction, other citizens may continue to make FOIA requests seeking information from the Plaintiff along the same lines. No public body of South Carolina suffers harm by performing its legislated responsibilities under FOIA. A public body can be compensated for its efforts in searching for and compiling the requested information under FOIA. See S.C. Code Ann. § 30-4-30(b). If a FOIA request for information is denied, no search for or compilation of the information is required, so no harm is done.

Even if they were proven to be true, the allegations of the Complaint could not establish that Plaintiff has no adequate remedy at law. In its Complaint, Plaintiff states “[i]n the absence of an injunction, SCLC will be without an adequate remedy at law to ensure the protection and security of personal identifying information of its lottery winners, which would put the personal privacy and physical safety of lottery winners in constant danger.” Id. at 7. Without an injunction, other citizens may continue to make FOIA requests seeking information from Plaintiff along these same lines. Plaintiff’s adequate remedy at law is to receive such requests and deny them if the Plaintiff believes the information requested is exempt from disclosure under FOIA. Assuming, for the sake of argument, that the Plaintiff could even have standing to assert a claim based upon a perceived harm suffered by an unidentified group of lottery winners, the Plaintiff still stands in a unique position to protect lottery winners as the administrator of the South Carolina Education Lottery and a public body under FOIA: simply deny a written request for what Plaintiff deems is exempt information and then, if the requesting citizen brings a lawsuit, defend on that basis. There is no allegation in Plaintiff’s Complaint that the statutorily

prescribed procedure for litigating a FOIA claim (which is being circumvented here) is defective in any manner.

THE PLAINTIFF LACKS STANDING

The Complaint fails to assert facts sufficient to entitle it to any relief in this matter, as the Plaintiff lacks standing. As the Plaintiff has no rights that are at issue in this suit, the Plaintiff has no claim to bring. In its Complaint, Plaintiff requests a declaratory judgment that "the release of a lottery winner's name, complete address, telephone number(s), and/or forms of identification submitted to SCLC would constitute an unreasonable invasion of their personal privacy" and injunctive relief estopping Defendant from seeking such information. *Id.* at 8. In its Complaint, Plaintiff has alleged no injury to the Plaintiff. Plaintiff is not an unincorporated association of persons who have received lottery winnings. Plaintiff is a public body subject to the requirements of FOIA. S.C. Code Ann. § 30-4-30(b).

"Standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'" Powell ex rel. Kelley v. Bank of America, 665 S.E.2d 237, 241 (Ct. App. 2008) (quoting Black's Law Dictionary 1413 (7th ed. 1999)). Standing goes to the question of a party's right to bring a proceeding. Baird v. Charleston Cnty., 333 S.C. 519, 530 & 530 n. 7, 511 S.E.2d 69 (1999). It is fundamental that only a party with standing may maintain an action.

Standing "consists of the following three elements" as noted by the South Carolina Supreme Court:

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely

speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. Natural Resources, 345 S.C. 594, 601, 550 S.E.2d 287 (2001) (internal quotation and quotation-related punctuation marks omitted). "The first element requires *the plaintiff* to suffer an injury in fact, or a particularized harm." Id. (emphasis added).

What the Plaintiff alleges as the purported irreparable harm would be the disclosure of information that is identifying information of lottery winners, who are not the Plaintiff. The Plaintiff has failed to allege that *it* would suffer *any* harm absent an injunction. The Plaintiff has not alleged that *it* has suffered an injury or is in danger of suffering a prospective injury concerning the matters subject of this case.

The Plaintiff does not have standing under FOIA, as it is not part of the class of persons conferred standing in the Act. "Any *citizen of the State* may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter." S.C. Code Ann. § 30-4-100 (emphasis added). "Citizen" is not defined in FOIA, so we turn to its normal and customary meaning. See Branch v. City of Myrtle Beach, 340 S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000) ("When faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning."). Webster's defines citizen as "a member of a state or nation who owes allegiance to it by birth or naturalization and is entitled to certain rights, as the right to vote, etc." Webster's New World Dictionary & Thesaurus 105 (1996); accord Black's Law Dictionary 100 (2d Pocket Ed. 2009) ("citizen, *n.*, 1. A person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges.") Here, the Plaintiff admits that it is a public body and part of

the government of South Carolina and that Defendant is a citizen of South Carolina. Plaintiff's Reply to Counterclaim at 1.

Two reported decisions in South Carolina have featured public bodies as plaintiffs in actions that sought a declaratory judgment under FOIA. See City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996); South Carolina Tax Commission v. Gaston Copper Recycling Corporation, 316 S.C. 163, 447 S.E.2d 843 (1994). Neither of those decisions discuss any issue concerning the standing of a public body to bring such a suit; hence, neither case holds that a public body may bring an action under FOIA. Id.

The Plaintiff is not a citizen; thus, it does not possess standing to bring this action and its complaint should be dismissed. See S.C. Code Ann. § 30-4-100(a).

**THE REQUESTED INFORMATION IS NOT EXEMPT FROM
DISCLOSURE UNDER FOIA**

The information the Plaintiff seeks to have an order authorizing it to withhold is not information that is exempt from disclosure under FOIA. In its Complaint, the Plaintiff seeks a determination that "the release of a lottery winner's name, complete address, telephone number(s), and/or forms of identification submitted to the Lottery Commission would constitute an unreasonable invasion of their personal privacy" and should therefore not be disclosed.

The FOIA was enacted based on the General Assembly's finding "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." S.C. Code Ann. § 30-4-15. Accordingly, the FOIA's essential purpose is to protect the public from secret government activity. Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). Because the FOIA is

remedial in nature, it should be liberally construed to carry out the purpose mandated by the legislature. Campbell v. Marion Cnty. Hosp. Dist., 354 S.C. 274, 281, 580 S.E.2d 163, 166 (Ct. App. 2003).

"A public body may but is not required to exempt from disclosure the following information: ... (2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. § 30-4-40(a)(2). "Information of a personal nature shall include, but not be limited to ... information relating to public records which include the name, address, 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." S.C. Code Ann. § 30-4-40(a)(2). "This provision must not be interpreted to restrict access by the public and press to information contained in public records." S.C. Code Ann. § 30-4-40(a)(2).

This case involves the interplay between a number of statutes concerning the term "personal identifying information" and its meaning and effect. The operative provisions of these statutes are set forth below.

It appears that the Plaintiff relies on S.C. Code Ann. § 30-4-40(a)(4), which exempts from disclosure under FOIA "[m]atters specifically exempted from disclosure by statute or law."

The Family Privacy Protection Act provides that, "[e]xcept as provided in Sections 30-2-320 and 30-2-330 of this article, a public body, as defined in Section 30-1-10(B), may not ... (e) intentionally communicate or otherwise make available to the general public an individual's social security number or a portion of it containing six digits or more or other personal identifying information." S.C. Code Ann. § 30-2-310(a)(1)(e). "Personal identifying

information,' as used in this section, has the same meaning as "personal identifying information" in Section 16-13-510, except that it does not include electronic identification names, including electronic mail addresses, or parent's legal surname before marriage." S.C. Code Ann. § 30-2-310(a)(1)(e).

The text of S.C. Code Ann. § 16-13-510 provides that "personal identifying information" means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this state, when the data elements are neither encrypted nor redacted: (1) social security number; (2) driver's license number or state identification card number issued instead of a driver's license; (3) financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident's financial account; or (4) other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual. The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to general public. S.C. Code Ann. § 16-13-510(D).

In linking the interpretation of "personal identifying information" from the Family Privacy Protection Act to the definition in the Personal Financial Security Act, the General Assembly limited the meaning of the term, such that it cannot include information lawfully obtained from publicly available information. Public bodies subject to FOIA may, but are not required to, exempt information from disclosure if the public body determines an exemption applies. Because FOIA can only apply to information held by a public body, the interplay between FOIA and these statutes should be "liberally construed" towards disclosure, S.C. Code

Ann. § 30-4-15, so as to "guarantee the public reasonable access to certain activities of the government," publicly available information covered by the Family Privacy Protection Act and Personal Financial Security Act should be construed towards providing the public such access when a FOIA request is made. Fowler v. Beasley, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996).

While Plaintiff's reliance on these statutes in denying Defendant's early request for names in conjunction with other identifying information was erroneous, the Plaintiff's reliance on these statutes in not complying with Defendant's final request for only the names of lottery winners was entirely inapplicable.

ONLY UNREASONABLE INVASIONS OF PRIVACY PROVIDE EXEMPTION

"A public body may but is not required to exempt from disclosure the following information: ... (2) Information of a personal nature where the public disclosure thereof would constitute *unreasonable invasion* of personal privacy." S.C. Code Ann. § 30-4-40(a)(2) (emphasis added).

The only right a person has regarding privacy under the South Carolina Constitution is the right to be free from *unreasonable invasions* of privacy, not *all* invasions of privacy. S.C. Const. art. I, § 10 ("Searches and seizures; invasions of privacy"). "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained." Id.

"The right of privacy is not an absolute right. Some limitations are essential for the protection of right of freedom of speech and of the press and the interests of the public in having

free dissemination of news and information.” Meetze v. Associated Press, 230 S.C. 330, 336 (1956). “One of the primary limitations placed on the right of privacy is that it does not prohibit the publication of matter which is legitimate public or general interest. ‘At some point, the public interest in obtaining information becomes dominant over the individual’s desire for privacy. It has been said that the truth may be spoken, written, or printed about all matters of a public nature, as well as matters of a private nature in which the public has a legitimate interest.” Id. at 337 (citing 41 Am.Jur., Privacy, Section 14); accord Society of Professional Journalists v. Sexton, 324 S.E.2d 313, 315 (1984) (“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”).

“A person may by his acts, achievements or mode of life become a public character and lose to some extent the right of privacy that would otherwise be his. There are times when one, whether willing or not, becomes an actor in an occurrence of public or general interest. When this takes place, he emerges from his seclusion and the publication of his connection with such occurrence is not an invasion of his right of privacy.” Meetze, 230 S.C. at 337 (citing Jones v. Herald Post Co., 230 Ky. 227, 18 S.W.2d 972; Berg v. Minneapolis Star & Tribune Co., D.C. Minn., 79 F. Supp. 957).

ORDINARY STANDARD FOR INJUNCTIVE RELIEF

Absent specific authority deviating from the general rule (such as that for citizens suits under S.C. Code Ann. § 30-4-100), the standard for the issuance of a permanent injunction is substantially the same as that for the issuance of a preliminary injunction, except that the plaintiff must show actual success on the merits rather than a likelihood of success on the merits. Amoco Prod. Co. v. Village of Gambell, 480 U.S. 546 n. 12 (1987). The party must show that 1) he has

succeeded on the merits, 2) he will suffer immediate, irreparable harm unless the injunction is issued, and 3) he has no adequate remedy at law. Id.

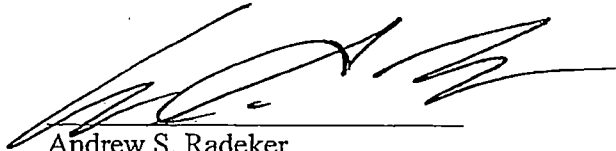
ABUSE OF PROCESS

The elements of abuse of process are 1) an ulterior purpose and 2) a willful act in the use of the process not proper in the regular conduct of the proceedings. See, e.g., Broadmoor Apts. of Charleston v. Horwitz, 306 S.C. 482, 486, 413 S.E. 2d 9, 11 (1991). "Our courts have noted that an abuse of process action may lie if a party prosecutes an entire lawsuit for collateral purposes." D.R. Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2002) (citing Food Lion, Inc. v. United Food & Commercial Workers Int'l. Union, 351 S.C. 65, 73, 567 S.E.2d 251, 255 (Ct. App. 2002)). In such a case, acts furthering the suit or other process satisfy the "willful act" requirement. See Broadmoor Apts., 306 S.C. at 487 (filing lis pendens constituted willful act where purpose of filing was to gain collateral objective). While the "willful act" often takes the form of a coercive act, coercion is not a necessary component of this element. See id.

PLAINTIFF'S PROSPECTIVE LAWSUIT IN THIS CASE VIOLATES THE POLICY BEHIND FOIA

If a public body such as the Plaintiff were permitted to bring a lawsuit such as this one, that would violate the public policy of the State of South Carolina and would have a chilling effect on the public and the free flow of information, all in violation of the spirit of and the policy behind FOIA. FOIA exists to make government information accessible to the public at a minimum of cost, expense, and delay. S.C. Code Ann. § 30-4-15. It does *not* exist so that a government public body may use it as a club against those whose FOIA requests it does not like.

Respectfully submitted,



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December 4, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Judge

Appellate Case No. 2016-001112

South Carolina Lottery Commission,.....Respondent,

v.

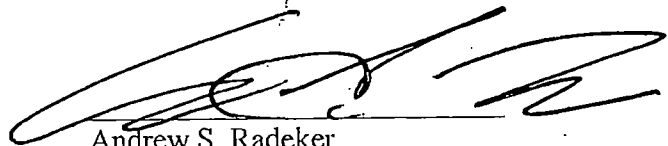
George S. Glassmeyer,.....Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included
by any of the parties and not any other material.

Respectfully submitted,

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