

VOLUME ONE OF TWO

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge
Case No.: 2017-CP-32-04435

Appellate Case No.: 2020-000770

Jada Garris.....Respondent,

v.

Lexington County School District One..... Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
Jada Garris,	)	Case No.: 2017-CP-32-04435
	)	
Plaintiff,	)	
v.	)	
	)	<u>DECISION OF THE COURT</u>
Lexington School District One,	)	
	)	
Defendant.	)	
_____	)	

This matter came before the Court on Defendant's Motion for Reconsideration after a bench trial on five separate alleged violations of the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, et seq., known as FOIA. The Court DENIES Defendant's motion.

Introduction

Plaintiff Jada Garris, a former Lexington School District One bus driver and current member of the Defendant Lexington School District One School Board ("the Board"), alleged at trial that the Defendant Board committed five violations of the Freedom of Information Act, SC. Code Ann. §§ 30-4-10, et seq. ("FOIA.") After a bench trial, the Court found for Plaintiff on one of the five alleged violations of FOIA, but found for Defendant on all other counts. The Court then awarded Plaintiff attorneys fees and costs of \$48,995.80 under S.C. Code Ann. § 30-4-10. Defendants then filed this Motion to Reconsider the fee award.

Factual Basis:

Defendants challenge the Court's award on three basis: 1) that there was no evidence in the record that Plaintiff voluntarily dismissed several of her allegations because she received documents requested under FOIA during the pendency of the lawsuit; 2) that Plaintiff is not the

prevailing party in the underlying matter and 3) that because Defendant prevailed on one factor of the *Burton* test, Plaintiff should not have been awarded her full costs and fees. The Court disagrees.

Analysis:

- I. There was un rebutted testimony at trial that Plaintiff dismissed several of her allegations against Defendant only after Defendant turned over documents requested by the Plaintiff under FOIA.

There was un rebutted testimony at trial that Plaintiff received several documents from the Defendant during the pendency of this litigation. Though Defendants now argue that they substantially complied with all FOIA requests prior to trial, and only turned over one responsive document during the pendency of the trial. However, that was not reflected in the trial evidence. In fact, Plaintiff Garris testified she did not receive the last of the requested documents until June 2019, approximately 18 months after this action was filed. The Court therefore denies Defendant's Motion on this ground.

- II. Plaintiff is the prevailing party in this matter, and as such is statutorily entitled to recover her attorney's fees and costs.

Under both the provisions of FOIA and relevant case law also cited in the previous Order, Plaintiff was and is the prevailing party. There was un rebutted trial testimony that several allegations were dismissed prior to trial only after documents were produced during litigation. Additionally, Plaintiff prevailed on another allegation at trial, proving that the Defendant violated FOIA. Defendant argues that because Plaintiff only prevailed on one allegation out of five, Defendant is in fact the prevailing party. The Court disagrees. Each side prevailed in part. Although S.C. Code Ann. § 30-4-100 does state "If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees **or** an appropriate portion of those attorney's fees" (emphasis added), the Court has discretion to either award the full amount or a

partial amount in this situation. In the Court's view, awarding some fraction of the attorney's fees would greatly reduce the incentive for filing FOIA claims. The Court also notes this matter went all the way to a trial, and the Plaintiff did prevail in part at trial. The Court therefore exercises its discretion and awards the full amount of fees. The Court denies Defendant's Motion on this ground.

III. The evidence provided by the Plaintiff as to the *Burton* factors justifies awarding Plaintiff her full costs and fees.

Defendant argues that Plaintiff's degree of success in the main action was minimal, in their opinion, and as such so the award of attorney's cost and fees should be reduced. Though Defendant is correct that Plaintiff only prevailed on one allegation of a violation of FOIA, the degree of a party's success must be measured as a whole. Here, even after being forced to turn over documents during the pendency of this litigation, the Defendant never conceded that they violated FOIA, forcing the Plaintiff to proceed to trial. Plaintiff then successfully proved at trial that Defendant violated FOIA. Reading *Burton* in the way argued by Defendant would mean the only way a prevailing party would receive the full amount of reasonable fees expended would be to prevail on every cause of action. This is not the law. A determination of the appropriate award of attorney's fees and costs is within the discretion of the Court, and in this case the Court has determined that Plaintiff is legally entitled to recover the full amount of \$48,995.80.

Additionally, Defendant argued that the Court misunderstood their position as to whether they wished to challenge the amount of time Plaintiff's attorneys spent on the underlying case, as well as the amount each of Plaintiff's attorneys charged as an hourly fee. However, Defendant offered no affidavits of other attorneys directly challenging the fee each attorney charged as unreasonable or challenging the amount of time each spent on the underlying matter. In fact, the only evidence that the Defendant offered to challenge Plaintiff's assertions were affidavits from

attorneys on cases entirely separate from the underlying matter. In considering Plaintiff's counsel's assertions and Defendant's affidavits, the Court determined that both the fees charged by Plaintiff's counsel, and the amount of time billed, were reasonable. The Court does not see any basis to disturb that ruling today.

Finally, S.C. Code Ann. § 30-4-100 explicitly permits full attorney's fees to be awarded to a party who prevails only in part. The Court has chosen to do so in this case to prevent discouraging future FOIA plaintiffs.

Defendant's motion is denied on this ground.

Conclusion:

For the reasons set forth above, the Court DENIES Defendant's Motion to Reconsider on all grounds. The amount owed shall be paid to Plaintiff within fourteen (14) days of this order.

IT IS SO ORDERED.

THIS THE ____ DAY OF _____, 2020.

THE HONORABLE WILLIAM A. MCKINNON



Lexington Common Pleas

Case Caption: Jada Garris VS Lexington County School District One

Case Number: 2017CP3204435

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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Jada Garris
PLAINTIFF(S)

Lexington County School District One
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Plaintiff's Motion to Clarify is GRANTED IN PART. The award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order. The Court declines to issue an advisory opinion as to the effect of any possible appeal.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/17/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Lexington Common Pleas

Case Caption: Jada Garris VS Lexington County School District One

Case Number: 2017CP3204435

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
Jada Garris,	)	Case No.: 2017-CP-32-04435
	)	
Plaintiff,	)	
v.	)	
	)	<u>ORDER GRANTING ATTORNEYS' FEES</u>
Lexington School District One,	)	<u>AND COSTS</u>
	)	
Defendant.	)	
_____	)	

This matter came before the Court on a Motion for Costs and Fees after a bench trial on five separate alleged violations of the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, et seq., known as FOIA. The Court finds in favor of the PLAINTIFF.

Introduction

Plaintiff Jada Garris, a former Lexington School District One bus driver and current member of the Defendant Lexington School District One School Board (“the Board”), alleged at trial that the Defendant Board committed five violations of the Freedom of Information Act, SC. Code Ann. §§ 30-4-10, et seq. (“FOIA.”) After a bench trial, the Court found for the Plaintiff on one of the five alleged violations of FOIA, but found for the Defendant on all other counts.

Factual Basis:

Plaintiff first filed suit in December 2017, asserting 12 violations of the FOIA. Prior to trial, but not before Plaintiff sought counsel and incurred costs, Defendant produced the documents Plaintiff had been seeking. Plaintiff subsequently, and voluntarily, dismissed the seven public records violations on June 13, 2019. Plaintiff proceeded to trial on the five other alleged violations of FOIA, and prevailed on one count. In bringing this suit against the

Defendant, Plaintiff alleges that she spent \$48,995.80 (\$47,427.54 in attorneys' fees and \$1,568.26 in costs). This is supported by affidavits of her counsel, Andrew Radeker and Taylor Smith. Plaintiff further provided time cards detailing the time spent by each attorney on the matter, and listing their hourly rate which was \$350 and \$300 an hour respectively¹. Lastly, Plaintiff provided affidavits of two other attorneys, Mr. Jay Bender and Mr. Robert Butcher. In these affidavits Mr. Bender and Mr. Butcher detail their experience with cases similar to the one brought by Plaintiff, and submit to the Court that the rates and total amount of fees submitted by Plaintiff's attorneys are reasonable.

In opposition, Defendant offers affidavits from Ms. Kathy Schillaci and Mr. Jonathan Milling, to demonstrate the rates these attorneys have charged for FOIA cases. These affidavits Defendant argues that because these attorneys, who have been practicing for longer than Plaintiff's attorneys, charged less than Mr. Radeker or Mr. Smith, Plaintiff's fees are not reasonable. As such, Defendant argues that the Court should reduce the fees and costs awarded to Plaintiff to these rates, if any are awarded. Additionally, Defendant argues that, because Plaintiff prevailed on only one claim, the court should further reduce any costs and fees awarded to reflect that Plaintiff prevailed on 1/5 of the allegations at trial.

Discussion of Law:

The Freedom of Information Act, or FOIA, requires that public bodies, such as the Lexington County School District One School Board, give the public written notice of their meetings in order to foster open governments². Additionally, records of a public body must be made available for public inspection, unless those documents fall within the parameters of S.C.

¹ The Court does note, however, that Plaintiff's Attorney Mr. Smith was originally billing at a rate of \$250 an hour, but that his rate was raised to \$300 an hour in November of 2017.

² S.C. Code Ann. § 30-4-80(A).

Code Ann. § 30-4-40.³ When a party seeking relief under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* (“FOIA”), prevails, “the may be awarded reasonable attorney’s fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney’s fees or an appropriate portion of those attorney’s fees.”⁴ S.C. Code Ann. § 30-4-10 does not define “prevailing party”, but the Supreme Court of South Carolina has previously stated that a prevailing party is “one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.”⁵ Additionally, a party is not required to prevail on every allegation to be found a prevailing party.⁶ While one who prevails at trial certainly qualifies as a “prevailing party”, when a public body only produces the requested information after suit is brought under FOIA, the plaintiff who sought the requested information is still the prevailing party.⁷

The six factors South Carolina courts traditionally consider in determining the amount of attorney’s fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for

³ S.C. Code Ann. §30-4-30.

⁴ S.C. Code Ann. § 30-4-100(b).

⁵ *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011) (quoting *Heath v. County of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990) (alteration in original)).

⁶ *Heath v. Cty. of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990).

⁷ *Sloan*, 409 S.C. 551, 762 S.E.2d 687, 689 (2014); *Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895, 897-98 (2011).

similar legal services; and (6) the beneficial results obtained⁸. The court must make specific findings as to each factor, but no one factor in and of itself is controlling.⁹

Analysis:

Under both the provisions of FOIA cited above, and relevant case law, Plaintiff was the prevailing party as she not only recovered documents from the Defendant prior to trial but prevailed on an allegation at trial. As such, Plaintiff is entitled to recover reasonable attorney's fees, as detailed in S.C. Code Ann. § 30-4-10. Though Defendant argues that, as a current member of the school board, Plaintiff cannot recover attorney's fees from Defendant. However, Defendant offers no case law to support this contention. Additionally, Plaintiff only recently became a member of the school board, and the lawsuit was started years prior to her ascension. In light of this fact, and the Plaintiff's status as the prevailing party, she is entitled to recover her fees.

Plaintiff has asserted that she has spent \$48,995.80 in pursuing claims against the Defendant. Plaintiff's attorneys submitted time cards to the Court to demonstrate the 132.34 hours spent on the case, their respective hourly rates, and the costs associated with the litigations. To support these figures Plaintiff submitted affidavits of two other attorneys within the same field, Mr. Bender and Mr. Butcher.

1. The Nature, Extent, and Difficulty of the Legal Services Rendered.

Plaintiff's attorneys began representing Plaintiff in June of 2017. Since that date Plaintiff's attorneys have spent a considerable amount of time, over 130 hours, preparing for and

⁸See *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296 (1989); *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004)

⁹ *Horton v. Jasper Cty. Sch. Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 445 (2018).

litigating this case. Plaintiff's attorneys settled some claims through negotiations with Defendants and proceeded to a week-long bench trial in October 2019. Defendant does not contest Plaintiff's assertions as to the nature, extent, or difficulty of the services rendered in this case. The Court finds that the nature, extent, and difficulty of the legal services rendered warrant an award of attorney's fees to Plaintiff.

2. The Time and Labor Necessarily Devoted to The Case.

As was discussed above, Plaintiff's attorneys spent numerous hours both preparing for and litigating this case. Defendant does not contest the amount of time Plaintiff's attorneys spent preparing, nor do they contest the amount of labor that preparation included. As such, the Court finds that Plaintiff presented sufficient evidence as to this factor to support an award of attorney's fees.

3. The Professional Standing of Counsel.

Plaintiff's attorneys, Mr. Radeker and Mr. Smith, have a combined 21 years of experience in civil litigation, including civil rights and constitutional rights cases, including pursuing FOIA cases. Plaintiff offered the affidavits of both Mr. Bender and Mr. Butcher to further demonstrate their professional standing amongst their peers. Both Mr. Bender and Mr. Butcher assert Plaintiff's attorneys are well regarded in their field and have the requisite amount of experience to handle a case such as this one. The Defendant does not dispute Plaintiff's attorneys' professional standing; as such, the Court finds that Plaintiffs have offered sufficient evidence as to this factor.

4. The Contingency of Compensation.

Plaintiff's attorneys undertook to represent Plaintiff on an hourly basis. Plaintiff is a former bus driver and a current school board member. Plaintiff's attorneys assert that they may have difficulty gaining full compensation, due to Plaintiff's financial situation, without an award of attorney's fees from the Court. The Defendant does not dispute the manner in which Plaintiff's attorneys chose to be compensated for their representation. As such, the Court finds that sufficient evidence exists to support this factor.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

Though Defendant does not dispute the manner in which Plaintiff's attorneys have chosen to be compensated, Defendant does dispute the rate charged by each attorney. As discussed above, Plaintiff submitted the affidavits of Mr. Bender and Mr. Bucher to support their contention that their hourly rate is similar to those customarily charged in the area for similar services. Defendants offered affidavits of two other attorneys, Ms. Schillaci and Mr. Milling to demonstrate the rates that these two attorneys charge, \$300 an hour and \$250 an hour, to represent clients in a FOIA case. Defendants contend that Plaintiff's rate should be reduced by 15% due to the discrepancies between the rates chosen by these attorneys and those chosen by Plaintiffs. However, Defendants did not offer affidavits directly disputing the amount charged by Plaintiff's attorneys, nor any case law to support their request to lower the rate chosen by Plaintiff's attorneys. Additionally, the affidavits of Ms. Schillaci and Mr. Milling were pulled from other cases as representations of rates in the community, but contain little detail as to the scope of their representation of the clients at issue in those affidavits, and contain no opinions by either attorney as to whether the rates chosen by Plaintiff's attorneys were reasonable. The Court finds that sufficient evidence exists to support Plaintiff's contention that the rates chosen by her

attorneys are similar to those charged in the area. As such, sufficient evidence exists to support this factor.

6. The Beneficial Results Obtained

Plaintiff contends that because she secured the release of several documents prior to trial, and because the Court found for her on one of five allegations presented at trial, Plaintiff's attorneys obtained a beneficial result. In looking at the time sheets submitted by Plaintiff's attorneys, no differentiation was made between each allegation when either attorney was logging the amount of time spent working on the case. As such it is difficult to parse out the amount of time and money each allegation represented in the total amount.

Defendants argue that no beneficial results were obtained, as Defendant no longer utilizes the procedure the Court found violated FOIA. Defendant contends that Plaintiff's attorney's fees should be reduced to 1/5 of the amount requested, or 1/12 to reflect the original 12 allegations, in order to reflect the only allegation Plaintiff prevailed on at trial. Neither method of calculation offered by the Defendant takes into account Plaintiff's status as the prevailing party concerning the documents Defendant turned over prior to trial. The Court agrees that the beneficial results obtained are minimal, and this factor cuts against the Plaintiff's request for fees and costs.

Though Defendant prevails on the last factor, the factors in *Burton* and *Speed* must be considered as a whole; no one factor is outcome determinative.¹⁰ Plaintiff presented ample evidence to find in their favor on factors one through five, and in light of that, the Court finds that awarding Plaintiff her full costs and fees would represent a reasonable award.

¹⁰ *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004); *Horton v. Jasper Cty. Sch. Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 445 (2018).

Conclusion:

For the reasons set forth above, the Court finds The Court finds in favor of PLAINTIFF GARRIS AND AWARDS ALL COSTS AND FEES REQUESTED AND INCURRED \$48,995.80 (\$47,427.54 in attorneys' fees and \$1,568.26 in costs).

IT IS SO ORDERED.

THIS THE ____ DAY OF _____, 2020.

THE HONORABLE WILLIAM A. MCKINNON



Lexington Common Pleas

Case Caption: Jada Garris VS Lexington County School District One

Case Number: 2017CP3204435

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Jada Garris,)
Plaintiff,)
v.)
Lexington School District One,)
Defendant.)

**IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT**

Case No.: 2017-CP-32-04435

AMENDED DECISION OF THE COURT

PRESIDING JUDGE:
DATE OF TRIAL:

The Honorable William A. McKinnon
October 24th, 2019

This matter came before the Court on October 24, 2019 for a bench trial on five separate alleged violations of the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, et seq., known as FOIA. The Court finds in favor of the PLAINTIFF GARRIS AS TO THE FIFTH CAUSE OF ACTION regarding the November 14, 2017 meeting, and in favor of DEFENDANT LEXINGTON SCHOOL DISTRICT ONE ON ALL REMAINING CAUSES OF ACTION.

Introduction

Plaintiff Jada Garris, a former Lexington School District One bus driver and current member of the Defendant Lexington School District One School Board (“the Board”), alleged at trial that the Defendant Board committed five violations of FOIA:

- 1) the Board held the entirety of its December 6, 2016 public meeting and executive session in the boardroom on December 6, 2016 instead of in the auditorium where the meeting notice and agenda provided the meeting would be held;

- 2) the Board failed to post the agenda for its March 21, 2017 meeting on its website at least 24 hours before the meeting was to be held, and published a post-dated agenda to make it falsely appear the agenda had been timely posted;
- 3) the Board failed to post the agenda for its June 15, 2017 special meeting on its website at least 24 hours before the meeting was to be held;
- 4) the Board failed to post the agenda for its July 18, 2017 meeting on its website at least 24 hours before the meeting was to be held, and published a post-dated agenda to make it falsely appear the agenda had been timely posted;
- 5) the Board began its November 14, 2017 meeting in the boardroom and entered into executive session there, instead of in the auditorium where the meeting notice and agenda provided the meeting would be begun.

Plaintiffs do not seek rescission of any Board votes, but seek 1) a declaration the Board acted unlawfully in each of the five particulars noted above, and 2) that the Board be enjoined from “post-dating” agendas, must timely post agendas, and must announce the purpose of any executive sessions in the public auditorium.

Factual Basis:

Much of this case turns on the difference between the “auditorium” and the “boardroom” at Lexington District One Central Services, located at 100 Tarrar Springs Road in Lexington. The section of the building is labeled “Auditorium” on the outside, and that section contains a large room for meetings, commonly called the “auditorium,” an adjacent smaller room with a conference table that opens off the main room and is commonly called the “boardroom,” and a kitchen that opens off the boardroom. Although it is possible that since the building is labeled “auditorium” on

the outside that “auditorium” could mean all three rooms, defense witness Mary Beth Hill testified “auditorium” referred to the large room only, not all three rooms.

The first witness, Debbie Gilly, testified that she arrived at the Auditorium of the Central Services building around 7:35pm on December 6, 2016 in order to attend a meeting of the Board. Ms. Gilly testified that she arrived five minutes after the meeting was set to begin on the agenda. She stated further that she and her granddaughter sat in the general auditorium area in order to attend the Board meeting, as that was where the agenda had listed the meeting was to be held, but that no one was in the room when she arrived. Ms. Gilly identified the auditorium as the large open area at the front of the building with dais, and described that this was where the meetings she had attended before had been held. She also identified a small room off of the auditorium where the Board met on its own.

Ms. Gilly stated that on the evening of December 6th the board room door was open, and that she heard people discussing different problem solving scenarios from within the room, but that she did not go in, or ask a staff member if she was allowed to go in the room. Additionally, she testified that no member of the Board came out into the general room to announce an executive session of the Board, to announce that the meeting had been moved into the board room, or to invite her into the board room to participate in the meeting being held within the room. Ms. Gilly testified that she did not go into the board room because she had not been invited into the room, and that she believed the room to be private.

The court found Ms. Gilly credible, and her testimony is in accord with other testimony that the December 6th meeting was the first meeting after the 2016 election, and the meeting consisted of a reception for the new members and training for the Board members in the boardroom, which was open to the public.

Plaintiff's second witness, Billy Garriss, testified that she attempted to attend the November 14, 2017 meeting, but that no member of the Board was in the auditorium when she arrived at 5:45. She stayed in the auditorium of the building until 6:15. The meeting was set to start at 6:00, but no member of the Board announced the beginning of the meeting or the beginning of executive session at 6:00 or at any time before she left at 6:15. The Court credits this testimony.

The Plaintiff then testified that she looked for agendas for the March 21, 2017, June 15, 2017, and July 18, 2017 on the Board website twenty-four hours before the meetings but did not see them. She testified that she downloaded the agendas when they were posted and, by looking at their metadata, determined that the documents had not been created 24 hours before the meetings were set to be held.

The defendant offered the testimony of the Board's communication director Mary Beth Hill. Ms. Hill testified that she creates the agendas and posts them on the Board website, at the Board's office, and at local schools. She also testified that, on occasion, she has found errors within the original agendas such as spelling errors, and has had to reload the corrected agenda on top of the original agenda in order to correct these errors. When this is done, the document looks as if it has been recently created, because it is saved over the old document to replace it. Ms. Hill also testified that, in order to promote the members of the Board itself, she adds a second page to the agenda with their names listed. This page is often added at a later date, not within the 24 hour requirement, but this page contains no substantive changes to the agenda. She testified that the only reason she makes this change, is to ensure that the names of the Board members are printed on the back of the agenda in advance of elections. Ms. Hill testified that these two non-substantive changes explain the metadata discrepancies noticed by the Plaintiff, as she uploads these modified documents over the old agenda in order to avoid having to re-create the link, which is time

consuming. This was confirmed with the admission of several screen captures of the Board's website that listed the agendas as posted prior to the required FOIA deadline, and emails to the press containing these agendas also prior to the deadline. The Court credits Ms. Hill's testimony that the agenda for the March 21, 2017 meeting was posted on March 16, and the July 18, 2017 meeting agenda was posted on July 11 – well within the twenty-four hour deadline. No formal agenda was posted for the special June 15, 2017 meeting, but the meeting notice posted on June 12, 2017 contained the only agenda item, the hiring of new employees.

Discussion of Law:

The Freedom of Information Act, or FOIA, requires that public bodies, such as the Lexington County School District One School Board, give the public written notice of their meetings in order to foster open governments. S.C. Code Ann. § 30-4-80(A). This includes requiring public bodies to post agendas for their public meetings within 24 hours of the meetings themselves. *Id.* Additionally, these agendas must identify the place and time where the meetings will be held. *Id.* If substantive changes are made to these agendas, such as adding or deleting a matter to be addressed in the meeting, it must be re-uploaded at least 24 hours before the meeting. *Id.* FOIA also requires that any meeting of a public body, such as the Board, must be open to the public, unless it meets an exception listed in S.C. Code Ann. § 30-4-70, such as executive session. S.C. Code Ann. § 30-4-60. The specific reason for entering executive session must be announced in public session before executive session, or a closed session, can begin. *Donohue v. City of N. Augusta*, 412 S.C. 526, 773 S.E.2d 140 (S.C., 2015). *See also Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001). Substantial compliance with these requirements will satisfy them, as long as the technical violation has no “demonstrated effect”, or harm, to or on the

public. See *Donohue*, 412 S.C. at 532 and *Multimedia Inc. v. Greenville Airport Com'n*, 287 S.C. 521, 525, 339 S.E.2d 884, 887 (1986).

Analysis:

I. There is no FOIA violation regarding agendas

As stated previously, the Court credits Ms. Hill's testimony that the agenda for the March 21, 2017 meeting was posted on March 16, and the July 18, 2017 meeting agenda was posted on July 11, 2017. The Court also credits the testimony that the "backdating" concerns arose from minor modifications to agendas already posted. The March 16 and July 11 postings were easily within the permissible window and thus there is no FOIA violation. With regard to the special June 15, 2017 meeting, Plaintiff is correct there was no agenda posted, but this meeting was a special called meeting solely to approve the hiring of new employees, and that was the only action taken, so the meeting notice stating it was for the purpose of hiring new employees satisfied the statutory requirement of an agenda.

II. There was, at most, a technical violation of FOIA at the December 6th, 2016 meeting

The new Board member training on December 6, 2016 was held in the boardroom, not the main auditorium, as the agenda provided. However, testimony reflected there had previously been a public reception for the new Board members that night, and members of the public were invited to attend the training sessions in the boardroom, and some did. Further, the door between the boardroom and the auditorium was open.

The Court finds that no violation of FOIA occurred in this instance. Alternatively, if moving part of a meeting from one room to an adjoining room in the same building that connects through a door, and leaving the door open, is even a FOIA violation, it is at most a

technical violation and the Board substantially complied with FOIA. *See Multimedia Inc. v. Greenville Airport Com'n.*

III The Board violated FOIA on November 14, 2017 as the Board did not enter into executive session while in open session.

The Plaintiff's daughter, Billy Garris, testified that she attempted to attend the Board meeting on November 14, 2017, but that at no point after she arrived at 5:45 did a member of the Board come out of the board room to announce the beginning of the meeting at 6:00 or the beginning of executive session. She further testified that the agenda listed the auditorium where she had been sitting as the area in which the meeting was to be held, not the board room. Additionally, Ms. Garris testified that the door to the board room was closed and that she could not hear the discussions of the individuals within the room.

The Court finds her testimony concerning this meeting credible. Additionally, Ms. Hill testified, as we previously stated, that the board room and the auditorium are separate rooms in the building and that the board room is typically private and not open to the public, especially when the door is closed. Considering these facts, the Court finds that the Board did violate FOIA by beginning the meeting in the private boardroom and voting to go into executive session in the private boardroom on November 7, 2017.

FOIA requires public bodies such as the Board to hold open meetings unless a closed session is announced for a specific purpose. S.C. Code Ann. § 30-4-60. When executive session is entered, FOIA requires that the specific reason for entering executive session must be announced in public session before the executive session can begin. *See Donohue v. City of N. Augusta*, 412 S.C. 526, 773 S.E.2d 140 (S.C. 2015). This procedure was not followed for the November 14, 2017 meeting, and as a result the public could not attend even the beginning of the meeting or

hear the purpose of the executive session heard that day. Under *Donohue*, the Court is compelled to find this failure is more than a technical violation.

The Court declines to issue injunctive relief on this issue as the uncontradicted testimony was the Board now announces the purpose of each executive session in the public auditorium before beginning any executive session.

Conclusion:

For the reasons set forth above, the Court finds The Court finds in favor of PLAINTIFF GARRIS AS TO THE FIFTH CAUSE OF ACTION regarding the November 14, 2017 meeting, and in favor of DEFENDANT LEXINGTON SCHOOL DISTRICT ONE ON ALL REMAINING CAUSES OF ACTION. The parties shall file motions for attorneys' fees as appropriate.

IT IS SO ORDERED.

THIS THE ____ DAY OF _____, 2019.

THE HONORABLE WILLIAM A. MCKINNON



Lexington Common Pleas

Case Caption: Jada Garris VS Lexington County School District One

Case Number: 2017CP3204435

Type: Order/Amend

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2020-01-28 09:40:51 page 9 of 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
Jada Garris,	)	Case No.: 2017-CP-32-04435
	)	
Plaintiff,	)	
v.	)	
	)	<u>DECISION OF THE COURT</u>
Lexington School District One,	)	
	)	
Defendant.	)	
_____	)	

PRESIDING JUDGE:
DATE OF TRIAL:

The Honorable William A. McKinnon
October 24th, 2019

This matter came before the Court on October 24, 2019 for a bench trial on five separate alleged violations of the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, et seq., known as FOIA. The Court finds in favor of the PLAINTIFF GARRIS AS TO THE FIFTH CAUSE OF ACTION regarding the November 14, 2017 meeting, and in favor of DEFENDANT LEXINGTON SCHOOL DISTRICT ONE ON ALL REMAINING CAUSES OF ACTION.

Introduction

Plaintiff Jada Garris, a former Lexington School District One bus driver and current member of the Defendant Lexington School District One School Board (“the Board”), alleged at trial that the Defendant Board committed five violations of FOIA:

- 1) the Board held the entirety of its December 6, 2016 public meeting and executive session in the boardroom on December 6, 2016 instead of in the auditorium where the meeting notice and agenda provided the meeting would be held;

- 2) the Board failed to post the agenda for its March 21, 2017 meeting on its website at least 24 hours before the meeting was to be held, and published a post-dated agenda to make it falsely appear the agenda had been timely posted;
- 3) the Board failed to post the agenda for its June 15, 2017 special meeting on its website at least 24 hours before the meeting was to be held;
- 4) the Board failed to post the agenda for its July 18, 2017 meeting on its website at least 24 hours before the meeting was to be held, and published a post-dated agenda to make it falsely appear the agenda had been timely posted;
- 5) the Board began its November 14, 2017 meeting in the boardroom and entered into executive session there, instead of in the auditorium where the meeting notice and agenda provided the meeting would be begun.

Plaintiffs do not seek rescission of any Board votes, but seek 1) a declaration the Board acted unlawfully in each of the five particulars noted above, and 2) that the Board be enjoined from “post-dating” agendas, must timely post agendas, and must announce the purpose of any executive sessions in the public auditorium.

Factual Basis:

Much of this case turns on the difference between the “auditorium” and the “boardroom” at Lexington District One Central Services, located at 100 Tarrar Springs Road in Lexington. The section of the building is labeled “Auditorium” on the outside, and that section contains a large room for meetings, commonly called the “auditorium,” an adjacent smaller room with a conference table that opens off the main room and is commonly called the “boardroom,” and a kitchen that opens off the boardroom. Although it is possible that since the building is labeled “auditorium” on

the outside that “auditorium” could mean all three rooms, defense witness Mary Beth Hill testified “auditorium” referred to the large room only, not all three rooms.

The first witness, Debbie Gilly, testified that she arrived at the Auditorium of the Central Services building around 7:35pm on December 6, 2016 in order to attend a meeting of the Board. Ms. Gilly testified that she arrived five minutes after the meeting was set to begin on the agenda. She stated further that she and her granddaughter sat in the general auditorium area in order to attend the Board meeting, as that was where the agenda had listed the meeting was to be held, but that no one was in the room when she arrived. Ms. Gilly identified the auditorium as the large open area at the front of the building with dais, and described that this was where the meetings she had attended before had been held. She also identified a small room off of the auditorium where the Board met on its own.

Ms. Gilly stated that on the evening of December 6th the board room door was open, and that she heard people discussing different problem solving scenarios from within the room, but that she did not go in, or ask a staff member if she was allowed to go in the room. Additionally, she testified that no member of the Board came out into the general room to announce an executive session of the Board, to announce that the meeting had been moved into the board room, or to invite her into the board room to participate in the meeting being held within the room. Ms. Gilly testified that she did not go into the board room because she had not been invited into the room, and that she believed the room to be private.

The court found Ms. Gilly credible, and her testimony is in accord with other testimony that the December 6th meeting was the first meeting after the 2016 election, and the meeting consisted of a reception for the new members and training for the Board members in the boardroom, which was open to the public.

Plaintiff's second witness, Billy Garriss, testified that she attempted to attend the November 14, 2017 meeting, but that no member of the Board was in the auditorium when she arrived at 5:45. She stayed in the auditorium of the building until 6:15. The meeting was set to start at 6:00, but no member of the Board announced the beginning of the meeting or the beginning of executive session at 6:00 or at any time before she left at 6:15. The Court credits this testimony.

The Plaintiff then testified that she looked for agendas for the March 21, 2017, June 15, 2017, and July 18, 2017 on the Board website twenty-four hours before the meetings but did not see them. She testified that she downloaded the agendas when they were posted and, by looking at their metadata, determined that the documents had not been created 24 hours before the meetings were set to be held.

The defendant offered the testimony of the Board's communication director Mary Beth Hill. Ms. Hill testified that she creates the agendas and posts them on the Board website, at the Board's office, and at local schools. She also testified that, on occasion, she has found errors within the original agendas such as spelling errors, and has had to reload the corrected agenda on top of the original agenda in order to correct these errors. When this is done, the document looks as if it has been recently created, because it is saved over the old document to replace it. Ms. Hill also testified that, in order to promote the members of the Board itself, she adds a second page to the agenda with their names listed. This page is often added at a later date, not within the 24 hour requirement, but this page contains no substantive changes to the agenda. She testified that the only reason she makes this change, is to ensure that the names of the Board members are printed on the back of the agenda in advance of elections. Ms. Hill testified that these two non-substantive changes explain the metadata discrepancies noticed by the Plaintiff, as she uploads these modified documents over the old agenda in order to avoid having to re-create the link, which is time

consuming. This was confirmed with the admission of several screen captures of the Board's website that listed the agendas as posted prior to the required FOIA deadline, and emails to the press containing these agendas also prior to the deadline. The Court credits Ms. Hill's testimony that the agenda for the March 21, 2017 meeting was posted on March 16, and the July 18, 2017 meeting agenda was posted on July 11 – well within the twenty-four hour deadline. No formal agenda was posted for the special June 15, 2017 meeting, but the meeting notice posted on June 12, 2017 contained the only agenda item, the hiring of new employees.

Discussion of Law:

The Freedom of Information Act, or FOIA, requires that public bodies, such as the Lexington County School District One School Board, give the public written notice of their meetings in order to foster open governments. S.C. Code Ann. § 30-4-80(A). This includes requiring public bodies to post agendas for their public meetings within 24 hours of the meetings themselves. *Id.* Additionally, these agendas must identify the place and time where the meetings will be held. *Id.* If substantive changes are made to these agendas, such as adding or deleting a matter to be addressed in the meeting, it must be re-uploaded at least 24 hours before the meeting. *Id.* FOIA also requires that any meeting of a public body, such as the Board, must be open to the public, unless it meets an exception listed in S.C. Code Ann. § 30-4-70, such as executive session. S.C. Code Ann. § 30-4-60. The specific reason for entering executive session must be announced in public session before executive session, or a closed session, can begin. *Donohue v. City of N. Augusta*, 412 S.C. 526, 773 S.E.2d 140 (S.C., 2015). *See also Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001). Substantial compliance with these requirements will satisfy them, as long as the technical violation has no “demonstrated effect”, or harm, to or on the

public. See *Donohue*, 412 S.C. at 532 and *Multimedia Inc. v. Greenville Airport Com'n*, 287 S.C. 521, 525, 339 S.E.2d 884, 887 (1986).

Analysis:

I. There is no FOIA violation regarding agendas

As stated previously, the Court credits Ms. Hill's testimony that the agenda for the March 21, 2017 meeting was posted on March 16, and the July 18, 2017 meeting agenda was posted on July 11, 2017. The Court also credits the testimony that the "backdating" concerns arose from minor modifications to agendas already posted. The March 16 and July 18 postings were easily within the permissible window and thus there is no FOIA violation. With regard to the special June 15, 2017 meeting, Plaintiff is correct there was no agenda posted, but this meeting was a special called meeting solely to approve the hiring of new employees, and that was the only action taken, so the meeting notice stating it was for the purpose of hiring new employees satisfied the statutory requirement of an agenda.

II. There was, at most, a technical violation of FOIA at the December 6th, 2016 meeting

The new Board member training on December 6, 2016 was held in the boardroom, not the main auditorium, as the agenda provided. However, testimony reflected there had previously been a public reception for the new Board members that night, and members of the public were invited to attend the training sessions in the boardroom, and some did. Further, the door between the boardroom and the auditorium was open.

The Court finds that if moving part of a meeting from one room to an adjoining room in the same building that connects through a door, and leaving the door open, is even a FOIA

violation, it is at most a technical violation and the Board substantially complied with FOIA. See *Multimedia Inc. v. Greenville Airport Com'n*.

III The Board violated FOIA on November 14, 2017 as the Board did not enter into executive session while in open session.

The Plaintiff's daughter, Billy Garris, testified that she attempted to attend the Board meeting on November 7, 2017, but that at no point after she arrived at 5:45 did a member of the Board come out of the board room to announce the beginning of the meeting at 6:00 or the beginning of executive session. She further testified that the agenda listed the auditorium where she had been sitting as the area in which the meeting was to be held, not the board room. Additionally, Ms. Gilly testified that the door to the board room was closed and that she could not hear the discussions of the individuals within the room.

The Court finds her testimony concerning this meeting credible. Additionally, Ms. Hill testified, as we previously stated, that the board room and the auditorium are separate rooms in the building and that the board room is typically private and not open to the public, especially when the door is closed. Considering these facts, the Court finds that the Board did violate FOIA by beginning the meeting in the private boardroom and voting to go into executive session in the private boardroom on November 7, 2017.

FOIA requires public bodies such as the Board to hold open meetings unless a closed session is announced for a specific purpose. S.C. Code Ann. § 30-4-60. When executive session is entered, FOIA requires that the specific reason for entering executive session must be announced in public session before the executive session can begin. See *Donohue v. City of N. Augusta*, 412 S.C. 526, 773 S.E.2d 140 (S.C. 2015). This procedure was not followed for the November 7,

2017 meeting, and as a result the public could not attend even the beginning of the meeting or hear the purpose of the executive session heard that day. Under *Donohue*, the Court is compelled to find this failure is more than a technical violation.

The Court declines to issue injunctive relief on this issue as the uncontradicted testimony was the Board now announces the purpose of each executive session in the public auditorium before beginning any executive session.

Conclusion:

For the reasons set forth above, the Court finds The Court finds in favor of PLAINTIFF GARRIS AS TO THE FIFTH CAUSE OF ACTION regarding the November 14, 2017 meeting, and in favor of DEFENDANT LEXINGTON SCHOOL DISTRICT ONE ON ALL REMAINING CAUSES OF ACTION. The parties shall file motions for attorneys' fees as appropriate.

IT IS SO ORDERED.

THIS THE ____ DAY OF _____, 2019.

THE HONORABLE WILLIAM A. MCKINNON



Lexington Common Pleas

Case Caption: Jada Garris VS Lexington County School District One

Case Number: 2017CP3204435

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2019-11-22 12:23:01 page 9 of 9

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-_____

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,
vs.

Lexington County School District One,
Defendant.

SUMMONS

TO THE DEFENDANT 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 upon the subscriber, at his office, P. O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

s/Taylor Smith

Taylor M. Smith IV (SC #101584)
Andrew S. Radeker (SC #73743)
HARRISON & RADEKER, P.A.
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Columbia, South Carolina 29250
(803) 779-2211
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 5, 2017

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-_____

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,
vs.

Lexington County School District One,
Defendant.

COMPLAINT

The Plaintiff, complaining of the Defendant herein, alleges:

1. Plaintiff Jada Garris is a citizen, resident, taxpayer, and registered elector of Lexington County for purposes of the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et. seq. (hereinafter “FOIA”) and S.C. Code Ann. § 15-53-10 et seq., known as the Uniform Declaratory Judgment Act. Plaintiff possesses standing to bring this lawsuit as a Lexington County taxpayer. She brings this action individually and on behalf of all others similarly situated.

2. Defendant Lexington County School District One (hereinafter “Defendant”) is a body politic and corporate form, which represents an area of Lexington County, whose purpose is to provide a free school education for area pupils.

3. Defendant is a “public body” for purposes of FOIA.

4. This Court possesses jurisdiction under the following decisions, which address public importance and taxpayer standing: South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013), American Petroleum Institute v. S.C. Dep’t. of Revenue, 382 S.C. 572, 677 S.E.2d 16 (2009), South Carolina Public Interest Foundation v. Harrell, 378 S.C. 441, 663 S.E.2d 52 (2008), Sloan v. Department of Transportation, 379 S.C. 160, 666 S.E.2d 236 (2008), Sloan v. Hardee, 357 S.C. 495, 640 S.E.2d

457 (2007); Cornelius v Oconee County, 369 S.C. 531, 633 S.E.2d 492 (2006); Sloan v. Department of Transportation, 365 S.C. 299, 618 S.E.2d 876 (2005), Sloan v. Wilkins, 362 S.C. 430, 608 S.E.2d 579 (2005); Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004); Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), Sloan v. School District of Greenville County, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), Baird v. Richland County, 333 S.C. 519, 511 S.E.2d 69 (1999), Newman v. Richland County Historic Preservation Commission, 325 S.C. 79, 480 S.E.2d 72 (1997); under S.C. Code Ann. § 15-53-10 et seq., known as the Uniform Declaratory Judgment Act and under S.C. Code Ann. § 30-4-10 et. seq., the South Carolina Freedom of Information Act, to adjudicate this matter.

5. In addition to having an interest in how millions of dollars in education funding is spent locally through Defendant school district, Plaintiff also has an interest, like other citizens and residents of South Carolina, in making sure Defendant operates in an open and public manner.

6. A favorable order to Plaintiff in this matter would vindicate both the important public interest of taxpayers, with whom Ms. Garriss is similarly situated, but also her personal interest in seeing that such public education funds are spent responsibly and in an open and public manner.

7. This action raises statutory issues of great public importance, namely the proper interpretation of a proviso of the currently-enacted state budget, and Plaintiff asks the Court to grant her standing based upon the great public importance of the statutory issues this action raises.

8. This Court also possesses jurisdiction under FOIA, specifically § 30-4-100, to review, enforce the provisions of FOIA and provide relief to the Plaintiff.

9. The purpose of FOIA is described in S.C. Code Ann. § 30-4-15:

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.

10. “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (S.C. 2001) (citing South. Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978)).

11. FOIA provides that “[a]ny person has a right to inspect or copy any public record of a public body.” S.C. Code Ann. § 30-4-30(a).

12. Upon receiving a written FOIA request, the public body must provide its written response regarding its final determination of the availability of records responsive to the request within 15 business days. S.C. Code Ann. § 30-4-30(c). “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.” Id.

13. FOIA also provides that “every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70 of this chapter.” S.C. Code Ann. § 30-4-60.

14. A “meeting” is defined as “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” S.C. Code Ann. § 30-4-20(d).

15. FOIA also mandates that public bodies, such as Defendant, close the open session of a meeting by announcing a specific purpose for closing a meeting to the public (S.C. Code Ann. § 30-4-70(b)), provide public written notice and agendas of its scheduled meetings (S.C. Code Ann. § 30-4-80), and keep written minutes of all of its public meetings (S.C. Code Ann. § 30-4-90).

16. This matter concerns several violations of FOIA regarding Defendant's handling of record requests, its public meetings and its perceived culture of general antipathy towards South Carolina residents' right to learn the activities of the school district at minimum cost or delay.

FOR A FIRST CAUSE OF ACTION

17. That each and every paragraph herein is repeated as if fully set forth.

18. In early December 2016, Defendant noticed and provided an agenda to the public whereby the Lexington County School District One Board of Trustees (hereinafter "Defendant Board") would meet on December 6, 2016 at the Auditorium of Central Services located at 100 Tarrar Springs Road in Lexington, South Carolina. A copy of the notice is attached hereto as "Exhibit A".

19. At the time noted on the notice and agenda, the Defendant Board did not appear nor otherwise convene a meeting in the Auditorium of Central Services.

20. No sign or other notice was posted in the Auditorium or shared otherwise publicly, noting an alternate venue for the December 6, 2016 meeting.

21. Upon information and belief, Defendant Board did meet on December 6, 2016.

22. The Defendant's failure to properly notify the public of the correct place for its meeting or its deliberate failure to meet in accordance with the location provided to the public is a violation of FOIA.

23. Plaintiff seeks a declaration that Defendant violated FOIA and rescission of actions taken at any meeting on December 6, 2016.

FOR A SECOND CAUSE OF ACTION

24. That each and every paragraph herein is repeated as if fully set forth.

25. On February 28, 2017, Plaintiff submitted a written request for information to Defendant, pursuant to FOIA, for “a copy of the audio from the February 11, 2017 Board Workshop.” A copy of the request is attached hereto as “Exhibit B”.

26. Defendant provided a written determination to Plaintiff’s FOIA request on March 9, 2017, in which it refused to provide a copy of the requested audio on the basis that the audio is not a public record, as defined by FOIA.

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

28. Upon information and belief, Defendant has used, presently possesses, or retains, the tape or recording of the audio sought by Plaintiff’s FOIA request.

29. The Defendant’s failure to produce this record under no lawful claim of exemption is a violation of FOIA.

30. Plaintiff seeks a declaration that Defendant violated FOIA and an injunction to provide the record responsive to the request.

FOR A THIRD CAUSE OF ACTION

31. That each and every paragraph herein is repeated as if fully set forth.

32. On March 20, 2017 at some point after 9:45 p.m., Defendant uploaded to its website (www.lexington1.net) a finalized version of an agenda for its March 21, 2017 Defendant Board meeting.

33. Both the entry on Defendant’s website and the date atop the agenda file read “March 16, 2017”.

34. FOIA provides “[a]n agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body

and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings.” S.C. Code Ann. § 30-4-80.

35. The posting of the agenda on the website less than 24 hours from the start of the Defendant Board meeting and deliberately backdating the document and website entry to make it appear it had been posted four days prior is a willful violation of FOIA.

36. Plaintiff seeks a declaration that Defendant willfully violated FOIA, is guilty of a misdemeanor as prescribed in S.C. Code Ann. § 30-4-110 (at the time of this violation) and shall be fined One Hundred Dollars, and rescission of actions taken at its March 21, 2017 Board meeting.

FOR A FOURTH CAUSE OF ACTION

37. That each and every paragraph herein is repeated as if fully set forth.

38. In April, Plaintiff viewed information provided by Defendant on its website, which, as an example, described a District expenditure as such: “01/05/2017 – PURCHASED SERVICE – Travel – 111.89”.

39. Subsequently, Plaintiff viewed the same type of information provided by Defendant on its website, which also as an example, described a similar District expenditure as: “10/17/2017 – EMPLOYEE – Travel – \$141.24”.

40. The South Carolina Legislature enacted H. 3720, the General Appropriations Bill for Fiscal Year 2017-2018, and specifically Proviso 1.26 of Section 1, H.630, Department of Education which provides, among other things:

School districts must maintain a transaction register that includes a complete record of all funds expended over one hundred dollars, from whatever source, for whatever purpose. The register must be prominently posted on the district's internet website and made available for public viewing and downloading. The register must include for each expenditure:

- (i) the transaction amount;
- (ii) the name of the payee; and

(iii) a statement providing a detailed description of the expenditure.

The register must not include an entry for salary, wages, or other compensation paid to individual employees. The register must not include any information that can be used to identify an individual employee. The register must be accompanied by a complete explanation of any codes or acronyms used to identify a payee or an expenditure. The register must be searchable and updated at least once a month.

Each school district must also maintain on its internet website a copy of each monthly statement for all of the credit cards maintained by the entity, including credit cards issued to its officers or employees for official use. The credit card number on each statement must be redacted prior to posting on the internet website. Each credit card statement must be posted not later than the thirtieth day after the first date that any portion of the balance due as shown on the statement is paid.

41. The Proviso also provides:

School districts that do not maintain an internet website must transmit all information required by this provision to the Comptroller General in a manner and at a time determined by the Comptroller General to be included on the internet website.

The provisions contained herein do not amend, suspend, supersede, replace, revoke, restrict, or otherwise affect Chapter 4, Title 30, the South Carolina Freedom of Information Act. Nothing in this proviso shall be interpreted as prohibiting the State Board of Education to exercise its authority to grant waivers under Regulation 43-261.

42. Upon information and belief, Defendant has neither prominently posted, nor maintained on its website for viewing and downloading, the information required by this provision.

43. Upon information and belief, Defendant has not transmitted this required information to the South Carolina Comptroller General's Office.

44. Plaintiff seeks a declaration under S.C. Code Ann. § 15-53-20 that Defendant has violated this provision of the current fiscal year state budget September 29 FOIA request is deemed approved, that Defendant violated FOIA and that Plaintiff is entitled to an injunction against Defendant for it to provide the records responsive to the request.

45. Plaintiff further seeks an injunction, under S.C. Code Ann. § 15-53-120, requiring Defendant to either prominently post and maintain on its website this provision's required information or to regularly transmit said information to South Carolina Comptroller General's Office. Such injunction is necessary and proper to effectuate the purpose of the interpreted provision, which has provides no enforcement mechanism for any administrative agency in South Carolina.

FOR A FIFTH CAUSE OF ACTION

46. That each and every paragraph herein is repeated as if fully set forth.

47. On May 10, 2017, Plaintiff submitted a written request for information to Defendant, pursuant to FOIA, for "a copy of the audio from the February 11, 2017 Board Workshop."

48. Plaintiff received a written determination from Defendant "that the official minutes from the February 11, 2017 Special Board Workshop are the public record of that meeting and that eh audio is merely temporary memory-jogging notes made by a district employee for the sole purpose of preparing the official minutes and verifying their accuracy before finalizing them." A copy of Defendant's written determination is attached hereto as Exhibit "C".

49. S.C. Code Ann. § 30-4-90 provides for the creation, retention, and dissemination of public body meeting minutes. Section 30-4-90 does not purport to create an exemption, nor otherwise change the definition of a public record, so as to make the audio recording of a meeting unavailable to a requester, under FOIA.

50. The Defendant's failure to produce this record under no lawful claim of exemption is a violation of FOIA.

51. Plaintiff seeks a declaration that Defendant violated FOIA and that Plaintiff is entitled to an injunction against Defendant for it to provide the record responsive to this request.

FOR A SIXTH CAUSE OF ACTION

52. That each and every paragraph herein is repeated as if fully set forth.

53. On June 2, 2017 Plaintiff submitted a written request for information to Defendant, pursuant to FOIA, for (among other things) “1) All information contained within the binder that was in the possession of each school board member as it existed when it was handed to each school board member before or during the April 25, 2017 board meeting and ... 3) Any and all documents provided to a board member during the closed portion of the April 25, 2017 board meeting.” A copy of this request is attached hereto as “Exhibit D”.

54. Plaintiff received a written determination from Defendant regarding the availability of records responsive to the June 2 FOIA request but such determination provided that no binder was used at the referenced board meeting and “[d]ocuments or information provided to the board during Executive Session, a closed meeting, are not subject to disclosure as explained in section 30-4-70 of the South Carolina FOIA.”

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

56. Plaintiff’s June 2 FOIA request sought records and information that was used by a Defendant board member during both the open and executive session of April 25, 2017 public meeting.

57. S.C. Code Ann. § 30-4-70 provides no exemption for the disclosure of information pursuant to a lawful written request under FOIA.

58. The Defendant’s failure to produce these records under no lawful claim of exemption is a violation of FOIA.

59. Plaintiff seeks a declaration that Defendant violated FOIA by refusing to disclose information and records responsive to Plaintiff's request and that Plaintiff is entitled to an injunction against Defendant for it to provide the records responsive to said request.

FOR A SEVENTH CAUSE OF ACTION

60. That each and every paragraph herein is repeated as if fully set forth.

61. On June 19, 2017, Defendant uploaded to its website (www.lexington1.net) a finalized version of an agenda for its June 15, 2017 Defendant Board meeting.

62. The entry on Defendant's website and the date atop the agenda for the June 15, 2017 board meeting both read "June 12, 2017".

63. The posting of the agenda on the website after the relevant Defendant Board meeting and deliberately backdating the document and website entry to make it appear it had been posted three days prior is a willful violation of FOIA.

64. Plaintiff seeks a declaration that Defendant violated FOIA in this instance and rescission of actions taken at the June 15, 2017 meeting.

FOR AN EIGHTH CAUSE OF ACTION

65. That each and every paragraph herein is repeated as if fully set forth.

66. On July 17, 2017, at some point between 7:45 p.m. and 8:45 p.m., Defendant uploaded to its website (www.lexington1.net) a finalized version of an agenda for its July 18, 2017 Defendant Board meeting scheduled for 7:30 p.m.

67. The entry on Defendant's website and the date atop the agenda for the July 18, 2017 board meeting both read "July 11, 2017".

68. The posting of the agenda on the website less than 24 hours prior to Defendant's Board meeting and deliberately backdating the document and website entry to make it appear it had been posted seven days prior is a willful violation of FOIA.

69. Plaintiff seeks a declaration that Defendant violated FOIA in this instance and rescission of actions taken at the July 18, 2017 meeting.

FOR A NINTH CAUSE OF ACTION

70. That each and every paragraph herein is repeated as if fully set forth.

71. On June 29, 2017, Plaintiff submitted a written request for information to Defendant: “[u]nder the Freedom of Information Act, I am requesting the names of the final pool of applicants for the position of Chief Human Resources Officer that was approved by the board on January 17, 2017. I would also like to know the number of applicants for the position.”

72. On July 5, 2017, Defendant provided its written determination that “[t]here was no was no final pool of applicants for this position. The superintendent has the ability to fill any position through promotion or transfer at any time.”

73. The term “final” appears in FOIA in S.C. Code Ann. § 30-4-40(a)(13), which provides an exemption to disclosure of “[a]ll materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying.” (emphasis added)

74. “The term ‘final’ in § 30-4-40(a)(13) refers to the last group of applicants, with at least three members, from which the employment selection is made.” New York Times v. Spartanburg School Dist., 649 S.E.2d 28, 374 S.C. 307 (S.C., 2007).

75. Defendant did not cite the above exemption in its written determination, but Defendant also did not disclose the information sought from Plaintiff’s request.

76. The Defendant’s failure to produce these records and information under no lawful claim of exemption is a violation of FOIA.

77. Plaintiff seeks a declaration that Defendant violated FOIA and that Plaintiff is entitled to an injunction against Defendant for it to provide the records responsive to this request.

FOR A TENTH CAUSE OF ACTION

78. That each and every paragraph herein is repeated as if fully set forth.

79. On August 28, 2017, Plaintiff submitted a written request for information to Defendant, pursuant to FOIA, for:

- 1) The written report of the Architectural Selection Committee, listing the persons or firms that responded to invitations to submit information and enumerating the reasons of the committee for selecting the particular ones to be interviewed for all architectural awards dating August 25, 2015 – August 25, 2017.
- 2) The annual report to the board for sole source and emergency procurements dating August 25, 2015 – August 25, 2017.

80. Plaintiff did not receive a written determination from Defendant regarding the availability of records responsive to the August 28 FOIA request within the 20 business days allowed by law.

81. Plaintiff has not received all the records responsive to its August 28 FOIA request.

82. The Defendant's failure to produce these records under no lawful claim of exemption is a violation of FOIA.

83. Plaintiff seeks a declaration that Plaintiff's August 28 FOIA request is deemed approved, that Defendant violated FOIA and that Plaintiff is entitled to an injunction against Defendant for it to provide the records responsive to this request.

FOR A ELEVENTH CAUSE OF ACTION

84. That each and every paragraph herein is repeated as if fully set forth.

85. On September 29, 2017, Plaintiff submitted a written request for information to Defendant, pursuant to FOIA, for:

- 1) All communication related to the Department of Labor during the time period of January 1, 2015 – September 15, 2017.
- 2) The construction cost of each Center for Advanced Study, date of construction and source of funding to include all of the centers at the following locations, including centers that have disbanded or evolved:
 - a. Pelion High School
 - b. Lexington Technology Center
 - c. River Bluff High School
 - d. White Knoll High School
 - e. Lexington High School
 - f. Gilbert High School
- 3) All information related to the disbursement of equipment and materials when the Center for Sustainable Solutions and Center for World Language and International Study disbanded.
- 4) All documents provided to a board member by any employee of Lexington School District One and any member of the leadership/administrative team before, during, and after the September 26, 2017 board workshop.
- 5) All communication and documents related to the property behind Gilbert Elementary School regarding improvements (not demolition), to include, but not limited to, fencing, equipment, and construction.

86. Plaintiff did not receive a written determination from Defendant regarding the availability of records responsive to the September 29 FOIA request within the 20 business days allowed by law.

87. Plaintiff has not received all the records responsive to its September 29 FOIA request.

88. The Defendant's failure to produce these records under no lawful claim of exemption is a violation of FOIA.

89. Plaintiff seeks a declaration that Plaintiff's September 29 FOIA request is deemed approved, that Defendant violated FOIA and that Plaintiff is entitled to an injunction against Defendant for it to provide the records responsive to this request.

FOR AN TWELFTH CAUSE OF ACTION

90. That each and every paragraph herein is repeated as if fully set forth.

91. Upon information and belief, on November 7, 2017, Defendant published to its website a notice and agenda for its November 14, 2017 monthly board meeting. A copy of the agenda is attached hereto as Exhibit E.

92. The agenda provides that the meeting was to be called to order at 6 p.m. in the Auditorium of Building One of Central Services.

93. The attached agenda mentions executive session beside the call to order and also specifies the closed session of the meeting as agenda item “2.0”.

94. Upon information and belief, at 6 p.m. on November 14, 2017, Defendant Board members were seated in the boardroom adjacent to the auditorium at the noticed location.

95. Upon information and belief, shortly after 6 p.m., Defendant Board, while present in the boardroom, voted to enter executive session.

96. Upon information and belief, at no point was the November 14, 2017 meeting called to order on that day in the auditorium of the noticed location.

97. S.C. FOIA provides that “before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session.” S.C. Code Ann. § 30-4-70(b).

98. Upon information and belief, at no point prior to entering executive session did the presiding officer of Defendant Board announce the specific purpose or purposes for entering such closed session.

99. Plaintiff seeks 1) a declaration that Defendant violated FOIA by failing call the meeting to order in the noticed location and by failing to announce a specific purpose for executive session, 2) rescission of actions taken at the November 14, 2017 Defendant board meeting, and 3) an injunction to compel Defendant Board to meet in locations it has noticed for its public meetings and to announce a specific purpose for entering executive session prior to it doing so.

WHEREFORE, the Plaintiff prays:

- (a) For an order of this Court declaring Defendant violated FOIA when it committed the above designated violations;
- (b) To issue an injunction requiring Defendant to provide the records responsive to the requests designated above and to repay Defendant monies related to overcharging Plaintiff to receive certain records;
- (c) To grant Plaintiff its costs and attorneys' fees under S.C. Code Ann. § 30-4-100 and S.C. Code Ann. § 15-53-10 et seq.;
- (d) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/Taylor Smith
 Taylor M. Smith IV (SC #101584)
 Andrew S. Radeker (SC #73743)
 HARRISON & RADEKER, P.A.
 Post Office Box 50143
 Columbia, South Carolina 29250
 (803) 779-2211
 (803) 779-6700 (facsimile)
 taylor@harrisonfirm.com (email)
 drew@harrisonfirm.com (email)
 ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
 December 5, 2017



DATE: November 21, 2016

TO: News Media

FROM: Mary Beth Hill, Chief Communications Officer

NOTICE OF: December 6, 2016 Special Called Board Meeting

On Tuesday, December 6, 2016, at 6:30 p.m., the Lexington County School District One Board of Trustees will hold a special called board meeting in the Auditorium of Lexington County School District One's Central Services Building located at 100 Tarrar Springs Road in Lexington, South Carolina.

The board meets at 5:30 p.m. for dinner.

Judge James O. Spence swears in the new board members at 6:30 p.m. As soon as the new board is sworn in, the board breaks for a reception honoring the new board.

The board resumes its board meeting at 7:30 p.m. in General Session with a new board orientation in accordance with Board Policy BBBB New Member Orientation.

We invite the public to attend the meetings and reception and would appreciate your assistance in making the public aware of these.

Thank you for your help.



DATE: November 21, 2016

TO: Principals and Other Building Supervisors

FROM: Mary Beth Hill, Chief Communications Officer

NOTICE OF: December 6, 2016 Special Called Board Meeting

We would appreciate your assistance in making the public aware of this meeting. Please post this public notice at all building entrances and in all employee workstations including, but not limited to, the main office, teachers' lounge, cafeteria office and custodial office. Thank you for your help.

On Tuesday, December 6, 2016, at 6:30 p.m., the Lexington County School District One Board of Trustees will hold a special called board meeting in the Auditorium of Lexington County School District One's Central Services Building located at 100 Tarrar Springs Road in Lexington, South Carolina.

The board meets at 5:30 p.m. for dinner.

Judge James O. Spence swears in the new board members at 6:30 p.m. As soon as the new board is sworn in, the board breaks for a reception honoring the new board.

The board resumes its board meeting at 7:30 p.m. in General Session with a new board orientation in accordance with Board Policy BBBB New Member Orientation.

We invite the public to attend the meetings and reception and would appreciate your assistance in making the public aware of these.



DATE: November 21, 2016

TO: Cynthia S. Smith, Board Secretary

FROM: Mary Beth Hill, Chief Communications Officer

NOTICE OF: December 6, 2016 Special Called Board Meeting

In compliance with the Freedom of Information Act, we have notified local media that the Lexington County School District One Board of Trustees will hold a special called board meeting in in the Auditorium of Lexington County School District One's Central Services Building located at 100 Tarrar Springs Road in Lexington, South Carolina, on Tuesday, December 6, 2016.

The notice stated that the board meets at 5:30 p.m. for dinner; that Judge James O. Spence swears in the new board members at 6:30 p.m. during General Session; that as soon as the new board is sworn in, the board breaks for a reception honoring the new board; that the board resumes its board meeting at 7:30 p.m. in General Session with a new board orientation in accordance with Board Policy BBBB New Member Orientation; that we invite the public to attend the General Session; and that we would appreciate the media's assistance in making the public aware of the meeting.

In addition, every principal and other building supervisor received a copy of the public notice that they were asked to post at all building entrances and in all employee workstations including, but not limited to, the main office, teachers' lounge, cafeteria office and custodial office.

The district's website and telephone information line continuously carry a list of all board meetings. The district also posts a copy of the public notice and agenda on the district's website.

From Jada Garris <ispyjada@yahoo.com> Feb 28 at 9:44 AM
To Mary Beth Hill

FREEDOM OF INFORMATION ACT REQUEST

Jada Garris
207 Centerville Rd.
Gilbert, SC 29054
803.622.6866

February 28, 2017

Ms. Mary Beth Hill
Chief Communications Officer
Lexington School District One
100 Tarrar Springs Rd.
Lexington, SC 29072

Dear Ms. Hill:

Under the South Carolina Freedom of Information Act, §30-4-10 et seq., I am requesting a copy of the audio from the February 11, 2017 Board Workshop. Thank you for your consideration of this request.

Sincerely,
Jada Garris

May 17, 2017

Ms. Jada Garris
207 Centerville Rd.
Gilbert, SC 29054
ispyjada@yahoo.com

Dear Ms. Garris:

This letter is in response to your May 10, 2017 email request for information from Lexington County School District One under the Freedom of Information Act. Specifically, you asked for "a copy of the audio from the February 11, 2017 Board Workshop."

Lexington County school District One's position remains the same based on the advice we have been provided by our attorney and the South Carolina Department of Archives and State History.

Should you wish to provide the district with a copy of the Attorney General's opinion, to which you have made repeated reference, the district would be happy to review it.

As previously stated, the district is advised that the official minutes from the February 11, 2017 Special Board Workshop are the public record of that meeting and that the audio is merely temporary memory-jogging notes made by a district employee for the sole purpose of preparing the official minutes and verifying their accuracy before finalizing them. In other words, the audio recording is the employee's reference tool until no longer needed (after final approval of the minutes). In fact, the chair states this at the beginning of every meeting by saying that the meeting is taped for accuracy of the minutes.

The minutes of the February 11, 2017 meeting (the official record of the meeting) are already online here <http://www.lexington1.net/about/school-board/meeting-minutes>.

Should you have any questions about the contents of this letter, please feel free to contact me by email at mbhill@lexington1.net.

Sincerely,



Mary Beth Hill
Chief Communications Officer

Ms. Mary Beth Hill
 Chief Communications Officer
 Lexington School District One
 100 Tarrar Springs Rd.
 Lexington, SC 29072

Dear Ms. Hill:

Under the South Carolina Freedom of Information Act I am requesting to inspect and make copies of:

1) All information contained within the binder that was in the possession of each school board member as it existed when it was handed to each school board member before or during the April 25, 2017 board meeting.

2) Any and all documents provided to a board member by any employee of Lexington School District One and any member of the leadership/administrative team, which includes: Mr. Jeff Salters, Chief Operations Officer; Ms. Gloria Talley, Chief Academic Officer; Ms. Mary Beth Hill, Chief Communications Officer; Mr. John Butler, Chief Finance Officer; Mr. Jeff Caldwell, Chief Student Services Officer; Ms. Mary Walker, Chief Human Resources Officer; before, during, and/or after either the open or closed portion of the February 21, 2017 board meeting.

3) Any and all documents provided to a board member during the closed portion of the April 25, 2017 board meeting.

4) Any and all documents which describe rules or guidelines concerning the use of recording equipment before, during, or after a board meeting.

5) All communication related to my request for a copy of the audio recording of the February 11, 2017 Board Workshop. Including, but not limited to, correspondence from Dr. Brad Pitts, Ms. Cheryl Layton and Ms. Mary Beth Hill, of whom I requested a copy of the audio.

Thank you for your consideration of this request.

Sincerely,
 Jada Garris

<06-19-2017 Hill to Garris.pdf>

<02-21-2017_Public_Packet.pdf>

<04-25-2017_Board_Meeting_Public_Packet.pdf>

<Cheryl Layton Emails.pdf>

<FY18 First Reading Complete Big Budget Book.pdf>

<FY18 First Reading Small Budget Book.pdf>

DATE: November 7, 2017
TO: Lexington County School District One Board of Trustees
FROM: Superintendent Gregory D. Little, Ed.D.
REGARDING: November 14, 2017 Monthly Board Meeting

On Tuesday, November 14, 2017, at 7:30 p.m., the Lexington County School District One Board of Trustees will hold its regular monthly meeting in the Auditorium of Building One of Central Services located at 100 Tarrar Springs Road in Lexington, South Carolina. At 6 p.m., the Board of Trustees meets in Executive Session.

NOVEMBER 14, 2017 BOARD AGENDA

- 1.0 Call to Order 6 p.m. Executive Session**
Chair Debra L. Knight presides
- 2.0 Executive Session**
 - 2.1 Legal Briefing Regarding a Bond Referendum Ethics
 - 2.2 Legal Briefing Regarding a Student Matter
 - 2.3 Employment Recommendations for 2017–2018
 - 2.4 Employment Recommendations for 2018–2019
 - 2.5 Contractual Matter Regarding Chapter 1 and Chapter 17 Third-Party Inspections for New Middle School
 - 2.6 Contractual Matter Regarding Selection of Educational Demography Consulting
- 3.0 Adjourn Executive Session**
- 4.0 Call to Order General Session**
 - 4.1 Notification of compliance with S.C. Freedom of Information Act
- 5.0 Approval of the Agenda**
- 6.0 Approval of Minutes of the Oct. 10, 2017 Special Board Meeting and Oct. 17, 2017 Board Meeting**
- 7.0 Reports and Action Items, if Needed, from Executive Session**
- 8.0 Honors and Achievements**
- 9.0 Citizens' Participation**
- 10.0 Action Items**
 - 10.1 Every Student Succeeds Act Resolution — Superintendent Greg Little, Ed.D.
 - 10.2 Student Travel Requests — Gloria Talley, Ed.D., Chief Academic Officer
- 11.0 Superintendent's Report**
 - 11.1 Report — Superintendent's Update — Superintendent Greg Little, Ed.D.
 - A. Report — Customer Service Update — Mary Walker, Senior Human Resources Consultant
 - B. Report — Operations Update — Jeff Salters, Chief Operations Officer
 - C. Report — Finance Update 2016–2017 Audit — John Butler, Chief Financial Officer
 - 11.2 First Reading — Policy IHBA Special Education/Programs for Handicapped/Disabled Students — Gloria Talley, Ed.D.
 - 11.3 First Reading — Policy IHCD-R Advanced College Placement— Gloria Talley, Ed.D.
 - 11.4 First Reading — Policy IKA-R Grading/Assessment Systems— Gloria Talley, Ed.D.
 - 11.5 Report — Minority Business Enterprise Quarterly Report — John Butler
- 12.0 Items for Board Information**
- 13.0 Adjourn**

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2017-CP-32-04435

ACCEPTANCE OF SERVICE

I am authorized to accept service of the Summons and Complaint on behalf of Defendant Lexington County School District One, and service of the within Summons and Complaint, with exhibits in the above-captioned matter is hereby accepted by me on behalf of Defendant Lexington County School District One, on the date listed below, at 3700 Forest Drive, Suite 404, Columbia, South Carolina 29204.

Respectfully Submitted,

DUFF & CHILDS, L.L.C.

By: s/David N. Lyon

David T. Duff, (SC Bar #1768)

David N. Lyon (SC Bar #100676)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

Facsimile: (803) 790-0605

dduff@duffchilds.com

dlyon@duffchilds.com

Attorneys for Defendant Lexington County
School District One

March 13, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-32-04435

**DEFENDANT LEXINGTON COUNTY
SCHOOL DISTRICT ONE'S ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT**

Defendant Lexington County School District One, (hereinafter, the "District"), by and through its undersigned counsel, hereby submits its Answer and Affirmative Defenses in response to the Complaint of Jada Garris, individually, and on behalf of all others similarly situated, (hereinafter, the "Plaintiff"). In response to the specific allegations in the enumerated paragraphs below, the District responds as follows:

1. The District is without information sufficient to form a belief concerning the truth of the allegations in the first sentence in Paragraph 1, and therefore denies same. The District agrees that Plaintiff has standing to bring this suit in Lexington County for alleged violations of the South Carolina Freedom of Information Act (hereinafter, "FOIA"). The remainder of the allegations in Paragraph 1 are denied.

2. Denied as stated. The District agrees only that it is a political subdivision that provides public educational services to eligible students residing within its boundaries.

3. The allegations in Paragraph 3 are admitted.

4. Admitted in part, denied in part. The District admits only that this court has jurisdiction to adjudicate violations of the FOIA and grant any relief that is authorized therein. The remainder of the allegations in Paragraph 4 are denied.

5. The District is without information sufficient to form a belief concerning the truth of the allegations in Paragraph 5 and therefore denies same.

6. The allegations in Paragraph 6 are denied. The District alleges that Plaintiff's Complaint assert some claims that could have been resolved without a lawsuit and further alleges that other claims assert hyper-technical, non-substantive violations of FOIA that do not vindicate an important public interest, but instead, squander public resources in needless litigation.

7. The allegations in Paragraph 7 are denied.

8. Paragraph 8 is not a proper allegation under Rule 8, SCRCF, in that it makes no particular allegation, but merely states a conclusion of law; therefore, no response is required. To the extent that a response is required, the District avers only that this court has jurisdiction to adjudicate violations of the FOIA and grant any relief that is authorized therein. The remainder of the allegations in Paragraph 8 are denied.

9. Paragraph 9 is not a proper allegation under Rule 8, SCRCF, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

10. Paragraph 10 is not a proper allegation under Rule 8, SCRCF, in that it makes no particular allegation, but merely quotes South Carolina Supreme Court opinions; therefore, no response is required. To the extent that a response is required, the District avers that these

opinions speak for themselves and respectfully refers the Court to the cases themselves for a full and accurate statement of the law.

11. Paragraph 11 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

12. Paragraph 12 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

13. Paragraph 13 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

14. Paragraph 14 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

15. Paragraph 15 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely summarizes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that the statutes cited speak for themselves and respectfully refers the Court to the statutes for a full and accurate statement of the law.

16. The allegations in Paragraph 16 are denied.

FOR A FIRST CAUSE OF ACTION

17. The District incorporates by reference herein its responses to the preceding Paragraphs of Plaintiff's Complaint.

18. The allegations in Paragraph 18 are admitted. The District avers that the notice and agenda speak for themselves and respectfully refers the Court to those documents for a full and accurate statement of their contents.

19. The allegations in Paragraph 19 are denied.

20. The allegations in Paragraph 20 are admitted. The District further avers that no sign noting an alternate venue was required.

21. The allegations in Paragraph 21 are admitted.

22. The allegations in Paragraph 22 are denied.

23. The allegations in Paragraph 23 are denied. Paragraph 23 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A SECOND CAUSE OF ACTION

24. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

25. The allegations in Paragraph 25 are admitted. The District avers that Plaintiff's written FOIA request speaks for itself and respectfully refers the Court to that request for a full and accurate statement of its contents.

26. The allegations in Paragraph 26 are admitted. The District avers that its written response speaks for itself and respectfully refers the Court to that response for a full and accurate statement of its determination.

27. Paragraph 27 is not a proper allegation under Rule 8, SCRCR, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

28. The allegations in Paragraph 28 are denied as stated. The District agrees only that a digital recording device was used by the Executive Administrative Assistant to record the Board Workshop in question, solely as a memory aid for the purpose of preparing a draft of minutes of the meeting and verifying the accuracy of said draft. The District further states that it possesses the recording because the recording became the subject of a FOIA dispute, and, on the advice of counsel, the recording has been maintained.

29. The allegations in Paragraph 29 constitute a legal conclusion, to which no response is required. To the extent that a response is required, the District denies the allegations in Paragraph 29.

30. The allegations in Paragraph 30 are denied. Paragraph 30 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A THIRD CAUSE OF ACTION

31. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

32. The allegations in Paragraph 32 are denied.

33. The allegations in Paragraph 33 are admitted.

34. Paragraph 34 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

35. The allegations in Paragraph 35 are denied.

36. The allegations in Paragraph 36 are denied. Paragraph 36 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A FOURTH CAUSE OF ACTION

37. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiffs' Complaint.

38. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38, and on that basis, deny, generally and specifically, each and every allegation contained therein.

39. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39, and on that basis, deny, generally and specifically, each and every allegation contained therein.

40. Paragraph 40 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes language from a proviso; therefore, no response is required. To the extent that a response is required, the District avers that this proviso speaks for itself and respectfully refers the Court to the proviso for a full and accurate statement of the law.

41. Paragraph 41 is not a proper allegation under Rule 8, SCRCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this proviso speaks for itself and respectfully refers the Court to the proviso for a full and accurate statement of the law.

42. Denied as stated. The District states that it has complied with the requirements of the proviso to the satisfaction of the Comptroller General, which is the governmental entity that oversees and reviews the General Assembly's financial transparency mandates for school districts. See Attachment A.

43. The allegations in Paragraph 43 are admitted. The District states that the Comptroller General has not requested that the District provide the information referenced in this paragraph.

44. The allegations in Paragraph 44 are denied. Paragraph 44 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

45. The allegations in Paragraph 45 are denied. Paragraph 45 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A FIFTH CAUSE OF ACTION

46. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

47. The allegations in Paragraph 47 are admitted.

48. The allegations in Paragraph 48 are admitted. The District avers that its written response speaks for itself and respectfully refers the Court to that response for a full and accurate statement of its determination.

49. Paragraph 49 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but paraphrases statutory language and asserts conclusions of law; therefore, no response is required. To the extent that a response is required, the District denies the allegations in Paragraph 49. Further, the District avers that the statute cited speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

50. The allegations in Paragraph 50 constitute a legal conclusion, to which no response is required. To the extent that a response is required, the District denies the allegations in Paragraph 50.

51. The allegations in Paragraph 51 are denied. Paragraph 51 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A SIXTH CAUSE OF ACTION

52. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

53. The allegations in Paragraph 53 are admitted. The District avers that the written FOIA request speaks for itself and respectfully refers the Court to that request for a full and accurate statement of its contents.

54. Admitted in part, denied in part. The District generally admits that it provided its written determination regarding the availability of the records responsive to the request and asserted that any documents provided to the Board during Executive Session are not be subject to

disclosure. The District denies it stated no binder was used; and instead, it responded that the Board was not given binders. The District states that its response speaks for itself and respectfully refers the Court to that response for a full and accurate statement of the law.

55. Paragraph 55 is not a proper allegation under Rule 8, SCRCF, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District states that the statute cited speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

56. The allegations in Paragraph 56 are admitted.

57. The allegations in Paragraph 57 constitute a legal conclusion, to which no response is required. To the extent that a response is required, the District denies the allegations in Paragraph 57.

58. The allegations in Paragraph 58 constitute a legal conclusion, to which no response is required. To the extent that a response is required, the District denies the allegations in Paragraph 58.

59. The allegations in Paragraph 59 are denied. Paragraph 59 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A SEVENTH CAUSE OF ACTION

60. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

61. The Allegations in Paragraph 61 are denied.

62. The allegations in Paragraph 62 are admitted.

63. The allegations in Paragraph 63 are denied.

64. The allegations in Paragraph 64 are denied. Paragraph 64 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR AN EIGHTH CAUSE OF ACTION

65. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

66. The allegations in Paragraph 66 are denied.

67. The allegations in paragraph 67 are admitted.

68. The allegations in Paragraph 68 are denied.

69. The allegations in Paragraph 69 are denied. Paragraph 69 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A NINTH CAUSE OF ACTION

70. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

71. The allegations in Paragraph 71 are admitted.

72. The allegations in Paragraph 72 are admitted. The District avers that its written determination speaks for itself and respectfully refers the Court to that determination for a full and accurate statement of its contents.

73. Paragraph 73 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required. To the extent that a response is required, the District

avens that the statute cited speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

74. Paragraph 74 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes South Carolina Supreme Court opinions; therefore, no response is required. To the extent that a response is required, the District avers that the opinion cited speaks for itself and respectfully refers the Court to the cases themselves for a full and accurate statement of the law.

75. The allegations in Paragraph 75 are admitted. The District further avers it did not cite the above exemptions because it was neither necessary nor applicable to the specific request made by Plaintiff. The District further avers that it informed Plaintiff that records sought did not exist.

76. The allegations in Paragraph 76 constitute a legal conclusion, to which no response is required. To the extent that a response is required, the District denies the allegations in Paragraph 76.

77. The allegations in Paragraph 77 are denied. Paragraph 77 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A TENTH CAUSE OF ACTION

78. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

79. Admitted in part, denied in part. The District denies that the FOIA request sought "the annual report to the board for sole source and emergency procurements . . .," but avers

instead that the request sought “a list of all sole source and emergency procurements . . .” The remainder of the allegations in Paragraph 79 are admitted.

80. The District admits that its initial determination as to the availability of the documents requested were not made within the time period allotted by the FOIA, and therefore the request was considered granted. The District states that it provided its determination along with responsive documents on December 6, 2017.

81. The allegations in Paragraph 81 are denied.

82. The allegations in Paragraph 82 constitute a legal conclusion, to which no response is required. To the extent that a response is required, the District denies the allegations in Paragraph 82.

83. The allegations in Paragraph 83 are denied. Paragraph 83 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR AN ELEVENTH CAUSE OF ACTION

84. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff’s Complaint.

85. The District admits the allegations in Paragraph 85.

86. The District admits that its initial determination as to the availability of the documents requested were not made within the time period allotted by the FOIA, and therefore the request was considered granted. The District states that it provided its determination along with responsive documents on December 6, 2017.

87. Admitted in part, denied in part. The District admits that it has not yet provided Plaintiff with “All communications related to the Department of Labor . . .,” citing the statutory

provision requiring the requester to pay for the search and retrieval of public records and requesting that Plaintiff agree to pay for any such search before beginning it. No such agreement to pay was provided; therefore, the District did not provide those records. The remainder of the allegations in Paragraph 87 are denied.

88. The allegations in Paragraph 88 constitute a legal conclusion, to which no response is required. To the extent that a response is required, the District denies the allegations in Paragraph 88.

89. The allegations in Paragraph 89 are denied. Paragraph 89 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A TWELFTH CAUSE OF ACTION

90. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

91. The allegations in Paragraph 91 are admitted. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents.

92. Denied as stated. The agenda provides that "the Lexington County School District One will hold its regularly monthly meeting in the Auditorium of building One of Central Services. The Agenda further provides the Call to Order will be at 6:00 PM. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents. The remainder of the allegations in Paragraph 92 are denied.

93. The allegations in Paragraph 93 are admitted. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents.

94. Denied as stated. The District states that the boardroom is part of the auditorium building and the two spaces are separated by a door that remains open to the public to enter and observe any board meetings, except when the board is in executive session.

95. Denied as stated. The District agrees that the Board voted to enter into executive session as its first order of business on or around 6:00 PM. The District avers that the vote may have taken place in the boardroom adjacent to the auditorium, the door to which was open to the public.

96. The allegations in Paragraph 96 are denied.

97. Paragraph 97 is not a proper allegation under Rule 8, SCRCR, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that the statute cited speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

98. The allegations in paragraph 98 are denied, upon information and belief. The District further states that the Board agenda, which was timely published, listed all of the matters to be considered in executive session.

99. The allegations in paragraph 99 are denied. Paragraph 99 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

100. The District denies each allegation that is not specifically admitted herein.

Plaintiffs' "WHEREFORE" statement constitutes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

Without admitting any allegations asserted in the Complaint, the District interposes the following defenses. Nothing stated in any of the defenses constitutes a concession that the District bears any burden of proof on any issue on which it would not otherwise bear such burden.

FOR A FIRST AFFIRMATIVE DEFENSE

One or more of the Complaint's causes of action fail to state a claim upon which relief can be granted and therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(6).

FOR A SECOND AFFIRMATIVE DEFENSE

One or more of the Complaint's causes of action should be dismissed because the claims are moot as the records requested have been provided.

FOR A THIRD AFFIRMATIVE DEFENSE

The District has not improperly withheld any records under the FOIA.

FOR A FOURTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any relief beyond that set forth under FOIA, and the Court lacks subject matter jurisdiction over Plaintiff's requests for relief that exceeds the relief authorized under FOIA.

FOR A FIFTH AFFIRMATIVE DEFENSE

To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, the District's responses may refer to such materials for a full and accurate statement of its contents; however, the District's references are not intended to be, and should

not be construed as an admission that the cited materials: (a) are correctly cited or quoted by Plaintiff; (b) are relevant to this, or any other, action; or (c) support Plaintiff's assertions of legally actionable or cognizable claims for which any relief is available.

FOR A SIXTH AFFIRMATIVE DEFENSE

All actions taken by the District and its employees with respect to the Plaintiff were lawful, proper, reasonable, and appropriate.

FOR A SEVENTH AFFIRMATIVE DEFENSE

All actions taken by the District and its employees with respect to the Plaintiff were conducted in good faith.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's request for attorneys' fees are barred by S.C. Code 30-4-110(c)(3) because the District, at all times, operated in good faith.

FOR A NINTH AFFIRMATIVE DEFENSE

The District has not had an opportunity to conduct a full and complete investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. The District intends to act expeditiously and in good faith to inform itself of the pertinent facts and prevailing circumstances surrounding Plaintiff's allegations and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate is supported by fact and/or law.

WHEREFORE, having fully answered Plaintiff's Complaint, the District prays that the same be dismissed with prejudice, and that it be awarded the costs of this action, and for such other and further relief as this Court deems proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully Submitted,

DUFF & CHILDS, L.L.C.

By: s/David N. Lyon

David T. Duff, (SC Bar #1768)

David N. Lyon (SC Bar #100676)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

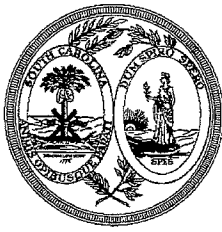
Facsimile: (803) 790-0605

dduff@duffchilds.com

dlyon@duffchilds.com

Attorneys for Defendant Lexington County
School District One

May 14, 2018
Columbia, South Carolina



State of South Carolina
Office of Comptroller General

1200 Senate Street
305 Wade Hampton Office Building
Columbia, South Carolina 29201

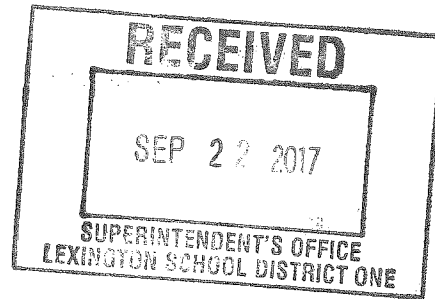
Telephone: (803) 734-2121
Fax: (803) 734-1765
E-Mail: cgooffice@cg.sc.gov

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

WILLIAM E. GUNN
CHIEF OF STAFF

Sept. 19, 2017

Dr. Greg Little, Superintendent
Lexington School District One
100 Tarrar Springs Road
Lexington, SC 29072



Dear Dr. Little,

As the operator and curator of the S.C. Fiscal Transparency Website, this office periodically reviews the websites of public school districts in the state for compliance with the General Assembly's financial transparency mandate for districts.

This legislative requirement originated in Act 23 of 2009 and remains in effect through annual state budget provisos, which have the force of law. The proviso for the current 2017-18 fiscal year is 1.26 and is enclosed (the financial transparency provisions are boldfaced for your convenient reference).

Recently in the course of our regular review of district websites we found a few areas where Lexington School District One's financial transparency postings do not fully comply with the provisions of the legislative mandate.

While Lexington One's "monthly expenditures" portal is user-friendly and easy to locate, we believe the following aspects of the information presented could be strengthened to bring the district into full compliance:

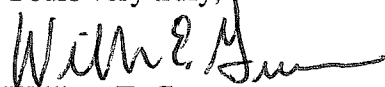
- **Vendors in accounts payable check registers:** The proviso requires "the name of the payee," and we found many instances of generalized vendors such as "purchased service."
- **Descriptions in accounts payable check registers:** The proviso requires "a detailed description of the expenditure," and we found many cases of generalized items such as "pupil activity."

- **Timeliness of updates:** The proviso specifies that the transaction register “must” be updated “at least once a month.” The most current register in our review was for June 2017.
- **Credit/purchasing card statements:** While the district does post purchasing card transaction registers in the same format as its accounts payable check registers, the proviso requires that “a copy of each monthly statement for all of the credit cards maintained by the entity, including credit cards issued to its officers or employees for official use” be posted online, with the card numbers redacted.

We sincerely appreciate your efforts to provide online financial transparency to the Lexington One community, and we believe the inclusion of this additional information would bring the district into full compliance with the open-government intent of the legislative mandate.

If we can be of assistance, please do not hesitate to contact our office at 803-734-2538 or: eward@cg.sc.gov.

Yours very truly,



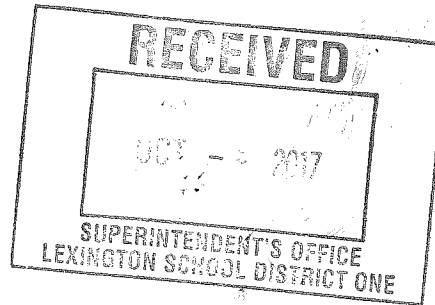
William E. Gunn
Chief of Staff



Where children and learning are One

October 6, 2017

Mr. William E. Gunn
Chief of Staff
Office of the Comptroller
1200 Senate Street
305 Wade Hampton Office Building
Columbia, SC 29201



Dear Mr. Gunn,

I am responding to your letter addressed to Dr. Greg Little dated September 19, 2017 regarding Lexington County School District One's Fiscal Transparency website, particularly those requirements listed in Proviso 1.26 for the 2017-18 fiscal year.

You mention that the District's monthly expenditures listed is user-friendly and easy to locate; but, believe the following aspects of the information presented could be strengthened to bring the District into what you consider to be full compliance with the proviso:

- ***Vendors in accounts payable check registers:*** The proviso requires "the name of the payee," and we found many instances of generalized vendors such as "purchased service".

In response to this issue, any vendor titled "purchased service" refers to an employee reimbursement. Proviso 1.26 clearly states: "The register must not include an entry for salary, wages, or other compensation paid to individual employees. The register must not include any information that can be used to identify an individual employee." We will continue to protect the privacy of our employees as required by the proviso; but, to be more transparent and precise, the District will modify the listed vendor to read "Employee."

- ***Description in accounts payable check registers:*** The proviso requires "a detailed description of the expenditure," and we found many cases of generalized items such as "pupil activity."

In response to this item, the District uses the description from our chart of accounts to which the expenditure is being charged as the description. The only other place in our accounting system to try to pull this information from would be the description listed on the purchase order, which would require us to post literally hundreds, and more likely, thousands of pages each month. It would be so much information listed that it basically would be unusable to the reader. We checked transparency websites of 12 other school districts and every one of them uses the same types of descriptions

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Where children and learning are One

Page 2

- **Timeliness of updates:** The proviso specifies that the transaction register “must” be updated “at least once a month”. The most current register in our review was for June 2017.

Because we had received concerns that our format was not in compliance with the proviso (the same issues you raise in your letter), we held off updating our format to further assess our compliance. It is updated now. We make every effort to update our website on a timely basis.

- **Credit/purchasing card statements:** While the district does post purchasing card transaction registers in the same format as its accounts payable check registers, the proviso requires that “a copy of each monthly statement for all the credit cards maintained by the entity, including credit cards issued to its’ officers or employees for official use” be posted on line, with the card number redacted.

The District has investigated and evaluated the possibility of placing a redacted copy of each p-card statement on our website as we did when we first started this process in 2009. The District has 120 procurement cards with each card statement averaging 3 to 6 pages. The procedure stated in your letter would require us to analyze and manually redact account numbers and employee names on up to 700 plus pages each month. This process would take numerous employee hours each month and would not be as accurate as our current method due to human error. We also noted that out of the 12 other school district websites we reviewed, nine of those districts listed the transactions as we did. Only three upload actual copies of the statements onto their websites. We believe that our current practice is in compliance with the proviso, particularly in light of the Comptroller General’s Office’s expressed expectation that the proviso’s transparency requirements not cause an undue burden or additional cost to school districts,

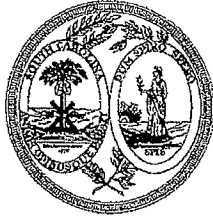
I hope this response will satisfy your concerns in your letter. Please feel free to contact me at jbutler@lexington1.net or at (803) 821-1167 if you have any questions.

Sincerely,

John C. Butler, CPA
Chief Financial Officer
Lexington County School District One

c: Dr. Greg Little ✓

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State of South Carolina
Office of Comptroller General

1200 Senate Street
305 Wade Hampton Office Building
Columbia, South Carolina 29201

Telephone: (803) 734-2121
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E-Mail: cgooffice@cg.sc.gov

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

WILLIAM E. GUNN
CHIEF OF STAFF

Oct. 30, 2017

John C. Butler, Chief Financial Officer
Lexington County School District One
P.O. Box 1869
Lexington, SC 29071-1869

Dear Mr. Butler,

Thank you for your Oct. 6 letter in response to my Sept. 19 correspondence regarding the General Assembly's financial transparency mandate for school districts, and Lexington County School District One's efforts to comply with this mandate.

We believe your intention to change the listing of "purchased service" vendors in the district's accounts payable check registers to "employee" would be a positive and helpful step. And, given the restriction on identifying employees, the district and public might also benefit if this restriction were included in the language on the district's monthly expenditures page referencing the original mandate: "To comply with Section 1.43 of Part I.B of the Appropriations Act of 2009 (Act 23 of 2009), Lexington County School District One posts monthly non-salary expenditures."

We also appreciate your expression of every effort to update the district's postings in a more timely manner. Similarly, we understand the challenges you explained for the district to comply with the requirements for detailed descriptions of expenditures in its accounts payable check registers, and to post copies of the district's monthly credit card statements.

Thank you for your cooperation and commitment to transparency. Please do not hesitate to contact us if we can offer assistance.

Yours very truly,

William E. Gunn
Chief of Staff

Proviso 1.26 in the Fiscal 2017-18 State Budget:

1.26. (SDE: School Districts and Special Schools Flexibility) All school districts and special schools of this State may transfer and expend funds among appropriated state general fund revenues, Education Improvement Act funds, Education Lottery Act funds, and funds received from the Children's Education Endowment Fund for school facilities and fixed equipment assistance, to ensure the delivery of academic and arts instruction to students. However, a school district may not transfer funds allocated specifically for state level maintenance of effort requirements under IDEA, funds allocated specifically for state level maintenance of effort requirement for federal program, funds provided for the Education and Economic Development Act, funds provided for Career and Technology Education, nor required for debt service or bonded indebtedness. All school districts and special schools of this State may suspend professional staffing ratios and expenditure regulations and guidelines at the sub-function and service area level, except for four-year old programs and programs serving students with disabilities who have Individualized Education Programs.

In order for a school district to take advantage of the flexibility provisions, at least seventy-five percent of the school district's per pupil expenditures must be utilized within the In\$ite categories of instruction, instructional support, and only transportation, food service, and safety within non-instruction pupil services. No portion of the seventy-five percent may be used for facilities, business services, debt service, capital outlay, program management, and leadership services, as defined by In\$ite. The school district shall report to the Department of Education the actual percentage of its per pupil expenditures used for classroom instruction, instructional support, and transportation, food service, and safety within non-instruction pupil services for the current school year ending June thirtieth. Salaries of on-site principals must be included in the calculation of the district's per pupil expenditures.

"In\$ite" means the financial analysis model for education programs utilized by the Department of Education.

School districts are encouraged to reduce expenditures by means, including, but not limited to, limiting the number of low enrollment courses, reducing travel for the staff and the school district's board, reducing and limiting activities requiring dues and memberships, reducing transportation costs for extracurricular and academic competitions, restructuring administrative staffing, and expanding virtual instruction.

School districts and special schools may carry forward unexpended funds from the prior fiscal year into the current fiscal year.

Prior to implementing the flexibility authorized herein, school districts must provide to Public Charter Schools the per pupil allocation due to them for each categorical program.

Quarterly throughout the current fiscal year, the chairman of each school district's board and the superintendent of each school district must certify where non-instructional or nonessential programs have been suspended and the specific flexibility actions taken. The certification must be in writing, signed by the chairman and the superintendent, delivered electronically to the State Superintendent of Education, and

an electronic copy forwarded to the Chairman of the Senate Finance Committee, the Chairman of the Senate Education Committee, the Chairman of the House Ways and Means Committee, and the Chairman of the House Education and Public Works Committee. Additionally, the certification must be presented publicly at a regularly called school board meeting, and the certification must be conspicuously posted on the internet website maintained by the school district.

For the current fiscal year, Section 59-21-1030 is suspended. The foreign language program assessment, and the physical education assessment must be suspended. School districts and the Department of Education are granted permission to purchase the most economical type of bus fuel.

For the current fiscal year, savings generated from the suspension of the assessments enumerated above must be allocated to school districts based on weighted pupil units.

School districts must maintain a transaction register that includes a complete record of all funds expended over one hundred dollars, from whatever source, for whatever purpose. The register must be prominently posted on the district's internet website and made available for public viewing and downloading. The register must include for each expenditure:

- (i) the transaction amount;
- (ii) the name of the payee; and
- (iii) a statement providing a detailed description of the expenditure.

The register must not include an entry for salary, wages, or other compensation paid to individual employees. The register must not include any information that can be used to identify an individual employee. The register must be accompanied by a complete explanation of any codes or acronyms used to identify a payee or an expenditure. The register must be searchable and updated at least once a month.

Each school district must also maintain on its internet website a copy of each monthly statement for all of the credit cards maintained by the entity, including credit cards issued to its officers or employees for official use. The credit card number on each statement must be redacted prior to posting on the internet website. Each credit card statement must be posted not later than the thirtieth day after the first date that any portion of the balance due as shown on the statement is paid.

The Comptroller General must establish and maintain a website to contain the information required by this section from a school district that does not maintain its own internet website. The internet website must be organized so that the public can differentiate between the school districts and search for the information they are seeking.

School districts that do not maintain an internet website must transmit all information required by this provision to the Comptroller General in a manner and at a time determined by the Comptroller General to be included on the internet website.

The provisions contained herein do not amend, suspend, supersede, replace, revoke, restrict, or otherwise affect Chapter 4, Title 30, the South Carolina Freedom of Information Act. Nothing in this proviso shall be interpreted as prohibiting the State Board of Education to exercise its authority to grant waivers under Regulation 43-261.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,
vs.

Lexington County School District One,
Defendant.

AMENDED SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended 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 upon the subscriber, at his office, P. O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

Respectfully submitted,

s/Taylor Smith

Taylor M. Smith IV
S.C. Bar No. 101584
Andrew S. Radeker
S.C. Bar No. 73743
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@harrisonfirm.com (email)
drew@harrisonfirm.com (email)
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
June 13, 2019

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
CASE NO. 2017-CP-32-04435

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,
vs.

Lexington County School District One,
Defendant.

AMENDED COMPLAINT

The Plaintiff, complaining of the Defendant herein, alleges:

1. Plaintiff Jada Garris is a citizen, resident, taxpayer, and registered elector of Lexington County for purposes of the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et. seq. (hereinafter “FOIA”) and S.C. Code Ann. § 15-53-10 et seq., known as the Uniform Declaratory Judgment Act. Plaintiff possesses standing to bring this lawsuit as a Lexington County taxpayer. She brings this action individually and on behalf of all others similarly situated.

2. Defendant Lexington County School District One (hereinafter “Defendant”) is a body politic and corporate form, which represents an area of Lexington County, whose purpose is to provide a free school education for area pupils.

3. Defendant is a “public body” for purposes of FOIA.

4. This Court possesses jurisdiction under the following decisions, which address public importance and taxpayer standing: South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013), American Petroleum Institute v. S.C. Dep’t. of Revenue, 382 S.C. 572, 677 S.E.2d 16 (2009), South Carolina Public Interest Foundation v. Harrell, 378 S.C. 441, 663 S.E.2d 52 (2008), Sloan v. Department of Transportation, 379 S.C. 160, 666 S.E.2d 236 (2008), Sloan v. Hardee, 357 S.C. 495, 640 S.E.2d

457 (2007); Cornelius v Oconee County, 369 S.C. 531, 633 S.E.2d 492 (2006); Sloan v. Department of Transportation, 365 S.C. 299, 618 S.E.2d 876 (2005), Sloan v. Wilkins, 362 S.C. 430, 608 S.E.2d 579 (2005); Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004); Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), Sloan v. School District of Greenville County, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), Baird v. Richland County, 333 S.C. 519, 511 S.E.2d 69 (1999), Newman v. Richland County Historic Preservation Commission, 325 S.C. 79, 480 S.E.2d 72 (1997); under S.C. Code Ann. § 15-53-10 et seq., known as the Uniform Declaratory Judgment Act and under S.C. Code Ann. § 30-4-10 et. seq., the South Carolina Freedom of Information Act, to adjudicate this matter.

5. In addition to having an interest in how millions of dollars in education funding is spent locally through Defendant school district, Plaintiff also has an interest, like other citizens and residents of South Carolina, in making sure Defendant operates in an open and public manner.

6. A favorable order to Plaintiff in this matter would vindicate both the important public interest of taxpayers, with whom Ms. Garriss is similarly situated, but also her personal interest in seeing that such public education funds are spent responsibly and in an open and public manner.

7. This action raises statutory issues of great public importance, namely the proper interpretation of a proviso of the currently-enacted state budget, and Plaintiff asks the Court to grant her standing based upon the great public importance of the statutory issues this action raises.

8. This Court also possesses jurisdiction under FOIA, specifically § 30-4-100, to review, enforce the provisions of FOIA and provide relief to the Plaintiff.

9. The purpose of FOIA is described in S.C. Code Ann. § 30-4-15:

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.

10. “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (S.C. 2001) (citing South. Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978)).

11. A “meeting” is defined as “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” S.C. Code Ann. § 30-4-20(d).

12. FOIA also mandates that public bodies, such as Defendant, close the open session of a meeting by announcing a specific purpose for closing a meeting to the public (S.C. Code Ann. § 30-4-70(b)), provide public written notice and agendas of its scheduled meetings (S.C. Code Ann. § 30-4-80), and keep written minutes of all of its public meetings (S.C. Code Ann. § 30-4-90).

13. This matter concerns several violations of FOIA regarding Defendant’s handling of record requests, its public meetings and its perceived culture of general antipathy towards South Carolina residents’ right to learn the activities of the school district at minimum cost or delay.

FOR A FIRST CAUSE OF ACTION

14. That each and every paragraph herein is repeated as if fully set forth.

15. In early December 2016, Defendant noticed and provided an agenda to the public whereby the Lexington County School District One Board of Trustees (hereinafter “Defendant Board”) would meet on December 6, 2016 at the Auditorium of Central Services located at 100 Tarrar Springs Road in Lexington, South Carolina. A copy of the notice is attached hereto as “Exhibit A”.

16. At the time noted on the notice and agenda, the Defendant Board did not appear nor otherwise convene a meeting in the Auditorium of Central Services.

17. No sign or other notice was posted in the Auditorium or shared otherwise publicly, noting an alternate venue for the December 6, 2016 meeting.

18. Upon information and belief, Defendant Board did meet on December 6, 2016.

19. The Defendant's failure to properly notify the public of the correct place for its meeting or its deliberate failure to meet in accordance with the location provided to the public is a violation of FOIA.

20. Plaintiff seeks a declaration that Defendant violated FOIA and rescission of actions taken at any meeting on December 6, 2016.

FOR A SECOND CAUSE OF ACTION

21. That each and every paragraph herein is repeated as if fully set forth.

22. On March 20, 2017 at some point after 9:45 p.m., Defendant uploaded to its website (www.lexington1.net) a finalized version of an agenda for its March 21, 2017 Defendant Board meeting.

23. Both the entry on Defendant's website and the date atop the agenda file read "March 16, 2017".

24. FOIA provides "[a]n agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings." S.C. Code Ann. § 30-4-80.

25. The posting of the agenda on the website less than 24 hours from the start of the Defendant Board meeting and deliberately backdating the document and website entry to make it appear it had been posted four days prior is a willful violation of FOIA.

26. Plaintiff seeks a declaration that Defendant willfully violated FOIA, is guilty of a misdemeanor as prescribed in S.C. Code Ann. § 30-4-110 (at the time of this violation) and shall be fined One Hundred Dollars, and rescission of actions taken at its March 21, 2017 Board meeting.

FOR A THIRD CAUSE OF ACTION

27. That each and every paragraph herein is repeated as if fully set forth.

28. On June 19, 2017, Defendant uploaded to its website (www.lexington1.net) a finalized version of an agenda for its June 15, 2017 Defendant Board meeting.

29. The entry on Defendant's website and the date atop the agenda for the June 15, 2017 board meeting both read "June 12, 2017".

30. The posting of the agenda on the website after the relevant Defendant Board meeting and deliberately backdating the document and website entry to make it appear it had been posted three days prior is a willful violation of FOIA.

31. Plaintiff seeks a declaration that Defendant violated FOIA in this instance and rescission of actions taken at the June 15, 2017 meeting.

FOR A FOURTH CAUSE OF ACTION

32. That each and every paragraph herein is repeated as if fully set forth.

33. On July 17, 2017, at some point between 7:45 p.m. and 8:45 p.m., Defendant uploaded to its website (www.lexington1.net) a finalized version of an agenda for its July 18, 2017 Defendant Board meeting scheduled for 7:30 p.m.

34. The entry on Defendant's website and the date atop the agenda for the July 18, 2017 board meeting both read "July 11, 2017".

35. The posting of the agenda on the website less than 24 hours prior to Defendant's Board meeting and deliberately backdating the document and website entry to make it appear it had been posted seven days prior is a willful violation of FOIA.

36. Plaintiff seeks a declaration that Defendant violated FOIA in this instance and rescission of actions taken at the July 18, 2017 meeting.

FOR A FIFTH CAUSE OF ACTION

37. That each and every paragraph herein is repeated as if fully set forth.

38. Upon information and belief, on November 7, 2017, Defendant published to its website a notice and agenda for its November 14, 2017 monthly board meeting. A copy of the agenda is attached hereto as Exhibit E.

39. The agenda provides that the meeting was to be called to order at 6 p.m. in the Auditorium of Building One of Central Services.

40. The attached agenda mentions executive session beside the call to order and also specifies the closed session of the meeting as agenda item "2.0".

41. Upon information and belief, at 6 p.m. on November 14, 2017, Defendant Board members were seated in the boardroom adjacent to the auditorium at the noticed location.

42. Upon information and belief, shortly after 6 p.m., Defendant Board, while present in the boardroom, voted to enter executive session.

43. Upon information and belief, at no point was the November 14, 2017 meeting called to order on that day in the auditorium of the noticed location.

44. S.C. FOIA provides that "before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session." S.C. Code Ann. § 30-4-70(b).

45. Upon information and belief, at no point prior to entering executive session did the presiding officer of Defendant Board announce the specific purpose or purposes for entering such closed session.

46. Plaintiff seeks 1) a declaration that Defendant violated FOIA by failing call the meeting to order in the noticed location and by failing to announce a specific purpose for executive session, 2) rescission of actions taken at the November 14, 2017 Defendant board meeting, and 3) an injunction to compel Defendant Board to meet in locations it has noticed for its public meetings and to announce a specific purpose for entering executive session prior to it doing so.

WHEREFORE, the Plaintiff prays:

- (a) For an order of this Court declaring Defendant violated FOIA when it committed the above designated violations;
- (b) For an order of this Court declaring rescission of actions taken at meetings where the above designated violations occurred;
- (c) For an injunction for the appropriately designated violations herein;
- (d) To grant Plaintiff its costs and attorneys' fees under S.C. Code Ann. § 30-4-100 and S.C. Code Ann. § 15-53-10 et seq.;
- (e) For such other and further relief as the Court may deem just and proper.

[signature next page]

Respectfully submitted,

s/Taylor Smith
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
June 13, 2019

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-32-04435

**DEFENDANT LEXINGTON COUNTY
SCHOOL DISTRICT ONE'S ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT**

Defendant Lexington County School District One, (hereinafter, the "District"), by and through its undersigned counsel, hereby submits its Answer and Affirmative Defenses in response to the Complaint of Jada Garris, individually, and on behalf of all others similarly situated, (hereinafter, the "Plaintiff"). In response to the specific allegations in the enumerated paragraphs below, the District responds as follows:

1. The allegations in Paragraph 1 are admitted.
2. Denied as stated. The District agrees only that it is a political subdivision that provides public educational services to eligible students residing within its boundaries.
3. The allegations in Paragraph 3 are admitted.
4. The District admits that this court has jurisdiction to adjudicate violations of the FOIA and grant any relief that is authorized therein.
5. The allegations in Paragraph 5 are admitted.
6. The allegations in Paragraph 6 are denied. The District alleges that Plaintiff's Amended Complaint assert hyper-technical, non-substantive violations of FOIA that do not

vindicate an important public interest, but instead, squander public resources in needless litigation.

7. The allegations in Paragraph 7 are denied.

8. Paragraph 8 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely states a conclusion of law; therefore, no response is required. To the extent that a response is required, the District avers only that this court has jurisdiction to adjudicate violations of the FOIA and grant any relief that is authorized therein. The remainder of the allegations in Paragraph 8 are denied.

9. Paragraph 9 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

10. Paragraph 10 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes South Carolina Supreme Court opinions; therefore, no response is required. To the extent that a response is required, the District avers that these opinions speak for themselves and respectfully refers the Court to the cited opinions themselves for a full and accurate statement of the law.

11. Paragraph 11 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

12. Paragraph 12 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required.

To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

13. Denied as stated. The District admits only that this lawsuit asserts violations of FOIA. The remainder of the allegations in Paragraph 36 are denied.

FOR A FIRST CAUSE OF ACTION

14. The District incorporates by reference herein its responses to the preceding Paragraphs of Plaintiff's Complaint.

15. The allegations in Paragraph 15 are admitted. The District avers that the notice and agenda speak for themselves and respectfully refers the Court to those documents for a full and accurate statement of their contents.

16. The allegations in Paragraph 16 are denied.

17. The allegations in Paragraph 17 are admitted. The District further avers that no sign noting an alternate venue was required.

18. The allegations in Paragraph 18 are admitted.

19. The allegations in Paragraph 19 are admitted.

20. The allegations in Paragraph 20 are denied. Paragraph 20 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A SECOND CAUSE OF ACTION

21. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

22. The District admits that a document containing the agenda for tis March 21, 2017 meeting was uploaded at 9:49 PM on March 20, 2017. The remaining allegations in paragraph 22 are denied.

23. The allegations in Paragraph 23 are admitted.

24. Paragraph 24 is not a proper allegation under Rule 8, SCRCPP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

25. The allegations in Paragraph 25 are denied.

26. The allegations in Paragraph 26 are denied. Paragraph 26 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A THIRD CAUSE OF ACTION

27. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

28. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.

29. The allegations in Paragraph 29 are admitted.

30. The allegations in Paragraph 30 are denied.

31. The allegations in Paragraph 31 are denied. Paragraph 31 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A FOURTH CAUSE OF ACTION

32. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

33. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. The allegations in paragraph 34 are admitted.

35. The allegations in Paragraph 35 are denied.

36. The allegations in Paragraph 36 are denied. Paragraph 36 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A FIFTH CAUSE OF ACTION

37. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

38. The allegations in Paragraph 38 are admitted. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents.

39. Denied as stated. The agenda provides that "the Lexington County School District One will hold its regularly monthly meeting in the Auditorium of building One of Central Services." The Agenda further provides the Call to Order will be at 6:00 PM. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents. The remainder of the allegations in Paragraph 39 are denied.

40. The allegations in Paragraph 40 are admitted. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents.

41. Admitted in part, denied in part. The District admits that on or around 6:00 PM, on November 14, 2017, Defendant Board members were in the boardroom adjacent to the auditorium. The District further states that the boardroom is part of the auditorium building and the board room is separated from the main room by a door that remains open to the public unless the board is in executive session. Any remaining allegations or inferences are denied.

42. Denied as stated. The District agrees that the Board voted to enter into executive session as its first order of business on or around 6:00 PM. The District avers that the vote may have taken place in the boardroom adjacent to the auditorium, the door to which was open to the public.

43. The allegations in Paragraph 42 are denied.

44. Paragraph 44 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that the statute cited speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

45. The allegations in paragraph 45 are denied, upon information and belief. The District further states that the Board agenda, which was timely published, listed all of the matters to be considered in executive session.

46. The allegations in paragraph 46 are denied. Paragraph 46 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

47. The District denies each allegation that is not specifically admitted herein.

Plaintiffs' "WHEREFORE" statement constitutes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

Without admitting any allegations asserted in the Complaint, the District interposes the following defenses. Nothing stated in any of the defenses constitutes a concession that the District bears any burden of proof on any issue on which it would not otherwise bear such burden.

FOR A FIRST AFFIRMATIVE DEFENSE

One or more of the Complaint's causes of action fail to state a claim upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

At all times relevant, the District was in compliance or substantial compliance with the FOIA and any violations were technical such that Plaintiff can demonstrate no harm. *Multimedia, Inc. v. Greenville Airport Comm'n*, 287 S.C. 521, 525, 339 S.E.2d 884, 887 (Ct. App. 1986).

FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any relief beyond that set forth under FOIA, and the Court lacks subject matter jurisdiction over Plaintiff's requests for relief that exceeds the relief authorized under FOIA.

FOR A FOURTH AFFIRMATIVE DEFENSE

To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, the District's responses may refer to such materials for a full and accurate

statement of its contents; however, the District's references are not intended to be, and should not be construed as an admission that the cited materials: (a) are correctly cited or quoted by Plaintiff; (b) are relevant to this, or any other, action; or (c) support Plaintiff's assertions of legally actionable or cognizable claims for which any relief is available.

FOR A FIFTH AFFIRMATIVE DEFENSE

All actions taken by the District and its employees with respect to the Plaintiff were lawful, proper, reasonable, and appropriate.

FOR A SIXTH AFFIRMATIVE DEFENSE

All actions taken by the District and its employees with respect to the Plaintiff were conducted in good faith.

FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the equitable doctrines of laches, waiver, estoppel, unclean hands, and/or *res judicata*.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's request for attorneys' fees are barred by S.C. Code 30-4-110(c)(3) because the District, at all times, operated in good faith.

WHEREFORE, having fully answered Plaintiff's Complaint, the District prays that the same be dismissed with prejudice, and that it be awarded the costs of this action, and for such other and further relief as this Court deems proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully Submitted,

DUFF & CHILDS, L.L.C.

By: s/David N. Lyon

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Attorneys for Defendant Lexington County
School District One

June 28, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-32-04435

**DEFENDANT LEXINGTON COUNTY
SCHOOL DISTRICT ONE'S AMENDED
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S AMENDED
COMPLAINT**

Defendant Lexington County School District One, (hereinafter, the "District"), by and through its undersigned counsel, hereby submits its Answer and Affirmative Defenses in response to the Complaint of Jada Garris, individually, and on behalf of all others similarly situated, (hereinafter, the "Plaintiff"). In response to the specific allegations in the enumerated paragraphs below, the District responds as follows:

1. The allegations in Paragraph 1 are admitted.
2. Denied as stated. The District agrees only that it is a political subdivision that provides public educational services to eligible students residing within its boundaries.
3. The allegations in Paragraph 3 are admitted.
4. The District admits that this court has jurisdiction to adjudicate violations of the FOIA and grant any relief that is authorized therein.
5. The allegations in Paragraph 5 are admitted.
6. The allegations in Paragraph 6 are denied. The District alleges that Plaintiff's Amended Complaint assert hyper-technical, non-substantive violations of FOIA that do not

vindicate an important public interest, but instead, squander public resources in needless litigation.

7. The allegations in Paragraph 7 are denied.

8. Paragraph 8 is not a proper allegation under Rule 8, SCRCPP, in that it makes no particular allegation, but merely states a conclusion of law; therefore, no response is required. To the extent that a response is required, the District avers only that this court has jurisdiction to adjudicate violations of the FOIA and grant any relief that is authorized therein. The remainder of the allegations in Paragraph 8 are denied.

9. Paragraph 9 is not a proper allegation under Rule 8, SCRCPP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

10. Paragraph 10 is not a proper allegation under Rule 8, SCRCPP, in that it makes no particular allegation, but merely quotes South Carolina Supreme Court opinions; therefore, no response is required. To the extent that a response is required, the District avers that these opinions speak for themselves and respectfully refers the Court to the cited opinions themselves for a full and accurate statement of the law.

11. Paragraph 11 is not a proper allegation under Rule 8, SCRCPP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

12. Paragraph 12 is not a proper allegation under Rule 8, SCRCPP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required.

To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute itself for a full and accurate statement of the law.

13. Denied as stated. The District admits only that this lawsuit asserts violations of FOIA. The remainder of the allegations in Paragraph 36 are denied.

FOR A FIRST CAUSE OF ACTION

14. The District incorporates by reference herein its responses to the preceding Paragraphs of Plaintiff's Complaint.

15. The allegations in Paragraph 15 are admitted. The District avers that the notice and agenda speak for themselves and respectfully refers the Court to those documents for a full and accurate statement of their contents.

16. The allegations in Paragraph 16 are denied.

17. The allegations in Paragraph 17 are admitted. The District further avers that no sign noting an alternate venue was required.

18. The allegations in Paragraph 18 are admitted.

19. The allegations in Paragraph 19 are denied.

20. The allegations in Paragraph 20 are denied. Paragraph 20 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A SECOND CAUSE OF ACTION

21. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

22. The District admits that a document containing the agenda for its March 21, 2017 meeting was uploaded at 9:49 PM on March 20, 2017. The remaining allegations in paragraph 22 are denied.

23. The allegations in Paragraph 23 are admitted.

24. Paragraph 24 is not a proper allegation under Rule 8, SCRCF, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that this statute speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

25. The allegations in Paragraph 25 are denied.

26. The allegations in Paragraph 26 are denied. Paragraph 26 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A THIRD CAUSE OF ACTION

27. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

28. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.

29. The allegations in Paragraph 29 are admitted.

30. The allegations in Paragraph 30 are denied.

31. The allegations in Paragraph 31 are denied. Paragraph 31 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A FOURTH CAUSE OF ACTION

32. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

33. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. The allegations in paragraph 34 are admitted.

35. The allegations in Paragraph 35 are denied.

36. The allegations in Paragraph 36 are denied. Paragraph 36 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

FOR A FIFTH CAUSE OF ACTION

37. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

38. The allegations in Paragraph 38 are admitted. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents.

39. Denied as stated. The agenda provides that "the Lexington County School District One will hold its regularly monthly meeting in the Auditorium of building One of Central Services." The Agenda further provides the Call to Order will be at 6:00 PM. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents. The remainder of the allegations in Paragraph 39 are denied.

40. The allegations in Paragraph 40 are admitted. The District avers that the agenda cited speaks for itself and respectfully refers the Court to the agenda for a full and accurate statement of its contents.

41. Admitted in part, denied in part. The District admits that on or around 6:00 PM, on November 14, 2017, Defendant Board members were in the boardroom adjacent to the auditorium. The District further states that the boardroom is part of the auditorium building and the board room is separated from the main room by a door that remains open to the public unless the board is in executive session. Any remaining allegations or inferences are denied.

42. Denied as stated. The District agrees that the Board voted to enter into executive session as its first order of business on or around 6:00 PM. The District avers that the vote may have taken place in the boardroom adjacent to the auditorium, the door to which was open to the public.

43. The allegations in Paragraph 42 are denied.

44. Paragraph 44 is not a proper allegation under Rule 8, SCRCP, in that it makes no particular allegation, but merely quotes statutory language; therefore, no response is required. To the extent that a response is required, the District avers that the statute cited speaks for itself and respectfully refers the Court to the statute for a full and accurate statement of the law.

45. The allegations in paragraph 45 are denied, upon information and belief. The District further states that the Board agenda, which was timely published, listed all of the matters to be considered in executive session.

46. The allegations in paragraph 46 are denied. Paragraph 46 also includes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

47. The District denies each allegation that is not specifically admitted herein.

Plaintiffs' "WHEREFORE" statement constitutes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint.

Without admitting any allegations asserted in the Complaint, the District interposes the following defenses. Nothing stated in any of the defenses constitutes a concession that the District bears any burden of proof on any issue on which it would not otherwise bear such burden.

FOR A FIRST AFFIRMATIVE DEFENSE

One or more of the Complaint's causes of action fail to state a claim upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

At all times relevant, the District was in compliance or substantial compliance with the FOIA and any violations were technical such that Plaintiff can demonstrate no harm. *Multimedia, Inc. v. Greenville Airport Comm'n*, 287 S.C. 521, 525, 339 S.E.2d 884, 887 (Ct. App. 1986).

FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any relief beyond that set forth under FOIA, and the Court lacks subject matter jurisdiction over Plaintiff's requests for relief that exceeds the relief authorized under FOIA.

FOR A FOURTH AFFIRMATIVE DEFENSE

To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, the District's responses may refer to such materials for a full and accurate

statement of its contents; however, the District's references are not intended to be, and should not be construed as an admission that the cited materials: (a) are correctly cited or quoted by Plaintiff; (b) are relevant to this, or any other, action; or (c) support Plaintiff's assertions of legally actionable or cognizable claims for which any relief is available.

FOR A FIFTH AFFIRMATIVE DEFENSE

All actions taken by the District and its employees with respect to the Plaintiff were lawful, proper, reasonable, and appropriate.

FOR A SIXTH AFFIRMATIVE DEFENSE

All actions taken by the District and its employees with respect to the Plaintiff were conducted in good faith.

FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the equitable doctrines of laches, waiver, estoppel, unclean hands, and/or *res judicata*.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's request for attorneys' fees are barred by S.C. Code 30-4-110(c)(3) because the District, at all times, operated in good faith.

WHEREFORE, having fully answered Plaintiff's Complaint, the District prays that the same be dismissed with prejudice, and that it be awarded the costs of this action, and for such other and further relief as this Court deems proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully Submitted,

DUFF & CHILDS, L.L.C.

By: s/David N. Lyon

David T. Duff, (SC Bar #1768)

David N. Lyon (SC Bar #100676)

P.O. Box 1486

Columbia, SC 29202

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dlyon@duffchilds.com

Attorneys for Defendant Lexington County
School District One

October 24, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

**PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rule 54(d)&(e), SCRCP, S.C. Code Ann. § 30-4-100(b), as well as pursuant to all other applicable law, for an order that awards her reasonable attorneys' fees and costs in this action.

The grounds for this motion are as follows:

1. The total amount of the Plaintiff's billing for attorneys' fees and costs in this case to date is **\$40,510.04**. The court should award this amount in attorney's fees and costs. The Plaintiff has prevailed in this case, and the Plaintiff and her attorneys are entitled to an order awarding attorneys' fees and costs.
2. The affidavits of Taylor Smith and Andrew Radeker submitted with this motion are hereby incorporated herein by reference as if here set forth verbatim.
3. When a party seeking relief under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* ("FOIA"), "prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees." S.C. Code Ann. § 30-4-100(b).

4. Though the Plaintiff did not prevail as to all of her causes of action at trial, she did prevail under a FOIA cause of action at trial and is, thus, the prevailing party under S.C. Code Ann. § 30-4-100.
5. In addition, the Plaintiff originally sought the disclosure of documents under FOIA in this case, documents the Defendant had withheld, erroneously, as being exempt from disclosure under FOIA. As further discussed in the affidavit of Taylor Smith submitted herewith and as was discussed at trial, the Defendant finally produced all the documents it had that were responsive to those requests in June of 2019.
6. When a public body only produces the requested information after suit is brought under FOIA, that moots the cause of action seeking production of those documents; however, the plaintiff who sought the requested information is still the prevailing party. Sloan v. S.C. Dept. of Revenue, 409 S.C. 551, 762 S.E.2d 687, 689 (2014); Sloan v. Friends of the Hunley, Inc., 393 S.C. 152, 711 S.E.2d 895, 897-98 (2011).
7. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989). Analysis of those factors is more particularly described in the affidavits of Taylor Smith and Andrew Radeker submitted with this motion.
8. It is just that the court award the Plaintiff her attorney's fees in this case. Even though the Plaintiff's suit prompted the Defendant to change its practices to comply with the

- law, the Defendant still refused to acknowledge it had committed any FOIA violations. The Defendant's lack of accountability to the law necessitated the trial of this case.
9. The Plaintiff testified at trial that the Defendant is still infected with an anti-transparency culture. 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). 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." 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. An award of the Plaintiff's full attorneys' fees and costs in this case would serve as a significant reminder to the Defendant of its obligations to the public under FOIA.
 10. The court is permitted to award the Plaintiff her attorney's fees and costs for this case in full, and it would serve the purpose of FOIA for the court to do so.
 11. This motion does not waive the Plaintiff's right to seek attorney's fees and costs in connection with later proceedings, if any, including appeal proceedings, in this case.
 12. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned notes that consultation with opposing counsel in advance of making this motion would not have served a useful purpose.

Respectfully submitted,

/s/ Andrew S. Radeker

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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ATTORNEYS FOR PLAINTIFF

December 2, 2019

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

**AFFIDAVIT OF TAYLOR SMITH AS
TO ATTORNEY FEES AND COSTS**

Personally appeared before me Taylor M. Smith IV, who, first being duly sworn, deposes and says as follows:

1. My name is Taylor M. Smith IV. I am an attorney for the Plaintiff in the above-captioned lawsuit. I was the attorney at our firm who primarily handled this file. One other attorney in our firm, Mr. Andrew S. Radeker, Esquire, also worked on this file.
2. The fee agreement that my firm has with Ms. Garris is for billing at an hourly rate for our representation of her in this case.
3. With our firm, the Plaintiff incurred \$212.06 in costs in this action and expects to incur an additional \$63.48, at a minimum, moving forward in this matter.
4. I spent at least 107 hours working on this case, including time I spent today drafting a motion and this affidavit and discussing these documents with my law partner. At my hourly rate of \$300/hour, that comes to **\$32,100** in just my time alone.
5. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee

customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989).

6. These factors, as applied in this case, are as follows:

- a. Nature, Extent, and Difficulty of the Legal Services Rendered. The most difficult issues in the case were resolving violations of the State's Freedom of Information Act (S.C. Code Ann. § 30-4-100 et. seq.) ("SCFOIA") through settlement of this matter. These issues included the production of records unlawfully withheld from disclosure under SCFOIA that were owed to Ms. Garris, but also involved settlement negotiations regarding open meeting violations of SCFOIA brought by Ms. Garris in this action. The settlement discussions were complicated (for both parties in this action) when Ms. Garris achieved election to the Defendant's school board during the pendency of this matter. Specifically, this matter involved investigation and legal research in this matter to determine how Ms. Garris' rights may be affected and could still be asserted, considering her election during my representation. In addition to the settlement negotiations, I also drafted and supplied responses to discovery requests, prepared for and attended depositions, attended a mediation of this matter, and attended the trial of this case. My representation of Ms. Garris began in June 2017. This action first appeared for a roster meeting in June 2019, when it was carried over to the September 2019 trial roster and was eventually provided a day-certain trial date of October 24, 2019, which is when the hearing

on the merits occurred. Accordingly, this case involved significant research, preparation, and attendance at court appearances.

- b. Time and Labor Necessarily Devoted to the Case. The legal questions raised by this case were complex, and this case was tried to judgment. This resulted in us having to do quite a lot of work. Accordingly, the time and labor devoted to this case were necessary to properly protect our client's interests in this case.
- c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina. I was admitted to the South Carolina Bar on May 19, 2014. I practice with the law firm of Harrison, Radeker & Smith, P.A., where I concentrate my practice in civil litigation, with a particular emphasis on SCFOIA cases, constitutional/civil rights and free speech cases, appeals, and consumer and lending litigation (representing debtors as well as creditors), as well as real estate litigation such as quiet title and partition actions. My work has also included representing clients in SCFOIA matters, criminal defense matters, defamation (slander and libel) cases, freedom of speech cases, real property litigation, and landlord-tenant cases. I have been a presenter at continuing legal education seminars, including the South Carolina Bar Convention. I was admitted to the South Carolina Bar on May 19, 2014. I am also lead attorney for the South Carolina Press Association which serves more than 95 percent of the state's newspapers. I am also the author of several open government guides for the Reporters Committee for the Freedom of Press. After graduating from law school, I became an associate with what was then the firm

of Harrison & Radeker, P.A. (which has since changed its name to Harrison, Radeker & Smith, P.A.). I have been a shareholder in the firm since 2018.

- d. Contingency of Compensation. While we have taken this matter on an hourly basis, our client is not wealthy, and whether attorney's fees are awarded in this case may have a significant bearing on whether my firm is fully compensated for the work we have done on the case.
- e. Customary Fee Charged on the Locality for Similar Services. The other attorney in my firm, Andrew S. Radeker, and I spent 132.34 hours working on this case through today. Our collective billing comes to \$40,510.04 through this point in the case. My hourly rate is \$300.00 and Mr. Radeker's hourly rate is \$350.00. These hourly rates, as well as the total of fees, are normal and customary for attorneys' services in South Carolina area for litigated civil cases. Accordingly, these rates and the total of fees are in line with those customarily charged in this locality for similar services.
- f. Beneficial Results Obtained. On the Plaintiff's behalf I was also able to negotiate the release of several records from Defendant which were included as causes of action in the filed Summons and Complaint in this matter. Specifically, Ms. Garris received records pertaining to five causes of action in June 2019, as she testified at trial. As of June 1, 2019, our law firm had billed Ms. Garris a total of \$12,787.54 for approximately 45 hours of work. It is clear to the undersigned and Ms. Garris that the aforementioned records would not have been provided had this lawsuit not been brought and maintained against the Defendant. In addition to the disclosure of the records unlawfully withheld,

Ms. Garris succeeded at trial in getting a finding that Defendant violated the South Carolina Freedom of Information Act. Both the disclosure and the finding at trial are beneficial results.

7. Ms. Garris is the prevailing party in this action at least by virtue of the disclosure of documents illegally withheld by Defendant in June of this year. Ms. Garris also is a prevailing party for the finding she received in her favor at the trial of this case. Although the undersigned can prove the amount of attorney's fees incurred by Ms. Garris at both the date of the disclosure and the total amount as of today, I cannot conclusively say what percentage of efforts by myself and/or Mr. Radeker are to credit for prevailing on one cause of action at trial as opposed to another cause of action. I can only say all of law firm's and Ms. Garris' efforts contributed wholly to all the success we had in this case.

FURTHER AFFIANT SAYETH NOT.

Taylor M. Smith IV

SWORN to before me this
2nd day of December, 2019.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 3/29/27

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**AFFIDAVIT OF TAYLOR SMITH AS
TO ATTORNEY FEES AND COSTS**

Personally appeared before me Taylor M. Smith IV, who, first being duly sworn, deposes and says as follows:

1. My name is Taylor M. Smith IV. I am an attorney for the Plaintiff in the above-captioned lawsuit. I was the attorney at our firm who primarily handled this file. One other attorney in our firm, Mr. Andrew S. Radeker, Esquire, also worked on this file.
2. The fee agreement that my firm has with Ms. Garris is for billing at an hourly rate for our representation of her in this case.
3. With our firm, the Plaintiff incurred \$212.06 in costs in this action and expects to incur an additional \$63.48, at a minimum, moving forward in this matter.
4. I spent at least 107 hours working on this case, including time I spent today drafting a motion and this affidavit and discussing these documents with my law partner. At my hourly rate of \$300/hour, that comes to **\$32,100** in just my time alone.
5. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee

customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989).

6. These factors, as applied in this case, are as follows:

- a. Nature, Extent, and Difficulty of the Legal Services Rendered. The most difficult issues in the case were resolving violations of the State's Freedom of Information Act (S.C. Code Ann. § 30-4-100 et. seq.) ("SCFOIA") through settlement of this matter. These issues included the production of records unlawfully withheld from disclosure under SCFOIA that were owed to Ms. Garris, but also involved settlement negotiations regarding open meeting violations of SCFOIA brought by Ms. Garris in this action. The settlement discussions were complicated (for both parties in this action) when Ms. Garris achieved election to the Defendant's school board during the pendency of this matter. Specifically, this matter involved investigation and legal research in this matter to determine how Ms. Garris' rights may be affected and could still be asserted, considering her election during my representation. In addition to the settlement negotiations, I also drafted and supplied responses to discovery requests, prepared for and attended depositions, attended a mediation of this matter, and attended the trial of this case. My representation of Ms. Garris began in June 2017. This action first appeared for a roster meeting in June 2019, when it was carried over to the September 2019 trial roster and was eventually provided a day-certain trial date of October 24, 2019, which is when the hearing

on the merits occurred. Accordingly, this case involved significant research, preparation, and attendance at court appearances.

- b. Time and Labor Necessarily Devoted to the Case. The legal questions raised by this case were complex, and this case was tried to judgment. This resulted in us having to do quite a lot of work. Accordingly, the time and labor devoted to this case were necessary to properly protect our client's interests in this case.
- c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina. I was admitted to the South Carolina Bar on May 19, 2014. I practice with the law firm of Harrison, Radeker & Smith, P.A., where I concentrate my practice in civil litigation, with a particular emphasis on SCFOIA cases, constitutional/civil rights and free speech cases, appeals, and consumer and lending litigation (representing debtors as well as creditors), as well as real estate litigation such as quiet title and partition actions. My work has also included representing clients in SCFOIA matters, criminal defense matters, defamation (slander and libel) cases, freedom of speech cases, real property litigation, and landlord-tenant cases. I have been a presenter at continuing legal education seminars, including the South Carolina Bar Convention. I was admitted to the South Carolina Bar on May 19, 2014. I am also lead attorney for the South Carolina Press Association which serves more than 95 percent of the state's newspapers. I am also the author of several open government guides for the Reporters Committee for the Freedom of Press. After graduating from law school, I became an associate with what was then the firm

of Harrison & Radeker, P.A. (which has since changed its name to Harrison, Radeker & Smith, P.A.). I have been a shareholder in the firm since 2018.

- d. Contingency of Compensation. While we have taken this matter on an hourly basis, our client is not wealthy, and whether attorney's fees are awarded in this case may have a significant bearing on whether my firm is fully compensated for the work we have done on the case.
- e. Customary Fee Charged on the Locality for Similar Services. The other attorney in my firm, Andrew S. Radeker, and I spent 132.34 hours working on this case through today. Our collective billing comes to \$40,510.04 through this point in the case. My hourly rate is \$300.00 and Mr. Radeker's hourly rate is \$350.00. These hourly rates, as well as the total of fees, are normal and customary for attorneys' services in South Carolina area for litigated civil cases. Accordingly, these rates and the total of fees are in line with those customarily charged in this locality for similar services.
- f. Beneficial Results Obtained. On the Plaintiff's behalf I was also able to negotiate the release of several records from Defendant which were included as causes of action in the filed Summons and Complaint in this matter. Specifically, Ms. Garris received records pertaining to five causes of action in June 2019, as she testified at trial. As of June 1, 2019, our law firm had billed Ms. Garris a total of \$12,787.54 for approximately 45 hours of work. It is clear to the undersigned and Ms. Garris that the aforementioned records would not have been provided had this lawsuit not been brought and maintained against the Defendant. In addition to the disclosure of the records unlawfully withheld,

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FURTHER AFFIANT SAYETH NOT.

Taylor M. Smith IV

SWORN to before me this
2nd day of December, 2019.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 3/29/27

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

**Jada Garriss, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**AFFIDAVIT OF
ANDREW S. RADEKER
AS TO ATTORNEY'S FEES**

Personally appeared before me, Andrew S. Radeker, who first being duly sworn, deposes and says as follows:

1. My name is Andrew S. Radeker. I am a principal in the law firm of Harrison, Radeker & Smith, P.A. and am an attorney for the Plaintiff in the above-captioned lawsuit. Taylor Smith of our firm did most of the lawyering in this case, but I worked on it as well, primarily in the time leading up to trial and during the trial of the case that occurred on October 24, 2019.
2. I have spent at least a total of 24.55 hours on this case. This includes 2.2 hours allotted to the time I spent today drafting motions and affidavits and related activity.
3. At my billing rate of \$350/hour, which is the rate used for billing the Plaintiff for my time in this case, 24.55 hours comes to **\$8,592.50**.
4. Before the time that the Defendant decided to produce documents that the Plaintiff sought, which was in June of this year, our records indicate I spent 1.05 hours (at least) on this case. Most of the time I spent on this case was for trial preparation and trial on the week of trial.

5. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989).
6. These factors, as applied in this case, are as follows:
 - a. Nature, Extent, and Difficulty of the Legal Services Rendered. This matter was a highly contested case. Almost all of the time I spent on it was for trial preparation and trial, and such work is among the more difficult and detail-oriented work of a lawyer.
 - b. Time and Labor Necessarily Devoted to the Case. As discussed above, I have spent at least a total of 24.55 hours on this case, and this was almost all in trial preparation and trying the case. That work was necessary for us to have the trial in a way that assisted our client's interests meaningfully. The time and labor devoted to this case were necessary to properly protect our client's interests.
 - c. Professional Standing of Counsel. I practice with the law firm of Harrison, Radeker & Smith, P.A., where I concentrate my practice in civil litigation, with a particular emphasis on foreclosure cases, false arrest cases, constitutional/civil rights and free speech cases, appeals, and consumer and lending litigation (representing debtors as well as creditors), as well as real estate litigation such as quiet title and partition actions. My work has also

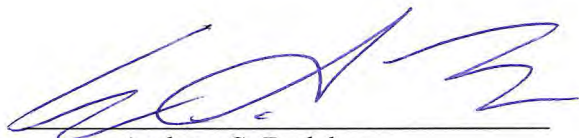
included representing clients in criminal defense matters, defamation (slander and libel) cases, wrongful death and personal injury cases, mechanic's lien actions, fraud and misrepresentation cases, and landlord-tenant cases. I have been a presenter at continuing legal education seminars, including the Master-in-Equity Bench/Bar CLE. I was admitted to the South Carolina Bar on November 14, 2005. I am a past real estate section chair of the South Carolina Association for Justice, have served on the Consumer Law Section council of the South Carolina Bar, and am one of the co-authors of the third edition of the South Carolina Foreclosure Law Manual. After graduating from law school, I became an associate with what was then the firm of James C. Harrison, Jr., P.A. (which since changed its name to Harrison & Radeker, P.A. and now to Harrison, Radeker & Smith, P.A.). I have been a shareholder in the firm since 2009.

- d. Contingency of Compensation. While we have this case on an hourly basis, our client is not wealthy, and whether attorneys' fees are awarded in this case may have a significant bearing on whether my firm is fully compensated for the work we have done on the case.
- e. Customary Fee Charged on the Locality for Similar Services. The hourly rate given above is normal and customary for attorneys' services in the Columbia area for litigated cases. The amount of the fees generated by my work on this case are even conservative for a case that was tried. I am aware from discussions with clients, other attorneys in the Midlands region of South Carolina, and from my general familiarity with the legal profession that the fees

charged for services similar to those in this case are in line with those incurred in the instant case. Accordingly, the fees for my work in this case are in line with those customarily charged in this locality for similar services.

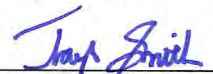
- f. Beneficial Results Obtained. This case has resulted in our client obtaining documents she was entitled to get that were originally withheld from her and resulted in a finding at trial that the Defendant had violated the South Carolina Freedom of Information Act, both of which are very beneficial results.

FURTHER AFFIANT SAYETH NOT.



Andrew S. Radeker

SWORN to before me this
2nd day of December, 2019.

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: June 10, 2024

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**AFFIDAVIT OF TAYLOR SMITH AS
TO ATTORNEY FEES AND COSTS**

Personally appeared before me Taylor M. Smith IV, who, first being duly sworn, deposes and says as follows:

1. My name is Taylor M. Smith IV. I am an attorney for the Plaintiff in the above-captioned lawsuit. I was the attorney at our firm who primarily handled this file. One other attorney in our firm, Mr. Andrew S. Radeker, Esquire, also worked on this file.
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3. With our firm, the Plaintiff incurred \$212.06 in costs in this action and expects to incur an additional \$63.48, at a minimum, moving forward in this matter.
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5. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee

customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989).

6. These factors, as applied in this case, are as follows:

- a. Nature, Extent, and Difficulty of the Legal Services Rendered. The most difficult issues in the case were resolving violations of the State's Freedom of Information Act (S.C. Code Ann. § 30-4-100 et. seq.) ("SCFOIA") through settlement of this matter. These issues included the production of records unlawfully withheld from disclosure under SCFOIA that were owed to Ms. Garris, but also involved settlement negotiations regarding open meeting violations of SCFOIA brought by Ms. Garris in this action. The settlement discussions were complicated (for both parties in this action) when Ms. Garris achieved election to the Defendant's school board during the pendency of this matter. Specifically, this matter involved investigation and legal research in this matter to determine how Ms. Garris' rights may be affected and could still be asserted, considering her election during my representation. In addition to the settlement negotiations, I also drafted and supplied responses to discovery requests, prepared for and attended depositions, attended a mediation of this matter, and attended the trial of this case. My representation of Ms. Garris began in June 2017. This action first appeared for a roster meeting in June 2019, when it was carried over to the September 2019 trial roster and was eventually provided a day-certain trial date of October 24, 2019, which is when the hearing

on the merits occurred. Accordingly, this case involved significant research, preparation, and attendance at court appearances.

- b. Time and Labor Necessarily Devoted to the Case. The legal questions raised by this case were complex, and this case was tried to judgment. This resulted in us having to do quite a lot of work. Accordingly, the time and labor devoted to this case were necessary to properly protect our client's interests in this case.
- c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina. I was admitted to the South Carolina Bar on May 19, 2014. I practice with the law firm of Harrison, Radeker & Smith, P.A., where I concentrate my practice in civil litigation, with a particular emphasis on SCFOIA cases, constitutional/civil rights and free speech cases, appeals, and consumer and lending litigation (representing debtors as well as creditors), as well as real estate litigation such as quiet title and partition actions. My work has also included representing clients in SCFOIA matters, criminal defense matters, defamation (slander and libel) cases, freedom of speech cases, real property litigation, and landlord-tenant cases. I have been a presenter at continuing legal education seminars, including the South Carolina Bar Convention. I was admitted to the South Carolina Bar on May 19, 2014. I am also lead attorney for the South Carolina Press Association which serves more than 95 percent of the state's newspapers. I am also the author of several open government guides for the Reporters Committee for the Freedom of Press. After graduating from law school, I became an associate with what was then the firm

of Harrison & Radeker, P.A. (which has since changed its name to Harrison, Radeker & Smith, P.A.). I have been a shareholder in the firm since 2018.

- d. Contingency of Compensation. While we have taken this matter on an hourly basis, our client is not wealthy, and whether attorney's fees are awarded in this case may have a significant bearing on whether my firm is fully compensated for the work we have done on the case.
- e. Customary Fee Charged on the Locality for Similar Services. The other attorney in my firm, Andrew S. Radeker, and I spent 132.34 hours working on this case through today. Our collective billing comes to \$40,510.04 through this point in the case. My hourly rate is \$300.00 and Mr. Radeker's hourly rate is \$350.00. These hourly rates, as well as the total of fees, are normal and customary for attorneys' services in South Carolina area for litigated civil cases. Accordingly, these rates and the total of fees are in line with those customarily charged in this locality for similar services.
- f. Beneficial Results Obtained. On the Plaintiff's behalf I was also able to negotiate the release of several records from Defendant which were included as causes of action in the filed Summons and Complaint in this matter. Specifically, Ms. Garris received records pertaining to five causes of action in June 2019, as she testified at trial. As of June 1, 2019, our law firm had billed Ms. Garris a total of \$12,787.54 for approximately 45 hours of work. It is clear to the undersigned and Ms. Garris that the aforementioned records would not have been provided had this lawsuit not been brought and maintained against the Defendant. In addition to the disclosure of the records unlawfully withheld,

Ms. Garris succeeded at trial in getting a finding that Defendant violated the South Carolina Freedom of Information Act. Both the disclosure and the finding at trial are beneficial results.

7. Ms. Garris is the prevailing party in this action at least by virtue of the disclosure of documents illegally withheld by Defendant in June of this year. Ms. Garris also is a prevailing party for the finding she received in her favor at the trial of this case. Although the undersigned can prove the amount of attorney's fees incurred by Ms. Garris at both the date of the disclosure and the total amount as of today, I cannot conclusively say what percentage of efforts by myself and/or Mr. Radeker are to credit for prevailing on one cause of action at trial as opposed to another cause of action. I can only say all of law firm's and Ms. Garris' efforts contributed wholly to all the success we had in this case.

FURTHER AFFIANT SAYETH NOT.

Taylor M. Smith IV

SWORN to before me this
2nd day of December, 2019.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 3/29/27

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

**Jada Garriss, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**AFFIDAVIT OF TAYLOR SMITH AS
TO ATTORNEY FEES AND COSTS**

Personally appeared before me Taylor M. Smith IV, who, first being duly sworn, deposes and says as follows:

1. My name is Taylor M. Smith IV. I am an attorney for the Plaintiff in the above-captioned lawsuit. I was the attorney at our firm who primarily handled this file. One other attorney in our firm, Mr. Andrew S. Radeker, Esquire, also worked on this file.
2. The fee agreement that my firm has with Ms. Garriss is for billing at an hourly rate for our representation of her in this case.
3. With our firm, the Plaintiff incurred \$212.06 in costs in this action and expects to incur an additional \$63.48, at a minimum, moving forward in this matter.
4. I spent at least 107 hours working on this case, including time I spent today drafting a motion and this affidavit and discussing these documents with my law partner. At my hourly rate of \$300/hour, that comes to **\$32,100** in just my time alone.
5. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee

customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989).

6. These factors, as applied in this case, are as follows:

- a. Nature, Extent, and Difficulty of the Legal Services Rendered. The most difficult issues in the case were resolving violations of the State's Freedom of Information Act (S.C. Code Ann. § 30-4-100 et. seq.) ("SCFOIA") through settlement of this matter. These issues included the production of records unlawfully withheld from disclosure under SCFOIA that were owed to Ms. Garris, but also involved settlement negotiations regarding open meeting violations of SCFOIA brought by Ms. Garris in this action. The settlement discussions were complicated (for both parties in this action) when Ms. Garris achieved election to the Defendant's school board during the pendency of this matter. Specifically, this matter involved investigation and legal research in this matter to determine how Ms. Garris' rights may be affected and could still be asserted, considering her election during my representation. In addition to the settlement negotiations, I also drafted and supplied responses to discovery requests, prepared for and attended depositions, attended a mediation of this matter, and attended the trial of this case. My representation of Ms. Garris began in June 2017. This action first appeared for a roster meeting in June 2019, when it was carried over to the September 2019 trial roster and was eventually provided a day-certain trial date of October 24, 2019, which is when the hearing

on the merits occurred. Accordingly, this case involved significant research, preparation, and attendance at court appearances.

- b. Time and Labor Necessarily Devoted to the Case. The legal questions raised by this case were complex, and this case was tried to judgment. This resulted in us having to do quite a lot of work. Accordingly, the time and labor devoted to this case were necessary to properly protect our client's interests in this case.
- c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina. I was admitted to the South Carolina Bar on May 19, 2014. I practice with the law firm of Harrison, Radeker & Smith, P.A., where I concentrate my practice in civil litigation, with a particular emphasis on SCFOIA cases, constitutional/civil rights and free speech cases, appeals, and consumer and lending litigation (representing debtors as well as creditors), as well as real estate litigation such as quiet title and partition actions. My work has also included representing clients in SCFOIA matters, criminal defense matters, defamation (slander and libel) cases, freedom of speech cases, real property litigation, and landlord-tenant cases. I have been a presenter at continuing legal education seminars, including the South Carolina Bar Convention. I was admitted to the South Carolina Bar on May 19, 2014. I am also lead attorney for the South Carolina Press Association which serves more than 95 percent of the state's newspapers. I am also the author of several open government guides for the Reporters Committee for the Freedom of Press. After graduating from law school, I became an associate with what was then the firm

of Harrison & Radeker, P.A. (which has since changed its name to Harrison, Radeker & Smith, P.A.). I have been a shareholder in the firm since 2018.

- d. Contingency of Compensation. While we have taken this matter on an hourly basis, our client is not wealthy, and whether attorney's fees are awarded in this case may have a significant bearing on whether my firm is fully compensated for the work we have done on the case.
- e. Customary Fee Charged on the Locality for Similar Services. The other attorney in my firm, Andrew S. Radeker, and I spent 132.34 hours working on this case through today. Our collective billing comes to \$40,510.04 through this point in the case. My hourly rate is \$300.00 and Mr. Radeker's hourly rate is \$350.00. These hourly rates, as well as the total of fees, are normal and customary for attorneys' services in South Carolina area for litigated civil cases. Accordingly, these rates and the total of fees are in line with those customarily charged in this locality for similar services.
- f. Beneficial Results Obtained. On the Plaintiff's behalf I was also able to negotiate the release of several records from Defendant which were included as causes of action in the filed Summons and Complaint in this matter. Specifically, Ms. Garris received records pertaining to five causes of action in June 2019, as she testified at trial. As of June 1, 2019, our law firm had billed Ms. Garris a total of \$12,787.54 for approximately 45 hours of work. It is clear to the undersigned and Ms. Garris that the aforementioned records would not have been provided had this lawsuit not been brought and maintained against the Defendant. In addition to the disclosure of the records unlawfully withheld,

Ms. Garris succeeded at trial in getting a finding that Defendant violated the South Carolina Freedom of Information Act. Both the disclosure and the finding at trial are beneficial results.

7. Ms. Garris is the prevailing party in this action at least by virtue of the disclosure of documents illegally withheld by Defendant in June of this year. Ms. Garris also is a prevailing party for the finding she received in her favor at the trial of this case. Although the undersigned can prove the amount of attorney's fees incurred by Ms. Garris at both the date of the disclosure and the total amount as of today, I cannot conclusively say what percentage of efforts by myself and/or Mr. Radeker are to credit for prevailing on one cause of action at trial as opposed to another cause of action. I can only say all of law firm's and Ms. Garris' efforts contributed wholly to all the success we had in this case.

FURTHER AFFIANT SAYETH NOT.

Taylor M. Smith IV

SWORN to before me this
2nd day of December, 2019.

(L.S.)

Notary Public for South Carolina

My Commission Expires: 3/29/27

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**Jada Garriss, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

**AFFIDAVIT OF
ANDREW S. RADEKER
AS TO ATTORNEY'S FEES**

Personally appeared before me, Andrew S. Radeker, who first being duly sworn, deposes and says as follows:

1. My name is Andrew S. Radeker. I am a principal in the law firm of Harrison, Radeker & Smith, P.A. and am an attorney for the Plaintiff in the above-captioned lawsuit. Taylor Smith of our firm did most of the lawyering in this case, but I worked on it as well, primarily in the time leading up to trial and during the trial of the case that occurred on October 24, 2019.
2. I have spent at least a total of 24.55 hours on this case. This includes 2.2 hours allotted to the time I spent today drafting motions and affidavits and related activity.
3. At my billing rate of \$350/hour, which is the rate used for billing the Plaintiff for my time in this case, 24.55 hours comes to **\$8,592.50**.
4. Before the time that the Defendant decided to produce documents that the Plaintiff sought, which was in June of this year, our records indicate I spent 1.05 hours (at least) on this case. Most of the time I spent on this case was for trial preparation and trial on the week of trial.

5. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989).
6. These factors, as applied in this case, are as follows:
 - a. Nature, Extent, and Difficulty of the Legal Services Rendered. This matter was a highly contested case. Almost all of the time I spent on it was for trial preparation and trial, and such work is among the more difficult and detail-oriented work of a lawyer.
 - b. Time and Labor Necessarily Devoted to the Case. As discussed above, I have spent at least a total of 24.55 hours on this case, and this was almost all in trial preparation and trying the case. That work was necessary for us to have the trial in a way that assisted our client's interests meaningfully. The time and labor devoted to this case were necessary to properly protect our client's interests.
 - c. Professional Standing of Counsel. I practice with the law firm of Harrison, Radeker & Smith, P.A., where I concentrate my practice in civil litigation, with a particular emphasis on foreclosure cases, false arrest cases, constitutional/civil rights and free speech cases, appeals, and consumer and lending litigation (representing debtors as well as creditors), as well as real estate litigation such as quiet title and partition actions. My work has also

included representing clients in criminal defense matters, defamation (slander and libel) cases, wrongful death and personal injury cases, mechanic's lien actions, fraud and misrepresentation cases, and landlord-tenant cases. I have been a presenter at continuing legal education seminars, including the Master-in-Equity Bench/Bar CLE. I was admitted to the South Carolina Bar on November 14, 2005. I am a past real estate section chair of the South Carolina Association for Justice, have served on the Consumer Law Section council of the South Carolina Bar, and am one of the co-authors of the third edition of the South Carolina Foreclosure Law Manual. After graduating from law school, I became an associate with what was then the firm of James C. Harrison, Jr., P.A. (which since changed its name to Harrison & Radeker, P.A. and now to Harrison, Radeker & Smith, P.A.). I have been a shareholder in the firm since 2009.

- d. Contingency of Compensation. While we have this case on an hourly basis, our client is not wealthy, and whether attorneys' fees are awarded in this case may have a significant bearing on whether my firm is fully compensated for the work we have done on the case.
- e. Customary Fee Charged on the Locality for Similar Services. The hourly rate given above is normal and customary for attorneys' services in the Columbia area for litigated cases. The amount of the fees generated by my work on this case are even conservative for a case that was tried. I am aware from discussions with clients, other attorneys in the Midlands region of South Carolina, and from my general familiarity with the legal profession that the fees

charged for services similar to those in this case are in line with those incurred in the instant case. Accordingly, the fees for my work in this case are in line with those customarily charged in this locality for similar services.

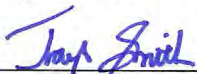
- f. Beneficial Results Obtained. This case has resulted in our client obtaining documents she was entitled to get that were originally withheld from her and resulted in a finding at trial that the Defendant had violated the South Carolina Freedom of Information Act, both of which are very beneficial results.

FURTHER AFFIANT SAYETH NOT.



Andrew S. Radeker

SWORN to before me this
2nd day of December, 2019.

 (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: June 10, 2024

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2017-CP-32-04435

**DEFENDANT’S MEMORANDUM IN
OPPOSITION TO PLAINTIFF’S MOTION
FOR ATTORNEYS FEES AND COSTS**

INTRODUCTION

Defendant Lexington County School District One (“Defendant” or “District”) hereby responds to Plaintiff’s Motion for Attorney’s Fees and Costs in this action under the South Carolina Freedom of Information Act (“FOIA”). Defendant submits that no fees should be awarded, but if any are to be, they must be in proportion to Plaintiff’s relative lack of success. Additionally, the fee petition lacks the necessary information that would allow Defendant’s counsel to challenge, or the Court to rule upon, the reasonableness of the fees requested.

The District submits the following procedural history, supplemented by attachments as necessary, as it bears on Plaintiff’s “prevailing party” status, as well as the factors the Court must consider in deciding whether to award attorney’s fees.

PROCEDURAL HISTORY

1. Jada Garris (“Plaintiff”) filed suit against the District on December 6, 2017, before she was elected to serve on the District’s Board of Trustees (“Board”). The Complaint alleged multiple, different FOIA violations and sought declaratory and injunctive relief.

Curiously, the suit was not served until on or around March 13, 2018, more than three months after the suit was filed.

2. The Complaint contained 12 Causes of Action (“COAs”).¹ COAs 2, 4, 5, 6, 9, 10, and 11 generally alleged that the District did not comply with Plaintiff’s various requests for documents. COAs 3, 7 and 8, generally alleged that the District did not timely post its agendas to its website.² COAs 1 and 12 alleged violations that the Board did not hold portions of its public meetings in a public place.

3. On May 10, 2018, prior to answering the Complaint, the undersigned wrote Plaintiff’s counsel requesting an opportunity to clarify some of the issues related to Plaintiff’s public records requests. **Attachment A.** The letter asserted the District’s position that Plaintiff’s requests for “public records,” as defined by FOIA and not subject to an exemption, had been fulfilled in the first instance, prior to the lawsuit. The one exception was a recording of a February 11, 2017 Board Workshop (hereinafter, “February 11 Recording”), about which there was (and is) a disagreement between Plaintiff and the District as to whether this recording was a “public record” for the purposes of the FOIA.

4. The letter noted that the District was unaware that Plaintiff believed the records it had provided her were insufficient. Nevertheless, the letter offered to clarify any misunderstandings about what records were requested and what was provided in response, and to supplement Defendant’s prior responses, if necessary. The undersigned received no response to this offer.

¹ In fact, two of the causes of action, COAs 2 and 5, were identical and redundant.

² COA 3 and COA 8 asserted trivial, hyper-technical violations. COA 3 alleged that the District missed its website posting deadline by approximately 3.75 hours. COA 8 asserted that the District missed its website posting deadline by no more than 2.75 hours.

5. The District filed and served its Answer on May 14, 2017, denying the violations alleged.

6. In the months following Defendant's Answer, Plaintiff took no action to prosecute her lawsuit. Plaintiff failed to take advantage of the provisions of S.C. Code Ann. § 30-4-100(A), which provides an opportunity for a possible prompt resolution to alleged FOIA violations. The statute states in relevant part:

Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing.

S.C. Code Ann. § 30-4-100(A).

7. Nearly six months after the District answered the Complaint, on November 6, 2018, Plaintiff was elected to serve as a trustee on the District's Board.³

8. Shortly after Plaintiff's election to the Board, the undersigned contacted Plaintiff's counsel to discuss whether a settlement of the lawsuit could be reached so that it would not become a distraction or impediment to the business of the District or its Board. The parties began to discuss settlement, and negotiations continued through the months of November and into December 2018. As part of the negotiations, the undersigned reiterated and attempted to demonstrate that, with the exception of the February 11 Recording, referenced in COAs 2 and 5, the District had responded to the public records requests at the time Plaintiff had made them.

9. Eventually, the undersigned understood from Plaintiff's counsel that the issues referenced in the Complaint's COAs 4, 6, 9, 10, and 11 were without merit or resolved, the

³ Plaintiff referenced her FOIA lawsuit during her election campaign and, upon information and belief, used it to brandish her bona fides as a change agent and champion for transparency. *See, e.g., Attachment B.*

District having fully complied with the public records requests when they were initially made. Ultimately, the settlement negotiations which began in November 2018 broke down when Plaintiff and the Defendant's Board could not agree on the terms of settlement.

10. In late January 2019, once it became clear that settlement was off the table, the undersigned again reached out to Plaintiff's counsel in an attempt to move the litigation forward. During a call on or around February 6, 2018, Plaintiff's counsel and the undersigned discussed proceeding ahead. The undersigned understood that Plaintiff's counsel was in the process of amending the Complaint to reflect the recognition that COAs 4, 6, 9, 10, and 11 were without merit *ab initio*, given that the records requests referenced therein had been properly fulfilled prior to the suit. To that end, on February 7, 2019, the undersigned prepared a Memorandum (the "February 7 Memo") outlining the understanding of which causes were considered effectively resolved. **Attachment C.**

11. On February 18, 2019, the undersigned sought an update from Plaintiff's counsel regarding the February 7 Memo and progress on amending the Complaint. No response was received, despite two additional attempts during the months of March and April, until May 8, 2019. **Attachment D.**

12. In a May 8, 2019 email, Plaintiff's counsel indicated that Plaintiff was willing to amend the Complaint, dismissing COAs 2, 4, 5, 6, 9, 10, and 11, on two conditions: 1) delivery of the February 11 Recording referenced in COA 2 (and repeated in COA 5); and 2) written confirmation from the undersigned that an exhaustive search for additional documents referenced in COA 10 was ended and any other forms that had been in existence were lost.⁴ The District

⁴ COA 10 referenced Plaintiff's initial FOIA request for documents related to the Architectural Selection Committee. Specifically, she sought: "The written report of the Architectural Selection Committee, listing the persons or firms that responded to invitations to submit

agreed to these terms in an effort to simplify and streamline the litigation, which would benefit both parties. In doing so, the District did not admit, and does not now admit, that it improperly or unlawfully withheld any document requested. **Attachment E.**

13. On or around June 13, 2019, Plaintiff filed the Amended Complaint. In conformity with the parties' negotiations, seven of the 12 COAs were dismissed, leaving the five COAs that were the subject of a trial on October 24, 2019. Once the Amended Complaint was filed, the District provided a copy of the February 11 Recording referenced in COA 2 (and repeated in COA 5) and the requested statement that there were no architectural subcommittee documents that had not previously been provided.

14. Following a trial on the five COAs in the Amended Complaint, the Court found only one FOIA violation, related to a Board meeting which, according to Plaintiff's teenage daughter, was opened in the board room adjacent to the main room of the auditorium building with the door between the board room and the main room closed.⁵

15. The parties' cross Motions for Reconsideration are currently pending with the Court. The Court's ruling on these motions may have a bearing on Plaintiff's status as a prevailing party.

information and enumerating the reasons of the committee for selecting the particular ones to be interviewed for all architectural awards dating August 25, 2015 - August 25, 2017." The District properly responded to this FOIA request and provided the documents in its possession. It appears the District did not maintain all of the individual committee member evaluations. However, each committee member's scores from their individual evaluations were contained in a summary that was provided to Plaintiff in response to her FOIA request and which contained all the pertinent information that would have been contained in the individual member evaluations.

⁵ As explained by Board Chair Cynthia Smith and the District's Chief Communication's Office, Mary Beth Hill, there was a longstanding practice of opening board meetings in the adjacent board room with the door between the board room and the main room of the auditorium open, followed by the Board going into executive session and shutting the door between the main room of the auditorium and the board room. As noted by the Court, injunctive relief was not required given that the Board no longer opens its meeting in this way.

LEGAL FRAMEWORK

The FOIA provides: “If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request.” S.C. Code Ann. § 30-4-100(b). “If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.” *Id.* The awarding of attorney’s fees, if any, and the amount awarded, is left to the discretion of the trial judge. *Kiriakides v. Sch. Dist. of Greenville Cty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009).

Courts consider six factors in determining the discretionary award of attorney’s fees: (1) nature, extent, and difficulty of the case; (2) time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004). A court should consider all six factors in making its decision, and none of the six factors are controlling. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989).

ARGUMENT

A. Because Plaintiff is a Trustee on the Defendant District’s Board, she should not be awarded attorney’s fees, which would be paid out of the District’s general fund.

Our Supreme Court has recognized that “every public officer is bound to perform the duties of his office honestly, faithfully and to the best of his ability, in a manner so as to be above suspicion of irregularity, and to *act primarily for the benefit of the public.*” *O’Shields v. Caldwell*, 207 S.C. 194, 35 S.E.2d 184 (1945) (emphasis added). It is axiomatic that a conflicting interest arises when a public official has an interest not shared in common with the other members of the public. 63C *Am. Jur. 2d.*, Public Officers and Employees § 242.

Plaintiff may believe her suit was intended to benefit the public. However, Plaintiff only prevailed on one issue and as a result, the Court issued a declaration that the District violated the FOIA on a single occasion. The Court declined to order injunctive relief. Consequently, there was no real benefit to the public that resulted from the suit. Awarding Plaintiff attorney's fees is not in the best interest of the public or the school district she serves. Any attorney's fees awarded to Plaintiff would benefit her (or her attorneys) to the detriment of the District's taxpayer funded general fund for which Plaintiff, as a Board member, is a steward. Her interest in being awarded attorney's fees (whether those be as reimbursement for funds already spent or for a debt owed to her attorneys) is necessarily averse to the District's, and thus the public's, interest. She should either relinquish her seat on the Board or forgo seeking monies from the District.

B. Plaintiff is technically a “prevailing party” under FOIA but only minimally so and only as to the matters adjudicated at trial.

Plaintiff claims she is a prevailing party because she prevailed on one of her causes of action following the October 24, 2019 trial. To the extent the Court's Order does not change as a result of the parties' cross motions for reconsideration, the District concedes Plaintiff has prevailed in part, based on the Court's finding a single FOIA violation. As such, the Court should consider Plaintiff's fee petition in proportion to Plaintiff's victory. As discussed more fully below, if any award of attorney's fees is granted, it should reflect Plaintiff's very limited success.

Plaintiff also contends that she is a prevailing party because “the Defendant finally produced all the documents it had that were responsive” to Plaintiff's initial FOIA requests. *See* Plaintiff's Motion for Attorney's Fees and Costs, ¶ 5. First, Plaintiff's motion does not state what documents she believes were provided after the litigation had commenced. Second, the

District, throughout this litigation, has maintained that it complied or substantially complied with all of Plaintiff's FOIA document requests and that the only requested item not provided was the February 11 Recording.⁶ **See Attachment A.** Further, it has been the undersigned's longtime understanding that Plaintiff and Plaintiff's counsel also came to accept that the District had provided the responsive documents initially and that the COAs based on FOIA requests were without merit *ab initio* or otherwise resolved. If, instead, Plaintiff now asserts that the District only complied with her document requests as a result of the lawsuit, then the District disputes any such claim. Adjudication of those issues would likely require a new hearing on the merits, which would place the Court and the parties in the absurd position of arguing the merits of claims that have been voluntarily dismissed.

The law generally supports the position that Plaintiff cannot claim to be a prevailing party regarding claims that she voluntarily dismissed. A voluntary dismissal is as if the action had never been filed. *See, e.g.,* 9 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2367 (3d. ed. 2014); *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 50, 378 S.E.2d 69, 71 (Ct. App. 1989) (finding that when the Plaintiff "voluntarily dismissed his case without prejudice, thus leaving his claim unadjudicated upon the merits, the situation became the same as if he had never brought the suit."). Accordingly, Plaintiff should not be allowed to recover attorney's fees based on claims she voluntarily dismissed.

⁶ Regarding the February 11 Recording, which was ultimately provided on or around June 17, 2019, the District asserts that it produced the recording as part of a settlement, which benefited both parties. The District contends, as it did when Plaintiff first made a FOIA request for the recording, that the recording was not a "public record" within the meaning the FOIA because it was not routinely and intentionally maintained in the normal course of business and rather was made by the Board's secretary for the sole purpose of helping her recall what transpired when she was preparing the Board meeting minutes.

The instant case is distinguishable from the *Sloan* cases cited in Plaintiff's Motion because the FOIA violations alleged in those cases were not voluntarily dismissed and were ultimately either adjudicated or conceded. In *Sloan v. the South Carolina Department of Revenue*, the Supreme Court found that DOR's response to Sloan's FOIA request for procurement documents was "best characterized as 'we will get to it when we get to it,' which [was] manifestly at odds with the clarity mandated by [the FOIA]." 409 S.C. 551, 553, 762 S.E.2d 687, 688 (2014). Sloan subsequently filed suit, and while DOR mooted the injunctive relief that Sloan sought, Sloan persisted with the litigation. *Id.* at 554, 762 S.E.2d at 688. The Supreme Court held that Sloan was still a prevailing party because DOR "did not comply with the statutory dictates of FOIA." *Id.* at 554-56; 762 S.E.2d at 688-89.

In *Sloan v. Friends of Hunley, Inc.*, Sloan's public records request was initially rebuffed by the Friends organization, which claimed it was not a public body under the FOIA. Sloan initiated suit against the Friends, which later provided documents and, importantly, conceded that it was a public body subject to the FOIA. 393 S.C. 152, 155, 711 S.E.2d 895, 896 (2011); see also *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 478 (2006) (*Sloan 1*).

This case is distinguishable from the *Sloan* cases because there remains a dispute as to whether the District violated FOIA with regard to Plaintiff's dismissed causes of action. With regard to the February 11 Recording (the only document request that the District chose not to provide), the District responded to Plaintiff's request and asserted the recording was not a "public record" for the purposes of FOIA.⁷ Unlike Sloan's *DOR* case, the District did not blatantly disregard the response requirements of FOIA; the District properly responded to Ms.

⁷ At the time of the February 11 meeting, the Board was not making audio or video recordings of its public meetings. It now records all of its meetings and posts the recordings on its website for reasons unrelated to this lawsuit.

Plaintiff's FOIA request with its rationale for not disclosing the recording. Unlike the Friends organization in Sloan's *Hunley* case, the District never conceded that FOIA applied to the February 11 Recording. In sum, this case is distinguishable from the *Sloan* cases because Plaintiff dismissed her document request causes of action, and there has been no admission by the District or finding by a court that the District violated FOIA as to these COAs.

Additionally, the District's decision to provide the February 11 Recording was not a "unilateral change in position," see *Hunley*, 393 S.C. at 157, 711 S.E.2d at 97-98. Instead, it was a bargained-for exchange. Specifically, the District provided the February 11 Recording⁸ in exchange for agreeing to allow Plaintiff to amend her Complaint to dismiss claims which would ultimately be shown to be meritless. Arguably, Plaintiff benefited financially from this agreement because the litigation of meritless claims would have resulted in additional, unnecessary attorney time and fees. The District similarly benefited. Additionally, Plaintiff's overall success rate was enhanced by her decision to abandon meritless claims—rather than prevailing on one of five claims, she would have prevailed on, at most, two of 12 claims.

For the above reasons, Plaintiff may be a prevailing party only as to the issues decided at trial. To the extent the Court will allow Plaintiff to claim prevailing party status as a result of the District agreeing to produce the February 11 Recording, any award should consider the benefit of the bargain the parties struck and the unnecessary delay on Plaintiff's part. To the extent Plaintiff believes she can claim prevailing party status as a result of the District producing other non-exempt documents for the first time as a result of the suit being filed, which the District denies it did, further litigation of these disputes would necessarily be required.

⁸ As noted above, the District also provided an attestation that some of the documents initially requested were searched for and were non-existent. As this was a new document created specifically for the purposes of settling this case, it was not a public record under FOIA and should not be considered in relation to the prevailing party analysis.

C. To the extent the District can address the *Burton* Factors, the analysis weighs in favor of no award of attorney's fees or a minimal amount.

Plaintiff's counsels' Motion and accompanying Affidavits do not provide sufficient detail or documentation for the Court or the undersigned to fully analyze and address *Burton* factors 2, 3, and 6. Plaintiff's counsels' failure in this regard would allow the Court to deny an award altogether. To the extent Plaintiff's counsel are allowed to supplement their Motion and/or Affidavits, the undersigned reserves the right to amend its Memorandum in response. At this time, given the lack of information, the undersigned will address only the first, fourth, and fifth *Burton* factors.

i. First *Burton* Factor – Nature, extent and difficulty of the case.

This litigation lasted longer and was more involved by far than it needed to be. As noted above, the case was effectively dormant for approximately three months after it was filed, and for six months after it was served. During that time, Plaintiff filed no discovery requests and made no requests to depose District employees. The fact that there was a statutory mechanism in place that would have allowed Plaintiff to at least attempt to expedite the case demonstrates the unreasonableness of the delay.

Meanwhile, the District and the undersigned counsel spent considerable time preparing its defense by attempting to demonstrate that the District had, in fact, complied with the document requests in the first instance. Ultimately, Plaintiff dismissed the seven COAs related to her public records requests, which, with the exception of the February 11 Recording, the District complied with in the ordinary course and not as a result of the suit. The time and expense the District and the undersigned put into reviewing its initial responses to Plaintiff's FOIA requests, only to confirm that all responsive records had been produced, was wasted as a result of otherwise meritless COAs.

Plaintiff's discovery responses were not extensive. Once the records request COAs had been dismissed, and the Amended Complaint filed, Plaintiff finally responded to the District's discovery requests. The responses were emails and screenshots Plaintiff sent to her attorney, which appear to have simply been cut and pasted into an 8-page document. Ultimately, the case did not involve an extensive document production, at least on Plaintiff's part, and the outcome of the case was based primarily on witness testimony.

ii. Fourth *Burton* Factor – Contingency of Compensation.

Based on the attestations of Plaintiff and her counsel, this case was not taken on a contingency basis. Instead, Plaintiff was charged hourly, and has thus far been billed \$12,787.54. Smith Aff. ¶ 6(f). Defendant District submits that Plaintiff's counsel has already received sufficient compensation considering the minimal beneficial results obtained (see below) and the other factors weighing against additional compensation discussed throughout this Memorandum.

iii. Fifth *Burton* Factor – Beneficial results obtained.

Whether the Court considers the allegations and relief sought in the initial Summons and Complaint or, more appropriately, limits its consideration to the Amended Complaint, the results obtained by Plaintiff following a trial are minimal. Plaintiff's original Complaint sought declarations that the District violated FOIA; injunctive relief that documents be produced; that the actions taken at the meetings referred to in the Complaint be rescinded, and in one case, absurdly, a declaration that the District was guilty of a misdemeanor for willfully violating FOIA. Plaintiff ultimately dismissed seven meritless COAs related to her public records request.

At trial, Plaintiff testified that she was not originally concerned with the alleged agenda-related violations or open meeting violations and did not even realize that these items were going to be in her Complaint. **Attachment F, Trial Tr. pp. 108; 115-118.** Nevertheless, these are the issues that Plaintiff brought to trial.

Ultimately, the Court found only one violation and determined that an injunction was not necessary. Regarding that violation, in which the Court found that the Board opened its November 17, 2017 meeting, and went directly into executive session in a manner that was not sufficiently “open to the public” for the purpose of FOIA, Plaintiff has put forward nothing to suggest that the Board took any secret action that would offend FOIA’s guiding principles that government business be conducted in the open. While the District continues to believe that it opened its meeting properly, even if the Court’s ruling stands, this was a technical violation with no indication of government malfeasance or harm to Plaintiff or any other citizen. Moreover, it is clear from the testimony that the actual subject matter of the executive session was of no interest to the Plaintiff because she sent her daughter in to observe; indeed, Plaintiff admitted she was interested only in whether the District strictly complied with the technical requirements of FOIA. **Attachment F, Trial Tr. pp. 115-116.**

Ultimately, Plaintiff’s FOIA requests and subsequent lawsuit have uncovered no wrongdoing, dishonesty, deception, corruption, or other efforts by the Board to prevent the public from knowing the District’s business.⁹ (Ironically, the lawsuit spotlighted Plaintiff’s own

⁹ In December 2019, an article was posted to the website of the South Carolina Press Association’s website, the organization for which Plaintiff’s counsel serves as “lead attorney” (Smith Aff. ¶ 6(c)), comparing Plaintiff’s lawsuit to the lawsuits that led to the release of the Pentagon Papers and more recently, the Afghanistan Papers. **Attachment G.** To compare Plaintiff’s suit to matters of war and national security is patently absurd.

deception and disregard for the FOIA.¹⁰). Yet, Plaintiff and her counsel continue to cast unsupported aspersions on the District and its Board.¹¹ For example, Plaintiff's Motion asserts, without evidence, that "the Defendant [District] is still infected with an anti-transparency culture." Motion, ¶ 9. The District has been largely vindicated by this Court yet remains subject to unfounded allegations about the District's aversion to transparency in both her pleadings and the press.¹² In the experience of the undersigned, District One is a model for other school districts in South Carolina as regards informing the public of its business.

¹⁰ At trial, Plaintiff testified that she had secretly recorded the Board's executive session on January 15, 2019, and a portion of that recording was admitted into evidence. The purpose of that recording was not to prove any aspect of the case in chief, but to assert what she believed to be continuing open meeting violations. **Attachment F, Trial Tr. pp. 99-101.** Recording executive session violates the District's Board Policy BEC and the FOIA. See § 30-40-90(c) ("All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed pursuant to Section 30-4-70 of this chapter . . ."). These actions may have also violated the South Carolina ethics rules, as Plaintiff used her public position to gather supposed evidence to support a lawsuit she filed in her personal capacity for which she now seeks reimbursement and/or payment from the District for her attorney's fees. See S.C. Code Ann. § 8-13-700 ("No public official . . . may knowingly use his official office . . . to obtain an economic interest for himself, a family member, an individual with whom he is associated . . .; S.C. Code Ann. § 8-13-725(A) ("A public official . . . may not use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a member of his immediate family, an individual with whom he is associated . . .)).

¹¹ Plaintiff also continues to accuse Board members of wrongdoing. Recently, in a late-night video rant conducted on Facebook Live on December 10, 2019, Plaintiff accused the Board Chair of lying under oath at the trial in this matter. **Attachment H.** She provided no explanation or evidence regarding this potentially defamatory allegation.

¹² In a December 10, 2019 article from the State Newspaper, Plaintiff appears to take credit for the District's ongoing efforts to improve how it informs the public about its business. **Attachment I.** None of the changes mentioned in the article are the results of Plaintiff's lawsuits except for the assertion that the District has now assigned a dedicated employee, who also happens to be an attorney, to respond to FOIA requests. Following Plaintiff's lawsuit, alleging trivial and hyper-technical violations of the FOIA, the District felt the need to adopt a proactive, defensive posture regarding FOIA requests so that it can defend itself from any potential future lawsuits by Plaintiff or others. This article also quotes Plaintiff's counsel as stating, misleadingly, that the District agreed to provide *several* requests for information only after [Plaintiff] sued them" (emphasis added) and incorrectly, that the District admitted to

CONCLUSION

For all of the reasons listed above, the District requests that the Court decline the award of attorney's fees requested by the Plaintiff, or, in the alternative, to award a negligible amount of attorney's fees.

Respectfully Submitted,

DUFF | FREEMAN | LYON, LLC

By: s/David N. Lyon

David T. Duff, (SC Bar #1768)

David N. Lyon (SC Bar #100676)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

Facsimile: (803) 790-0605

dduff@dfi-lawfirm.com

dlyon@dfi-lawfirm.com

Attorneys for Defendant Lexington County
School District One

January 22, 2020
Columbia, South Carolina

violating FOIA. The District has never admitted to violating FOIA, and as noted above, the District believes it complied or substantially complied with all of Plaintiff's FOIA document requests and that the only requested item not provided was the February 11 Recording.

ATTACHMENT “A”



DUFF & CHILDS, LLC

ATTORNEYS AND COUNSELORS AT LAW

ATTORNEYS

David T. Duff *†

Kenneth L. Childs

Laura Callaway Hart

William C. Freeman

David N. Lyon

Tiffany L. Butler

SPECIAL COUNSEL

Keith R. Powell

OF COUNSEL

M. Jane Turner

**Certified Specialist in
Employment and Labor Law*

*†Certified Civil Mediator
and Arbitrator*

sender's email address
dlyon@duffchilds.com

May 10, 2018

VIA ELECTRONIC AND U.S. MAIL

Taylor Smith, Esquire
Harrison, Radecker & Smith, P.A.
923 Calhoun Street
Columbia, SC 29201
Taylor@harrisonfirm.com

Re: Garris Complaint

Dear Taylor:

I appreciate your willingness to allow us additional time to respond to the complaint in the above matter. As we have discussed, we agreed to a deadline of Monday, May 14, 2018. This extension has allowed us to conduct a preliminary investigation into the twelve (12) causes of action in the Complaint, most of which are brought under Section 30-4-100 of the South Carolina Freedom of Information Act (FOIA).

Clearly, the purpose of a lawsuit brought under this provision of FOIA is to ensure compliance with the Act. Further, it seems clear that Section 30-4-100 intends for any such matters brought thereunder to be resolved as expeditiously as possible. In that spirit, I would like to attempt an early resolution to some of the issues raised in the Complaint regarding various public records requests. I believe the court will appreciate our early efforts to resolve as many of the disputes as possible.

Initially, I believe the District has previously responded in good faith to the records requests discussed below. Without waiving any of the defenses we will raise in our Answer to the Complaint, I offer the following in an effort to clarify any misunderstandings about what was requested and what was provided, and, to offer to supplement the District's prior responses as necessary to fulfill the records requests.

Regarding Cause of Action 9, seeking the final pool of applicants for the Chief Human Resources Officer, I would like to reiterate the District's position that there were no applicants for this position. The Superintendent recommended, and the Board agreed, to promote Mike Stacy, who was the Human Resources Director, to the position of Chief. The District's policies allowed them to act as they did. If this was not clear in the District's initial response to Ms. Garris, we apologize. Ultimately, however, documents related to a "final pool of applicants" do not exist.

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www.duffchilds.com

Taylor Smith, Esquire
 May 10, 2018
 Page | 2

Regarding Cause of Action 10, related to Ms. Garriss' August 28, 2017 FOIA request, it appears that the District responded and provided the records requested. I am not aware that Ms. Garriss ever complained that the records provided were incomplete. However, if you believe the responses were incomplete, please provide the particulars so that the District may provide you with the correct and complete set of records.

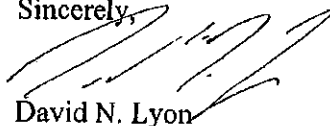
Regarding Cause of Action 11, related to Ms. Garriss' September 29, 2017 FOIA request, it appears that the District responded and provided all of the documents/information requested, with the exception of, "communications related to the Department of Labor," which the District stated it would provide if Ms. Garriss were willing to pay for the search and production of any such documents. It is my understanding that Ms. Garriss neither responded to that request, indicating her willingness to pay for the search and production, nor complained that the records provided were incomplete. In the spirit of compromise and if acceptable to you and Ms. Garriss, the District agrees to waive any fee necessary for searching for records related to the Department of Labor, as expensive and time consuming though it may be, and will provide these documents as soon as they are available, subject to any necessary exemptions outlined in Section 30-4-40 of the FOIA.

Regarding Cause of Action 6, seeking documents given to Board members at the April 25, 2017 Board meeting, it is my understanding that the District responded to this request by providing the public version of the "Board packet," which the Board typically receives in an electronic format. If Ms. Garriss believes there are items not contained in the public version of the Board packet, I am willing to compare the public version versus the Board version and provide any missing documents, redacted as necessary. As I believe was previously referenced, there are documents within the Board's version of the packet, specifically regarding field trip requests, that include student names. Those names would be exempt from disclosure under FOIA based on the requirements of the Family Educational Rights and Privacy Act (FERPA).

With regard to the specific request for "any and all documents provided to a Board member during [executive session]," which appears to be the heart of the dispute, it is my understanding that no additional documents, other than those contained in the Board packet, were provided to Board members during executive session. Therefore, there are no documents responsive to this portion of the request, other than those provided in the Board packet. I understand it is possible that at least one Board member may have had his electronic Board packet printed out, which may provide an explanation if Ms. Garriss believes she saw a Board member carrying actual printed documents.

The remainder of the allegations in the Complaint involve disputed matters of law and/or alleged procedural FOIA violations, which I assume we cannot resolve at this time. Therefore, we look forward to resolving these in court, if necessary. I hope however, that the above matters can be resolved prior to our initial appearance in court.

Sincerely,



David N. Lyon

DNL/kc

c: Mary Beth Hill, Chief Communications Officer (via email only)
 Dave Duff, Esquire

ATTACHMENT “B”

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Opinion

Lack of transparency, not questions, hurting Lexington District One students

May 24, 2018 | Jada Garriss, candidate for Lexington School, District One's Board of Trustees

Now that my campaign is gaining traction, I have become aware of an organized effort to discredit me by others because of pending litigation. This litigation has been public record since December 6, 2017 when I filed a Freedom of Information Act (FOIA) lawsuit. Here is the link to the document for you to view: www.jadagarriss.com/transparency. Due to the way FOIA is structured, I am not eligible to receive any money or compensation from this lawsuit. I will not get ONE penny. The only thing I stand to gain is information that I will pass on to the voter and taxpayer.

I filed this lawsuit after repeated FOIA requests went unfilled. On April 25, 2017, I stood before the school board at a public meeting and showed them a letter from the Attorney General's office concerning my request. It stated: "The Attorney General's Office is of the mind that Lexington School District One misconstrued ... its disclosure obligations under FOIA." I went on to say publicly: "I could take this information to an attorney and something tells me that they're going to agree with the Attorney General's opinion, but that would be doing an injustice to the taxpayers of this district." I requested the information again after publicly informing the board of the Attorney General's opinion, giving them an opportunity to comply. I filed with the court as a last resort. I am in the process of posting all of these letters on my website. I have absolutely nothing to hide. If you have any questions, please feel free to ask me. I do not believe it is ridiculous to ask questions.

I am a mother of two who works as a court reporter with no political affiliations or aspirations. Yet, somehow, I have threatened the establishment by seeking information and transparency. I encourage the district to adopt the same policy as the Attorney General and "when in doubt, disclose". They have unlimited resources and money, I do not. I am just the little guy fighting for the little guy.

Please do not let this pending litigation distract you from all of the issues at hand. The people who stand to gain from a lack of transparency would rather spend time attacking me personally instead of talking about the issues.

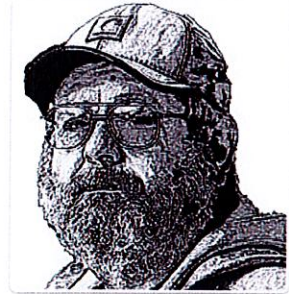
Sincerely,
Jada Garriss



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ATTACHMENT “C”

David Lyon

From: David Lyon
Sent: Thursday, February 7, 2019 2:36 PM
To: Taylor Smith
Cc: Dave Duff
Subject: RE: Meeting today?
Attachments: Narrowing Claims.pdf

Taylor,

See the attached memo we discussed yesterday regarding narrowing the claims going forward to avoid unnecessary burdensome discovery.

In the meantime, can you share what documents you have (screen shots etc.) showing that agendas were not timely posted? I assume I will eventually see this either through discovery or through our attempts to negotiate stipulated facts. For expediency's sake, are you willing to go ahead and send them?

David

David N. Lyon
 Duff & Childs, L.L.C.
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 Columbia, SC 29202
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From: Taylor Smith <Taylor@harrisonfirm.com>
Sent: Wednesday, February 6, 2019 11:17 AM
To: David Lyon <dlyon@duffchilds.com>
Subject: RE: Meeting today?

David,

Sorry for my failure to reply sooner.

Yes, today at 2:40 works for me. Do y'all plan to call me or should I reach out to you guys?

Taylor M. Smith IV



923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
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From: David Lyon
Sent: Wednesday, February 6, 2019 11:10 AM
To: Taylor Smith
Subject: Meeting today?

Taylor,
Are you able to speak with Dave and me today about the Garriss matter?
I proposed the time of 2:40.
David

David N. Lyon
Duff & Childs, L.L.C.
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From: David Lyon
Sent: Monday, February 4, 2019 10:55 AM
To: 'Taylor Smith' <Taylor@harrisonfirm.com>
Cc: Dave Duff <dduff@duffchilds.com>
Subject: RE: Meeting Thursday Afternoon

Taylor,
How about we talk on Wednesday at 2:40?
David

David N. Lyon
Duff & Childs, L.L.C.
P.O. Box 1486
Columbia, SC 29202

MEMORANDUM

TO: Taylor Smith
 FROM: David Lyon and Dave Duff
 DATE: February 7, 2019
 RE: Garris v. Lexington School District One
 SUBJECT: Efforts at Narrowing the Complaint

We appreciate your willingness to attempt to narrow this complaint as much as possible so that we can limit unnecessary discovery and/or litigation. It is our continued hope to resolve this matter as soon as possible, or, in the alternative, make sure this matter is in the best posture for motions or trial soon.

The Complaint is comprised of 12 Causes of Action (COA). Several of the COAs are similar; for these, I have grouped them accordingly below. Under each bullet point below, I have listed what I believe is the current understanding of our agreement as to next steps if any.

- **COA 1 and 12:** - Assertions of notice violations regarding opening the meetings in the board room attached to auditorium.
 - **FUTURE ACTION** - David Lyon has agreed to draft stipulated facts as to this issue;
 - If facts can be stipulated to, COAs will be ripe for adjudication
- **COAs 3, 7, and 8** – asserting agendas were not timely posted on the website.
 - **FUTURE ACTION** - Taylor Smith has agreed to draft stipulated facts as to this issue and provide documentation upon which the draft stipulated facts are based.
 - If facts can be stipulated to, COAs will be ripe for adjudication
- **COAs 2 and 5** – duplicate COAs requesting audio from the Board Member workshop.
 - District has offered the opportunity to allow JG to listen to the recording
 - Plaintiff wants copy with limited or no restrictions on dissemination
 - **FUTURE ACTION** – Continued negotiations
 - i. If negotiations are unsuccessful, parties may agree to stipulate facts and submit to the court for adjudication.
- **COAs 10 and 11**- FOIA requests from August 28, 2017 and September 29, 2017:
 - **RESOLVED:**
 - i. Upon further discussion between attorneys, Plaintiff agrees these FOIA were filled.
 - ii. Plaintiff's attorney has considered amending complaint to remove these COAs.
- **COA 4** – alleged failure to comply with the transparency proviso.
 - **RESOLVED**

- i. District provided copies of State Comptroller General letters indicated District was complaint
 - ii. Plaintiff's attorney will confirm whether these COAs will be removed from the complaint
- **COA 6** – docs reviewed in exec session on April 25, 2017.
 - **RESOLVED:**
 - i. Upon further discussion between attorneys, Plaintiff agrees these FOIA were filled.
 - ii. Plaintiff's attorney will confirm whether these COAs will be removed from the complaint
- **COA 9** – doc request for final pool of applicants for the Chief HR office.
 - **RESOLVED:**
 - i. Upon further discussion between attorneys, Plaintiff agrees this FOIA was filled.
 - ii. Plaintiff's attorney will confirm whether these COAs will be removed from the complaint

We appreciate your prompt feedback on these matters.

ATTACHMENT “D”

David Lyon

From: David Lyon
Sent: Monday, February 18, 2019 7:39 AM
To: Taylor Smith
Cc: Dave Duff
Subject: Garris suit - seeking updates

Hi Taylor,

Any updates? I think we have this suit narrowed down to 6 or 7 causes of action that are still at issue. What's your timetable for amending the complaint to remove those COAs that involve satisfied FOIA requests?

Regarding your COAs 3, 7 and 8, I believe I can demonstrate that the agendas were not back-dated; I believe I can show you through meta data that the documents were initially created on the date listed at the top of the document. I think the date on the website entry merely reflects the date atop the agenda, which again, reflects the document creation date.

Its my understanding that the agendas are drafted up as early as possible so that all of the appropriate notices can be sent out – to the press, to building administrators so that they can post signs, etc.

This does not establish exactly when the documents were posted- still working on ways to confirm that beyond a shadow of a doubt, though it's your burden to prove that they weren't timely posted – but I think we can demonstrate the date on the document reflects the creation date, which, in all cases, was more than 24 hours prior to the meeting.

I'll look forward to hearing from you soon.
 David

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David Lyon

From: David Lyon
Sent: Friday, March 8, 2019 5:15 PM
To: Taylor Smith
Cc: Dave Duff; Kim Chatman
Subject: Garris v. Lexington One
Attachments: LCSD1-Garris-03082019170412.pdf

Taylor,

Having heard nothing from you since our conversation last month, we will move ahead in the traditional manner. Attached are some standard discovery requests. Also, please provide us with dates in mid-April when Ms. Garris would be available for a deposition. Hard copies are in the mail.

It may be that there are limited documents that Ms. Garris has that are relevant to her current claims. I'm thinking specifically documents that she would use to show the alleged late posting of the agendas. If that is the case, send those, along with any witness information as soon as possible and we can move forward with Ms. Garris's deposition sooner rather than later.

We're still willing to proceed in good faith in the expedited manner we've previously discussed, but we need to get this case moving or settled.

Thanks,
 David

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David Lyon

From: David Lyon
Sent: Thursday, April 18, 2019 8:39 AM
To: Taylor Smith
Cc: Dave Duff; Kim Chatman
Subject: RE: Garris v. Lexington One

Taylor,

Its now been more than two months since we've last heard from you. I assume you are still representing Ms. Garris and that she wishes to continue this litigation. If so, we need to get this case moving. As you know, our ADR deadline in this case is June 11. Should we consider a scheduling order?

Also, I was expecting your responses to our discovery requests last week. By my calendar, the responses are 10 days past due. I don't see that you've requested any extension of time. Please let me know your intentions. Once we have your discovery responses, we will schedule Ms. Garris's deposition. It would be good to go ahead and get some dates for that.

Thanks,

David

David N. Lyon
 Duff & Childs, L.L.C.
 P.O. Box 1486
 Columbia, SC 29202
 Ph. (803) 790-0603
 Fax (803) 790-0605
 Firm Website www.duffchilds.com



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 ATTORNEYS AND COUNSELORS AT LAW

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From: David Lyon
Sent: Friday, March 8, 2019 5:15 PM
To: 'Taylor Smith' <Taylor@harrisonfirm.com>
Cc: Dave Duff <dduff@duffchilds.com>; Kim Chatman <kchatman@duffchilds.com>
Subject: Garris v. Lexington One

Taylor,

Having heard nothing from you since our conversation last month, we will move ahead in the traditional manner. Attached are some standard discovery requests. Also, please provide us with dates in mid-April when Ms. Garris would be available for a deposition. Hard copies are in the mail.

It may be that there are limited documents that Ms. Garris has that are relevant to her current claims. I'm thinking specifically documents that she would use to show the alleged late posting of the agendas. If that is the

case, send those, along with any witness information as soon as possible and we can move forward with Ms. Garris's deposition sooner rather than later.

We're still willing to proceed in good faith in the expedited manner we've previously discussed, but we need to get this case moving or settled.

Thanks,

David

David N. Lyon
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Columbia, SC 29202
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ATTACHMENT “E”

David Lyon

From: David Lyon
Sent: Thursday, May 9, 2019 2:53 PM
To: Taylor Smith
Subject: RE: Garris v. Lexington One

Taylor,

Thanks for getting back with me. Your ears must have been burning, as we were preparing a motion for a hearing to force some movement on this case, which is now over a year old.

We've been discussing your amending the complaint on and off since probably November, so I want to get a clear understanding and commitment from you as to exactly how you are planning to amend and when.

As I understand it, you are proposing to amend the complaint to remove COA 2, 4,5, 6,9, 10, 11 in exchange for the District providing the audio of the board workshop and a written confirmation from me that the District folks have looked for the architectural selection committee member evaluations and can't find it.

This would leave us with left with two sets of issues: 1) whether the board announced and opened its meetings in accordance with FOIA (COAs 1 and 12); and 2) whether the agendas were timely posted to the website (COAs 3, 7 and 8).

Please confirm that you are not planning to add any claims, facts or otherwise amend the complaint.

If all of the above is correct, we'll agree to provide the audio and statement within 24 hours of receiving an amended complaint that conforms with the above. We need to see the amended complaint within two weeks. I would also like to receive as quickly as possible the evidence that Ms. Garris has regarding COA's 3,7, and 8, as well as a list of witnesses in support of the claims in COA 3,7 and 8. I can grant an extension of two weeks on the remainder of the discovery.

I don't know any FOIA mediators and I don't see any avenues to settle other than what we've previously explored. But feel free to suggest someone. I still think it would be better to nail down the facts as best we can in the quickest way we can and take this to a judge. The facts regarding the opening of the meetings are not really in dispute, are they?

If we're in agreement with the above, I will draft up a scheduling order, with the goal of finally resolving this case within 3 months.

David

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From: Taylor Smith <Taylor@harrisonfirm.com>
Sent: Wednesday, May 8, 2019 4:05 PM
To: David Lyon <dlyon@duffchilds.com>
Cc: Dave Duff <dduff@duffchilds.com>; Kim Chatman <kchatman@duffchilds.com>
Subject: RE: Garris v. Lexington One

David,

I'm sorry for the tardy reply.

Yes, I am fine with a scheduling order and attempting mediation of this matter. Although I think mediation is best served in matters that aren't seeking legal determinations only from a court, it's possible there is a way to settle this matter that neither you or I have been able to anticipate. The scheduling order would also help us conclude this matter in an orderly manner. Good ideas.

Before I get on those discovery requests, I'd like to amend our complaint along the lines we previously discussed: removing all the open record violations and keep all the open meeting violations. But before I do that: my client needs two things: 1) delivery to her of the audio referenced in in causes of action 2 and 5 (the February 11, 2017 Board Workshop) and 2) written confirmation from you that an exhaustive search for the architectural selection committee member evaluations referenced in cause of action 10 has ended and the remaining forms are lost. Once my client receives those aforementioned items, I will amend the complaint and we can move forward.

Kindly let me know your thoughts on this proposal. Feel free to contact me if you have any questions or concerns. Thank you.

Taylor M. Smith IV



923 Calhoun Street,
 Columbia, South Carolina 29201
 Post Office Box 50143,
 Columbia, South Carolina 29250
 Telephone: (803) 779-2211
 Facsimile: (803) 779-6700
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From: David Lyon
Sent: Thursday, April 18, 2019 8:39 AM
To: Taylor Smith
Cc: Dave Duff ; Kim Chatman
Subject: RE: Garris v. Lexington One

Taylor,

Its now been more than two months since we've last heard from you. I assume you are still representing Ms. Garris and that she wishes to continue this litigation. If so, we need to get this case moving. As you know, our ADR deadline in this case is June 11. Should we consider a scheduling order?

Also, I was expecting your responses to our discovery requests last week. By my calendar, the responses are 10 days past due. I don't see that you've requested any extension of time. Please let me know your intentions. Once we have your discovery responses, we will schedule Ms. Garris's deposition. It would be good to go ahead and get some dates for that.

Thanks,

ATTACHMENT “F”

State of South Carolina
County of Lexington

Court of Common Pleas

Jada Garris	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2017-CP-32-04435
	)	
Lexington County School	)	
District One	)	
	)	
Defendant.	)	

October 24, 2019
Lexington, South Carolina

B E F O R E:

The Honorable William McKinnon, Judge.

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

Taylor Smith, Esquire
Drew Radeker, Esquire
Attorneys for the Plaintiff

David Duff, Esquire
David Lyon, Esquire
Attorneys for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

1 Do you want us to play it again before he takes the
2 computer down?

3 I will actually play the video later. But I'm
4 not going to play it between now and what I assume
5 will be lunch after this testimony.

6 BY MR. LYON:

7 Q. Ms. Garriss, I'm actually going to switch myself
8 up a little bit here. We just heard this recording
9 that I imagine -- I understand this was -- the date
10 on this was January 2019; is that correct?

11 A. Correct.

12 Q. You were a board member then, were you not?

13 A. Yes, sir.

14 Q. Okay. And how did you record this, this part
15 of the meeting?

16 A. On iPhone.

17 Q. So you had your iPhone out on the table
18 recording it?

19 A. No; it was in my purse.

20 Q. So your iPhone was in your purse secretly
21 recording this meeting?

22 A. Correct.

23 Q. How much of the meeting did you record -- the
24 executive session did you record?

25 A. I do not remember.

1 Q. I mean, the whole thing?

2 A. I really don't remember. I'm not sure how much
3 I sent to my attorney.

4 Q. Well, since we're talking about sending it, did
5 you send it to anyone else?

6 A. No.

7 Q. Is this the first time you've recorded a board
8 meeting?

9 A. No.

10 Q. You've recorded at an executive session before?

11 A. Yes -- well, I don't know about before that.

12 Q. Let me start over. But January 15, 2019, that
13 would have been your first board meeting?

14 A. No, sir.

15 Q. Second?

16 A. No. It probably -- I think we had two in
17 December and then one or two in January.

18 Q. Okay. So this was the 15th. I'm thinking
19 that's going to be the first of the January
20 meetings. Does that sound right?

21 A. No, because, usually, our special-called
22 meetings would be -- I don't know. I don't know.

23 Q. So this was one of the first few meetings that
24 you were a board member?

25 A. Correct.

1 Q. And you made that recording for what purpose?

2 A. For my own purposes. I mean, occasionally
3 there's some disagreement about what was said and
4 who said it. And I'm not talking about just being
5 on the board; I'm talking about in general with
6 myself and the district over the years.

7 Q. I guess my question is, what was the purpose
8 of -- what was the purpose of us listening to this
9 right now?

10 A. To show that the Board and the District are
11 still willfully violating FOIA.

12 Q. In your opinion?

13 A. Correct.

14 Q. Okay. And you don't recall if the door was
15 open in this meeting?

16 A. I do not.

17 Q. Okay. The Board voted to go into executive
18 session, correct?

19 A. Yes.

20 Q. Did I miss it? I didn't hear anyone oppose
21 that.

22 A. Correct.

23 Q. So you did not oppose it?

24 A. I did not.

25 Q. Why not? Did you vote for it?

1 for a recording and documents, we now have these
2 other categories of alleged violations related to
3 meetings and related to agendas. How did that make
4 it into the lawsuit?

5 A. Well, like I said, as I came across things
6 after I met with Mr. Smith -- and I believe that
7 would have been early 2017 -- then I would just --
8 as I noticed FOIA violations, I would e-mail those
9 to him.

10 So my original complaint, going to see
11 Mr. Smith, was I really want a copy of this audio;
12 I've got the Attorney General's opinion, and it
13 seems like I should have the audio. And I came in,
14 you know, with a box of things. And I remember
15 Mr. Smith looking at me, saying, well, is that all
16 you want --

17 MR. SMITH: Your Honor, objection, because at
18 this time, I need to advise my client that some of
19 this is probably covered under attorney-client
20 privilege. We would assert it would be. However,
21 she's welcome to waive it. We just want to be sure
22 she knows.

23 THE COURT: Okay.

24 BY MR. LYON:

25 Q. So do you recall that, at some point along the

1 said, well, we talked about that as a board and we
2 just decided we're tearing down the football
3 stadium.

4 And I said, well, you can't do that. You know,
5 somewhere along the way, this has to be announced
6 publicly. You had to hire a contractor. You got
7 letters from the Town of Gilbert. So I said, can
8 you explain to me how executive session works?
9 Maybe I need to start showing up at 6:00 and hearing
10 something I'm missing during the rest of the
11 meeting. And he said, well, you wouldn't hear
12 anything anyways because once we sit down at 5:30
13 and eat supper, we don't come out again until 7:30.

14 So I spoke with -- at the time, the chair was
15 Chair Knight. So a couple months after that, I
16 spoke to her about the demolition of the football
17 stadium. And I said, how is it that the public was
18 not made aware until a wrecking crew showed up and
19 started tearing the thing down? And she said, well,
20 we were in a hurry and we can take action as a board
21 without consulting the public or without announcing
22 it to the public.

23 That's why I sent my daughter in, in November,
24 because I wanted to see exactly how they entered
25 executive session; if they came out and announced,

1 because I don't just like taking somebody's word for
2 it. So we got there really early. I sent her in.
3 She came out and confirmed what the board member had
4 already told me, was that they don't come out for
5 executive session.

6 Q. Why did you send her in if you don't like
7 taking people's words for it?

8 A. Well, she's going to tell me the truth. And we
9 were texting back and forth. You know, the whole
10 time, I was working and she would send a text and
11 say, they're not here yet. A few minutes later, you
12 know, they're not here yet. And she really enjoys
13 board meetings.

14 Like I said, if I had known this was going to
15 be included in my complaint, I most definitely would
16 have went in. But I just assume her going in and
17 coming out and telling me no, Mom, they never walked
18 out there, that confirmed what I needed to know, you
19 know, when I sent that on to Mr. Smith saying, hey,
20 look, they really don't come out of that room to
21 announce why they're going into executive session.

22 Q. And this allegation was actually in your
23 initial complaint?

24 A. See, I went to see him in early 2017. And
25 then, like I said, I came with a couple things I

1 wanted to give him, the audio and some FOIA requests
2 that had been ignored. So I didn't realize that
3 nothing had been filed, I guess, like -- I assumed
4 over that year, 2017, the stuff I was sending him,
5 he was just tucking away in his mind for, you know,
6 okay, we can bring this up later and show them that
7 this is continuing, so something needs to be done to
8 fix it. I did not realize that this was going to be
9 part of my original complaint.

10 Q. Did you read your original complaint?

11 A. Yes. But I didn't know until -- when I got
12 this in December, I was under the impression that
13 this had been filed months earlier.

14 Q. Okay. I'm ready to move on and talk about
15 agendas. Do you know anything about the District's
16 website? Who creates it?

17 A. I learned, during the depositions, a lot of
18 that information.

19 Q. Okay. And it's actually contracted by a local
20 company. Is that what you learned?

21 A. Well, that part, I already knew.

22 Q. Okay. So we're dealing with -- there are two
23 that are, you say, posted within the 24-hour time
24 frame, the March 21 and July 18; is that correct?

25 A. Correct.

1 THE COURT: Let me interrupt you. Let me make
2 sure I clarify. With regard to the executive
3 session issue, is your complaint that they were not
4 properly in an open session when they announced they
5 were going into executive session or that they were
6 in the open session but the open session was not
7 where it was previously announced it was going to
8 be?

9 THE WITNESS: My complaint with it is that if
10 you wanted to hear why they were entering executive
11 session, you could not, because when you came into
12 the auditorium, there was no way to hear the vote
13 being taken. So you would have no way of knowing
14 why they were entering executive session.

15 THE COURT: Okay. Were the doors closed to
16 the --

17 THE WITNESS: My daughter says they were.

18 BY MR. LYON:

19 Q. All right. You -- let's talk about the March
20 meeting. And you pointed us to Plaintiff's 10. Do
21 you have that?

22 A. Yes, sir.

23 Q. Now, this shows what again?

24 A. This shows a copy of the agenda for the March
25 21st, 2017 board meeting and the document

ATTACHMENT “G”

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Tales of FOIA and Secrets, Then and Now

Published December 2019



By Eric P. Robinson, USC School of Journalism and Mass Communications

The [Pentagon Papers case](#), in which the [U.S. Supreme Court rejected](#) the Nixon administration's attempt to bar publication of a detailed history of American involvement in southeast Asia prior to and during the Vietnam War, is rightly celebrated as a landmark decision in favor of government openness and accountability.

But the case also shows that tenacity and persistence is also required: by the journalists who analyzed and summarized the information in the documents, by the editors who resisted government pressure and by the owners who paid the bills for the court battle over publication. And two recent freedom of information cases—one national, one here in South Carolina—show that tenacity and persistence are still required for journalists to obtain public information and hold government accountable.

The national example is *The Washington Post*'s [recent articles](#) based on transcripts and other information from 400 interviews of Pentagon officials conducted as part of an internal review of the Afghanistan War. These articles, and the materials they are based on, detail the story of the ongoing war in Afghanistan: at 18 years and counting, the longest armed conflict in American history. And, like the Pentagon Papers almost 50 years ago, they reveal that United States military and civilian government officials continually gave the American people overly optimistic and often downright false assessments of the situation in Afghanistan and the eventual outcome of the mission. As the *Post* put it, "Year after year, U.S. officials failed to tell the public the truth about the war in Afghanistan."

In addition to reporting on the interviews, the *Post* [explained](#) how it got this information. Based on a tip about an interview of former U.S. Army Lt. Gen. [Michael Flynn](#), the paper filed a request in August 2016 under the federal Freedom of Information Act for the transcript, recordings, and any other information from that one interview. The newspaper later filed another FOIA request in March 2017 seeking similar materials from the other interviews.

The Pentagon office that conducted the interviews was at first cooperative with the *Post*. But this changed after Donald Trump won the election and [offered Flynn the position as his national security adviser](#). ([Flynn resigned after less than a month](#).) After the inauguration, the *Post*'s FOIA request for information from the Flynn interview was denied. The *Post* filed an administrative appeal of that decision, then in October 2017 filed a lawsuit in federal court.

The lawsuit prompted the Pentagon to release some of the interviews. But it refused to release the identities of who had been interviewed claiming that the identities were protected by various FOIA exemptions. So the *Post* sued a second time in November 2018. This eventually led to the release of 428 interviews, but with information redacted from many of them and the identities of 366 subjects withheld. The *Post* began publishing stories based on the interviews on Dec. 9, but the lawsuit seeking full disclosure continues.

In the South Carolina case, Common Pleas Judge William McKinnon held that the Lexington 1 school district had largely not violated the state's Freedom of Information Act by posting no or inadequate notice of meetings and withholding several documents. Interestingly, this lawsuit was

brought not by the media but by a member of the board itself, Jada Garris, [a former school bus driver and long-time critic](#) of the district's board who was elected to the board in November 2018.

But while Judge McKinnon [ruled on Nov. 22](#) that the board's meeting notices and procedures were either adequate under the law or constituted only minor, inconsequential violations, most of the claims regarding withheld documents were resolved by the board releasing the many of the materials before the case went to trial. But the board apparently released these documents only because Garris had sued. "[T]he district agreed to supply responsive records to several requests for information only after she sued them," her lawyer Taylor Smith [wrote to The State newspaper](#) in an email. (Smith is also legal counsel to the Press Association.)

[Garris told The State](#) that once the lawsuit was filed, the board's agendas, meeting practices and handling of FOIA requests were more in line with the legal requirements. So while both the board and Garris have asked for reconsideration of the issues on which the court ruled against them, the lawsuit seems to have resulted in positive changes in how the school district conducts business.

Both *The Washington Post* case and Garris's lawsuit against Lexington School District 1 thus seem to have had positive results in terms of public access and accountability. But they also show that lawsuits in court can be required in order to force government entities to release information. And that those lawsuits require vigilance and resolve to bring such cases in the first place.

Eric P. Robinson is an assistant professor at the USC School of Journalism and Mass Communication and is Of Counsel to Fenno Law in Charleston / Mount Pleasant, although any opinions are his own. He has worked in media law for more than 18 years, and is admitted to legal practice in New York and New Jersey and before the U.S. Supreme Court. This column is for educational purposes only; it does not constitute legal advice.

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ATTACHMENT “H”

(December 10, 2019 – Facebook Live Video)

ATTACHMENT “I”

LOCAL

Judge sides with Lexington 1 in public records lawsuit brought by school board member

BY ISABELLA CUETO

DECEMBER 10, 2019 05:00 AM



ORDER REPRINT →



Since 1967, the Freedom of Information Act (FOIA) has provided the public the right to request access to records from any federal agency. It is often described as the law that keeps citizens in the know about their government. BY DEPT. OF JUSTICE

LEXINGTON, SC

The Lexington 1 school district mostly followed public records laws despite claims from a school board member, a judge ruled recently.

The case, brought by board member Jada Garriss, claimed district officials violated the state's Freedom of Information Act, which encourages government transparency. After the trial in late October, Judge William McKinnon ruled Nov. 22 in favor of the district on four out of the five allegations.

Garris was found to be in the right on the main allegation, which was over how board members entered into executive session in November 2017, a year before she was elected to the board.

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During that meeting, the board entered into executive session behind closed doors at the district office without announcing it to the public in open session. By law, public officials must vote in public before entering executive sessions. McKinnon ruled it to be a violation of South Carolina sunshine laws.

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Lexington 1's attorneys have asked McKinnon to reconsider his ruling on that issue, according to district spokesperson Mary Beth Hill. Garris' attorneys are also asking the judge to reconsider his ruling on the remaining issues she raised.

In her lawsuit, Garris, a [former bus driver and longtime critic of Lexington 1](#), also accused the school district of failing to post agendas 24 hours before three school board meetings, as the law requires.

During the trial, Hill testified that she often updates agendas after posting them to the district's website. Because of that, she said, the agenda documents online could show they were created later than they actually were.

McKinnon found agendas in two of the three cases Garris included in her lawsuit to have been timely. The third, a special called meeting on June 15, 2017, was held "solely to approve the hiring of new employees," so the public meeting notice was sufficient to satisfy legal requirements, he wrote.

Garris also alleged that the board held its Dec. 6, 2016, meeting in an adjoining boardroom but

McKinnon found the Dec. 6, 2016, meeting blunder to be at most, a technical violation of FOIA, writing in his analysis that “members of the public were invited to attend the training sessions in the boardroom, and some did. Further, the door between the boardroom and the auditorium was open.”

“The Court finds that if moving part of a meeting from one room to an adjoining room in the same building that connects through a door, and leaving the door open, is even a FOIA violation, it is at most a technical violation and the Board substantially complied with FOIA,” McKinnon wrote in his ruling.

The school district said it has, and will continue to, follow public records laws. While it typically will not discuss ongoing legal matters, the district said in a statement it is pleased that the court “overwhelmingly agreed with and ruled in the district’s favor” on all but one of the allegations.

“We believe that our work to provide the year’s meeting dates to media, to link to the current agenda in several locations on our website, to post the agenda on front doors, to video record meetings, and to broadcast not just the entire meeting but individual presentations on an interactive agenda goes far beyond what other entities do for notification and the requirements of the law,” the statement said.

This legal skirmish between Garris and Lexington 1 was years in the making, though it was not the first time the freshman board member has butted heads with district leaders. Garris initially sought out attorney Taylor Smith after he said the district failed to provide her with public documents in the time frame set by South Carolina law.

The case was amended through the months, as Lexington 1 turned over some of the records Garris requested, including an audio recording from a board retreat and financial documents.

“She is still the prevailing party of her FOIA suit ... because the district agreed to supply responsive records to several requests for information only after she sued them,” Smith wrote in an email.

“Those open records violations were not considered at trial because the district effectively admitted to those violations before the proceeding occurred.”

Smith has represented The State Media Co. and the S.C. Press Association in other cases.

The district’s behavior also shifted noticeably after litigation began, Garris said: Agendas were more detailed, meetings were live streamed, public records requests were handled by one of the district’s attorneys and the school board started meetings with public session in the auditorium, instead of starting in the boardroom.

“By demanding more transparency and having access to data, we are one step closer to meeting the needs of students and reversing inequities within our district. No one should have to take a public agency to court to convince them that public documents are, in fact, public,” Garris said in a statement.

Garris and her attorneys, in addition to seeking a different ruling from McKinnon, want Lexington 1 to repay more than \$40,000 in attorney’s fees. A hearing to address the two parties’ motions is set for late January.

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EDUCATION

How is Lexington school district spending taxes? Board member struggles to find out

MAY 06, 2019 5:15 PM

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EDUCATION

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

**AFFIDAVIT OF
JADA GARRIS**

Personally appeared before me Jada Garris, who first being duly sworn, deposes and says as follows:

1. My name is Jada Garris. I am the Plaintiff in the above-captioned lawsuit.
2. I have read the Defendant (the district)'s memorandum in opposition to my motion for attorney's fees and costs. I take issue with a number of factual statements and insinuations made in it, because they are false, and this affidavit addresses a few of them.
3. The documents that the district said that they could not provide us because they no longer have them include about two years' worth of minutes of meetings of the architectural selection committee and documents concerning how architects were chose to be awarded contracts by the district. The documents that I did get about this tend to confirm my beliefs about impropriety in the district's conduct.
4. Some of the records I sought in this case were the contents of binders provided to district board members at an April 25, 2017, board meeting. The district now takes the position that I was provided with those documents before this case really got going, but that is not really true. The documents I was provided as the contents of the binders did not actually contain the entire set of documents that were in the binders, though I did not discover

- that until later. Only later, well into the life of this lawsuit, did we get other documents that were also in the binders.
5. I find it interesting that the district takes the position that the recording they turned over after I sued them is not a public record. When a reporter from The State newspaper asked for it in a FOIA request, the district allowed the reporter to come and listen to it.
 6. The only part of the recording of a board meeting we played during the trial was the part that went right up to, but did not include, executive session.
 7. I did not bring or prosecute this case as a board member. I brought it as an individual citizen.
 8. Cindy Smith made statements during her testimony at trial that are contradicted by other statements she made. If you want to see the comparison of the statements, it is in one of the letters submitted as an exhibit to this affidavit, which discuss Ms. Smith's inconsistent statements along with other problems concerning the district's board and operations.
 9. The factual statements I made in those letters are true. I stand by them, just as I do the Facebook Live video referenced in the district's memorandum.
 10. This suit brought to light in the public space of a courtroom that the district has been routinely violating FOIA every time its board met for many years. While there are still a lot of problems at the district, this lawsuit did get the district to make some change. The district changed its policy concerning whether a vote to enter executive session is taken in public as a result of this suit.
 11. I don't really think that what the district says in its memorandum makes any difference about whether I'm the prevailing party. I think I'm the prevailing party because I sued the district for violating FOIA and got a court order that finds that they did. I think I'm

the prevailing party because I asked for documents under FOIA, the district refused to give them to me, and then, after I sued them, they agreed to give me the documents. I brought a lawsuit seeking a determination that the district violated FOIA, and the court issued an order that says that they did.

FURTHER AFFIANT SAYETH NOT.



Jada Garriss

SWORN to before me this
23rd day of January, 2020.


_____(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3/29/27

January 2, 2020

Dear Chair Smith,

As a follow up to your letter "on behalf of the board officers", I am writing on behalf of myself. You and the board officers need to understand the three of you do not represent the board. Under oath (in October) you testified, "No one person is above another. Even though you have a title, everyone is equally elected. It's just that the officers generally have an administrative role." You continue to abuse your nonexistent authority, even going so far as to tell me a month later that the board officers represent the board. That statement is one of many contradictions that I'll include as an attachment.

I won't be supplying any additional statements about my testimony being "accurate and true" because the record speaks for itself. I took an oath to tell the truth, and while you are willing to perjure yourself, I am not. As you well know, prior to being elected in November 2018 I had never stepped foot in the board room, and neither had my daughter. As a matter of fact, the only time she has ever been in the board room was during her deposition in October. To testify under oath that both my daughter and I attended previous meeting(s) in the board room in order to support the district's claim that the board room is public, is not only perjury, but a testament to your character.

Per my testimony: I haven't sent any recordings to anyone other than my attorney - and that was only the public session, I don't remember what I recorded, and I don't have any recordings in my possession, as they were only used for my own purposes, much in the same way Lexington District One uses audio from board meetings as "memory-jogging notes".

I'm not telling you this because I owe you anything. I'm telling you this so that you have no excuse to pad Dave Duff's pockets with further outlandish requests that require legal counsel. If you and the board officers want to have any further discussion about this letter, this matter, or conversation about any matter, you need to put an item on the agenda. Mailing a letter that involves four members and is copied to all board members is not wise. When there's a quorum there's a meeting.

In regards to your concerns of student privacy, if you recall, one of the board officers and myself wanted to table the student "appeal" (that was actually a waiver) because we needed more information. Based on the lack of personally identifiable information that was provided to us, including the student's name, it would be difficult, if not impossible, to violate any laws.

If you are *really* concerned with protecting the information in executive session, you should be investigating who shared information with *The Chronicle*. In a recent article, information from executive session was reported but wasn't contributed to anyone specific, saying only, "...the Chronicle has learned...". This means someone in the board room not only "disclosed matters discussed in executive session," but did so to the media. This most certainly "destroys the purpose of executive session."

As any good board member does, I'm sure you read the daily emails we receive from the SCSBA. So, you're aware that recently some board members filed suit alleging other members were acting in "collusion" and "civil conspiracy" by arbitrarily choosing which board policies to follow to benefit their own agenda. The paragraph you reference in Board Policy BEC that "forbids recording executive sessions", includes two other sentences:

- board members are "not to disclose matters discussed in executive session..."
- and they must "refrain from using electronic communications during executive session on personal or district-owned devices..."

To avoid the appearance of impropriety, I expect to see a letter forthcoming to the board member(s) who spoke to the *Chronicle* with the same demands made of them. This also means everyone that

has used a cell phone, iPad and/or laptop during our closed-door meetings can expect to receive a letter as well. All means all, right?

As I told you earlier this year, and I'll attach that letter for reference as well, *"I am ready for real change to occur in Lexington One. I ran so I could be part of the solution, and was elected because the community wants us to do better. As a citizen, my emails and communication fell on deaf ears. I am now your equal as a Board member and I expect action to take place."* Bullying from board officers/members only fuels my desire to do what is right and expose the self-serving politicians who like to show up for photo ops, school tours, and appreciation lunches, but are clueless as to what's really going on on the front lines.

If this board is *really* interested in empowering each child to design the future, they would put their boots on the ground and spend a few days in a classroom - from the first bell to the last bell and stay there until the last bus/car rider is picked up. We are purposefully shielded from reality and required to ask permission from the superintendent to visit schools so that we don't know what teachers and support staff deal with on a daily basis. If staff, especially teachers, is expected to meet high standards and students are expected to perform to high standards, then it's our job to guarantee that those efforts are not in vain.

When does this board plan to bring ideas and initiatives to the district for consideration? Why do board members attend conferences but come back empty handed? Why do we investigate anonymous tips from students but ignore anonymous letters from employees? When does this board plan to take some real initiative, ie: share tables at all schools, reimbursing teachers for National Board Certification, technology for instructional assistants, and e-learning for weather make-up days (just to name a few)? I have a list a mile long and if my requests for items to be added to the agenda weren't denied, we might actually accomplish something great!

Driving from one side of the district to the other the inequities are astounding, teachers lack support and are expected to do more with less, discipline is out of control, and retaliation is so rampant a former employee committed suicide, according to the letter we received earlier this month. When does this board plan to start governing instead of being governed? We were elected to be watchdogs, not lapdogs.

When are **you** going to start doing what you were elected to do and stop all of this nonsense of tallying my requests for information (without caring if the information is provided), reading from a script at board meetings (that's written by a staff member), pretending to be confused about parliamentary procedure so that you can suppress dissent, and speaking/writing on behalf of the board without first consulting the board?

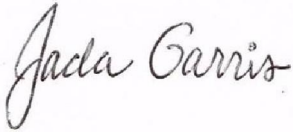
Conversely, I hope **you** will cooperate with **me** and promptly cease signing documents on behalf of the board without the board's knowledge, contacting legal counsel without the board's knowledge and refusing to share the correspondence with other board members, and disregarding the agenda by inserting items that interest you. If there is a board update it needs to be listed on the agenda, not only so that everyone has a chance to participate, but because it's legally required. I brought this to your attention in November, but you continue to follow your own agenda. As a reminder, when asked (under oath) if you give more information than what the agenda says, you replied, "Never," and that, "You follow the agenda. That is not fair to our constituents". It is my hope that Robert's Rules of Order has simply slipped your mind, because surely after almost twenty years of serving on the board, fifteen of those as an officer, you have a firm grasp of RRO. Just in case, I have purchased the latest edition of Robert's Rules of Order for you. Thousands of taxpayer dollars have been spent sending you to conferences for the last 19 years, so there's no excuse for you not to know how to preside over a meeting.

Finally, I would like your written promise that you will comply with Board Policy, SC Ethics Reform Act, SC Code of Laws, SCSBA Code of Ethics and Robert's Rules of Order. I am requesting this by January 17, 2020.

Those are some pretty lofty demands from one board member to another, right? Imagine my reaction when I read your letter. As sad as it may be, I expect that you will never do any of the above because "this is the way it's always been done."

Now, can we please do some real work?

Sincerely,



Jada Garriss, Board member

CC: No one. It's your job to share board correspondence with all board members.

Cindy's Contradictions

Sworn Testimony October 2019

CINDY: Dr. Tiffany Richardson... talked about the yeses and nos of executive session.

Q. Okay. Did they address at all the placement of executive session before the open session of a meeting?

CINDY: No. That is up to the Board. And I do know that Boards do it different ways. The way we've just -- the way we do it is just the way we do it.

Q. Okay. Do you understand when that may have started with the Board?

CINDY: I think in 1952.

Q. Okay. So to your knowledge the Board has always done it that way? Is that your understanding?

CINDY: I think so. I'm not sure, **but I know for the 20 years that I've been on the Board we've always done it prior to open session.**

Q. Okay. Have you ever understood why it was first done like that? Why it was decided to do it that way?

CINDY: I think it's so that when we went out and voted we would have the information we need to cast the votes.

Q. Okay. And your time on the Board, so not necessarily just your Vice Chair time or your current Chair time, have you gotten any feedback from the public about the placing of executive session before the open session?

CINDY: From Ms. Garriss. I've had her question it.

Q. **Has there ever been anyone else who has questioned that or asked questions about it generally speaking?**

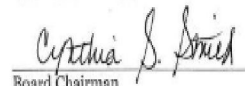
CINDY: **No. Just Ms. Garriss.**

Sep 24, 2019 Email

JADA: Could we move Executive Session further down the agenda? It is not feasible to enter executive session at the beginning of the meeting, especially when there are time restraints... In cases where Executive Session is anticipated to last longer than 30 minutes, it could be added as a final item on the agenda. A five minute briefing before taking a final vote on a property purchase, because the time allotted for Executive Session is nearing an end, as was the case Tuesday night, poses many problems. Another benefit that's a possibility and would be worth discussing is that we could begin and end board meetings earlier because we wouldn't have to adhere to the scheduled time for executive session. We could just adjourn when the discussion is complete and return to general session.

CINDY: On your final question, I want to share a little history with you. **Many years ago, the Executive Session was held at the end of Board meetings and our constituents communicated that they did not feel this was a transparent way for the district to conduct business and they asked for the results of executive session be moved more towards the front of open session.**

<u>Sworn Testimony October 2019</u> CINDY: Chair is basically the administrator for the Board. They coordinate the functions of the Board. And no one person is above another. Even though you have a title, everyone is equally elected. It's just that the officers generally have an administrative role.	<u>November 19 meeting with Dr. Little & Cindy (not verbatim)</u> JADA: The board officers do not represent the board. They only have additional duties. CINDY: The board officers represent the board.
<u>Sworn Testimony October 2019</u> Q. For November of 2017 (did) they announce anything different than what was on the agenda? CINDY: We do not because by law we have to follow the agenda. So I can -- I don't recall that, but I can say that, yes, we followed the agenda. Q. I understand. Do you follow the agenda to each word or in the context of what I'm talking about would you give more information sometimes than what the agenda says? CINDY: Never. Q. Never give more information? CINDY: No. You follow the agenda. That is not fair to our constituents.	<u>November 2019</u> "Board Update" item was removed the agenda. However, you continue to give a board update during the meeting, but no longer allow other members an opportunity to speak, even after I addressed my concerns with you after the November meeting.
<u>Sworn Testimony October 2019</u> Q. Have you ever had a constituent tell you -- voice any concerns to you about the manner in which a -- agendas are posted to the website? CINDY: Only Ms. Garris. Q. Okay. Has there ever been to your knowledge any complaints about the ways in which the agendas having been posted appear on the website? CINDY: No. I've never had a complaint about that.	<u>June 25, 2019 board minutes</u> Cheri Rish addressed the board of trustees... She felt the June 4 meeting agenda was changed and constituted an illegal meeting. <u>Jul 15, 2019 Email</u> CHERI: When can I expect a response from you to my questions I asked of you at the last board meeting? Illegal meetings (changing times without 24 hr public notice)? CINDY: I believe the meeting you are questioning is the Special Called Board Meeting held on June 4, 2019 at 6:00 pm. The initial agenda was publically posted on May 30, 2019 at 7:17 pm. The attached agenda which is the legal document was correct. The cover letter misstated the time. The agenda was correct as per the law below. The cover letter was corrected on June 3, 2019 at 6:31 pm. Once again the agenda was attached and it continued to be correct and was in compliance with the Freedom of Information Act as outlined below.
<u>May 2019 Email</u> JADA: Why are you the only member being provided with the requests? According to Board Policy, all members will be advised of requests and the responses given. FROM: Cindy TO: Jada Garris Cc: Anne Marie Green, Dr. Brent Powers (only board officers were copied in the response) We have all been copied. It helps us to see patterns or answer questions we may receive too. I always copy the entire board when I reply to Board requests, as does Dr. Little.	<u>May 2019 Email</u> CONSTITUENT (shared the email with the board): Can you tell me why you copied two board members on my email and not the entire board? CINDY: <i>I always copy our officers</i> so that we can see if we have patterns in concerns sent our way and the same goes for Dr Little.

AND AGAIN: <u>November 11, 2019 Email</u> JADA: Why were only the officers included in your response? Please include all board members in email replies. CINDY: (No response).	<u>May 2019 Email</u> CINDY: I always copy the entire board when I reply to Board requests, as does Dr. Little.
<u>September 2019 Email</u> JADA: Earlier this year I spoke with Anne Marie about the board meeting outside of Central Services. ...She said the board talked about having Town Hall type meetings in the Pelion and Gilbert communities. Since this has not yet taken place, I am requesting this item be added to the agenda for discussion. CINDY: Dr. Little is currently setting up meetings in the Gilbert and Pelion communities. He will share that information with us soon.	<u>November 19 meeting with Dr. Little & Cindy (not verbatim)</u> JADA: When will we have a town hall type meeting that Anne Marie and I have asked for? CINDY: Dr. Little went last week. JADA: An SIC meeting is not a town hall meeting and the board wasn't invited. CINDY: We usually aren't invited. (By the way, Dr. Little said he is unaware that Anne Marie has asked for any Town Hall type meeting.)
<u>On Oct 2, 2019 Email</u> CINDY: We already have the employee issue on the agenda.	<u>Oct 11, 2019 Email</u> JADA: Hey Cindy, Do you know why the anti-bullying policy for employees wasn't on the agenda? CINDY: Let me check with Greg but I think it is next month. (It's January and the policy hasn't been placed on the agenda)
<u>November 19 meeting with Dr. Little & Cindy (not verbatim)</u> JADA: When will our board be reviewing the information in the delegate handbook so that the delegates know how to vote on our behalf? CINDY: Each person is a stand-alone person.	<u>Email from SC School Boards Association</u> Please make plans to review the Delegate Assembly Handbook... ...Your delegates will be voting to approve the slate of officers, SCSBA Legislative Priorities and States of Belief, and changes to the SCSBA Constitution and Bylaws. It is important that you review the information as a board so that your delegate or alternates will be prepared to vote on behalf of your board.
<u>November 19 meeting with Dr. Little & Cindy (not verbatim)</u> JADA: What delegates and alternates have been chosen for the SCSBA Delegate Assembly? CINDY: Whoever goes are the alternates and delegates. JADA: Did you have to sign anything? CINDY: No.	<u>October 2019 Email from SCSBA</u> Board chairs and superintendents will receive an official voting delegate certification form by mail this week. Please discuss this information at your next board meeting. (This was never done.) Here is the signed form: This form is not official until we have the appropriate signatures listed below.  _____ Superintendent  _____ Board Chairman For delegates to be certified, this form must be returned by November 18, 2019 to: Judy LeGrand, SCSBA, 111 Research Drive, Columbia, SC 29203; email: jlegrand@scsba.org Or fax: 1-877-859-6439. Thank you.

May 2019 emails regarding waiving of attorney-client privilege of David Duff's opinion related to Jada Garris:	
CONSTITUENT: Why did you choose to use a school board meeting to make your statement? CINDY: We felt it was important to release the privileged document and release a statement from the Board.	JADA: When was this statement approved by the board? CINDY: It was not approved by the Board.
CONSTITUENT: Were you, in your statement, speaking for the entire board? CINDY: Yes, the entire board knew we were addressing this issue.	JADA: Why were all board members not made aware of the statement prior to the meeting? CINDY: They were not. That statement came from me...
March 25, 2019 Letter to Cindy:	
Regarding property purchase (December 2018) on Hwy. 1 in Gilbert: You said that you rode by my house and that my property "backs that property" and I should have recused myself.	The property I voted on is a .84 acre piece of property located on Hwy. 1. The property in question is .5 miles from my house (according to Google maps) and I cannot see ANY of the property for the new school from my house.
During our conversation you claimed I voted on the property on the corner of Rice Drive and Hwy. 1, although I assured you I did not.	Board minutes confirm the property on the corner of Rice Drive and Hwy. 1 was purchased approximately a year before I came on the board.
JADA: Good Afternoon Ms. Smith, Is there any information regarding pending items such as land deals or litigation that former board members have received that will be considered by current board members? If so, when can we expect to receive that information? CINDY: There are no pending land deals currently.	On December 18th, thirteen days after the email, the board voted to purchase property that had been pending for over a year.
<i>(Is there any information regarding pending items such as land deals or litigation that former board members have received that will be considered by current board members?)</i> CINDY: There are no written documents for the board and none are given to the board. This is usually communicated orally in executive session. Dr. Little periodically updates us on pending lawsuits. The board does not receive extensive details unless we are called upon in an appeal so that there is no prejudicial perception.	We received extensive details in February 2019 - by legal counsel - who told us that he gives quarterly updates to the board - not Dr. Little. As part of his update, he provided written documents to the board. Furthermore, if someone has brought a suit against the district, it can't be brought back to the board for an appeal. Any chance we had to rectify the problem before then is long gone.
JADA: The last time we talked on the phone, you told me that no other district makes their board secretary take minutes.	The first district I called said their secretary takes minutes.
JADA: In regards to the site for the new LMS, you said all of our schools have wetlands. I assured you they didn't.	Today, that information was confirmed in an email from Mary Beth. Seven of our schools have wetlands.
In response to last month's email I sent to SCSBA's legal counsel, you told me that prior to entering executive session, the door to the boardroom is opened and attendees from the auditorium are always invited in.	That is not true. This did not take place during the January 15th meeting when we entered into executive session in the boardroom instead of the auditorium.
During our December 2018 meeting, you told the board that while attending the conference in Charleston, we would be meeting with architects to discuss the bond referendum.	As an 18-year veteran of the board, you have to know this is not only a FOIA violation, but it's unethical.
You have agreed not to "post or reply on social media"	You still post on social media.

March 28, 2019 Letter

Cindy,

I was hoping to speak by phone with you after our discussion at LHS, as you requested. I think it's important to have open communication. You asked what the board was doing that was so wrong. I have answered this question several times over the years as a citizen, both in emails to the board and during citizens' participation. Now, as a fellow board member, it is my hope that since you are asking, you are genuinely interested in hearing my concerns. I have listed a few of them in this email.

First, I will address your concern regarding the recent property purchase on Hwy. 1 in Gilbert. You said that you rode by my house and that my property "backs that property" and I should have recused myself. The property in question is .5 miles from my house (according to Google maps) and I cannot see ANY of the property for the new school from my house. My address is 207 Centerville Rd. Gilbert, SC. To assuage any concerns, I called the Ethics Commission on Friday, 3/22/19, to confirm there was no conflict of interest. You recently recused yourself because of a relationship with MB Kahn. We have been working with MB Kahn for years. Why haven't you recused yourself from past votes related to MB Kahn?

During our conversation you claimed I voted on the property on the corner of Rice Drive and Hwy. 1 although I assured you I did not. Board minutes confirm the property on the corner of Rice Drive and Hwy. 1 was purchased approximately a year before I came on the board. The property I voted on in December of 2019 is a .84 acre piece of property located on Hwy. 1.

Second, I stand by my Facebook post that you let Mr. Hudson know that you have walked the property because, as I mentioned, in my line of work, a head nod is an affirmative answer. During our conversation you said you didn't nod your head, but later you said you did, so as promised, I have requested video and audio from Mary Beth for Tuesday night's board meeting. Walking potential property and/or driving around property with Mr. Salters is another issue that I believe should be discussed as a Board. Viewing potential sites before we vote is a good idea.

In response to your request that I not post about you on my Facebook page: Part of my duties according to board policy include keeping our stakeholders informed. In your role as board chair, it would be impossible for me to keep citizens informed without including any information about you, therefore I cannot guarantee I will never post about you in your capacity as Board chair.

Honesty and integrity should always be exhibited by board members. You might want to take this opportunity to review your own truths. There have been several inconsistencies in what you believe to be truthful.

A few examples are:

On Wed, Dec 5, 2018 at 2:56 PM Jada Garris <jadagarris@aol.com> wrote:

Good Afternoon Ms. Smith,

Is there any information regarding pending items such as land deals or litigation that former board members have received that will be considered by current board members? If so, when can we expect to receive that information?

Date: Wed, Dec 5, 2018 at 3:33 PM From: Cynthia Smith <csmithlex@gmail.com>wrote:

*There are no pending land deals currently. **Yet, on December 18th, thirteen days after you sent this email, the board voted to purchase property that had been pending for over a year.***

There are no written documents for the board and none are given to the board. This is usually communicated orally in executive session. Dr. Little periodically updates us on pending lawsuits.

The board does not receive extensive details unless we are called upon in an appeal so that there is no prejudicial perception.

Yet we received extensive details in February 2019 - by legal counsel - who told us that he gives quarterly updates to the board - not Dr. Little. As part of his update, he provided written documents to the board. Furthermore, if someone has brought a suit against the district, it can't be brought back to the board for an appeal. Any chance we had to rectify the problem before then is long gone.

- The last time we talked on the phone, you told me that no other district makes their board secretary take minutes. The first district I called said their secretary takes minutes.
- In regards to the site for the new LMS, you said all of our schools have wetlands. I assured you they didn't. Today, that information was confirmed in an email from Mary Beth. Seven of our schools have wetlands.
- You have agreed not to "post or reply on social media" yet you still post on social media.
- In response to last month's email I sent to SCSBA's legal counsel, you told me that prior to entering executive session, the door to the boardroom is opened and attendees from the auditorium are always invited in. That is not true. This did not take place during the January 15th meeting when we entered into executive session in the boardroom instead of the auditorium.
- During our December meeting, you told the board that while attending the conference in Charleston, we would be meeting with architects to discuss the bond referendum. As an 18-year veteran of the board, you have to know this is not only a FOIA violation, but it's unethical.

You said it's sad that I don't trust Dr. Little, yet I believe trust is earned, not bestowed on someone based on their position. History has shown me that Dr. Little cannot be trusted. The Board of Trustees job is to hold him accountable by consistently verifying what he says and does. **Here are several examples of why I do not trust him:**

- In a video about the bond referendum he lied about the school capacity of GES.
- He has yet to provide me numbers for free and reduced lunch that he claimed would be evenly distributed after the new GES is rezoned.
- In January, I sent him an email following up on past due FOIA requests I sent as a citizen. He has ignored my requests for details of who spent hundreds of dollars at restaurants and how he spent over \$1,800 in Petty Cash. (All of this is information the general public is entitled to.)
- During bus driver in-service when he was scheduled to speak, he sent Mr. Caldwell to tell the drivers he was "out of district". However, he was a couple of miles up the road at another school and he even tweeted about it!
- We do not receive follow-up from citizens that address the board during citizens' participation, although those are constituents addressing the board. (A neighboring district posts responses to citizens' questions on their website after the meeting).
- We do not receive follow-up when parents/guardians email both the board and Dr. Little. One such email included a policy revision – so that is within the board's purview.
- Following the January 2019 Board Workshop, he had a list of follow-up items to report back to us. One included an intergovernmental meeting with the town and county. He has yet to do this.
- The district told the public that the board is very active in the rezoning process, yet that's not true: I received a phone call from Dr. Little a few days after the community meetings asking my thoughts on the community's feedback – feedback that I hadn't received. After receiving that feedback, no additional information was provided. I learned of changes to the plan at the same time as the general public – during the board meeting.
- His Trail Mix includes only positive information. However, parents have forwarded us their concerns after receiving an unsatisfactory response from Dr. Little. Why doesn't he include all relative information for the board in the Trail Mix? After all, this is necessary information in order to conduct a thorough evaluation of his job performance.

- In an email to the district that Ms. Gillman forwarded to the board, she stated, "Here are the facts and I want you to deliver this to the school board...". This information was never delivered to the board. The district also told her that they "requested that board members submit existing documents". I was never asked for any documents.
- During a board workshop I attended as a citizen, the district informed the board that the Center for Sustainable Solutions had disbanded and that "the equipment that was there has been disbursed out to other sites." I sent in a FOIA request for this information. The district's response was, "...The district did not disburse the equipment and materials from the Centers."

On Greenville County's board page they state: "The administration is tasked with the day-to-day running of the schools, but the Board serves as both a champion and a watchdog, ensuring that policies, budgets, and personnel all align toward meeting the shared goals." We have the tail wagging the dog. We have lost sight of the fact that the superintendent works for the board – not the other way around.

Another misconception is the role of the board chair. Now is a good time for us to review and understand the definition of Board Chair.

State law: The chairman shall preside at meetings of the board and perform other duties imposed on him under the law.

Board policy: All powers of the board lie in its action as a governing body.

Chair duties include:

- parliamentary action (DURING board meetings)
- signing authority (AFTER board approval)
- planning the agenda (WITH the Superintendent and Board and SUBJECT TO BOARD APPROVAL)
- calling special meetings
- appointing committees (SUBJECT TO BOARD APPROVAL)
- acting as the public spokesperson (AFTER conferring with the board)

As public spokesperson, the Chair conveys the board's agreed upon message to the public. That doesn't mean that individual board members can't speak for themselves, nor does it mean that the Chair responds to emails and "speaks on behalf of the board" when the Chair's thoughts and opinions are their own, and do not reflect the thoughts and opinions of the full board.

The Chair doesn't have more power than the rest of the board, only additional duties.

- You, alone, don't get to decide that you are contacting legal counsel for something that you deem important without first consulting with the board.
- When the district office receives correspondence addressed to the Board of Directors, all board members should receive the information, and if received electronically, it should be sent to all members at the same time. Last week, you forwarded the board an email from a student. Included in that email was your response to the student, on behalf of the board.
- In addition, when information is shared with you by the leadership team, that information should be relayed to all board members, especially when it impacts future decisions.
- Your duties don't include responding to invitations on behalf of the board. We received an email from an architect prior to the last conference and you told them we wouldn't be joining them. However, that's for each board member to decide.
- Without consulting the entire board you, alone, conducted an investigation into alleged wrongdoing by Dr. Little and determined the accusations about him were untrue. You did so without speaking to any witnesses and ignored my email request for full action of the board prior to an investigation. During our conversation last week when I questioned the credibility of your investigation, you told me the lady would just have to sue the district.

I am ready for real change to occur in Lexington One. I ran so I could be part of the solution, and was elected because the community wants us to do better. As a citizen, my emails and communication fell on deaf ears. I am now your **equal** as a Board member and I expect action to take place.

If we, as a board, want to focus on teamwork, let's work toward that goal. No longer should decisions be made prior to a board meeting as they did when we elected officers. Anne Marie told me right before I sat down at the December meeting that you would be Chair, she would be VC and Brent, Secretary. She said we would be changing the policy to allow officers to serve a one-year term. When a few Board members hold discussions and "make decisions" without including everyone it's difficult to act like a team.

Although our main function is policy development, we have policies that haven't been revised in over 30 years, and most often we don't operate according to policy – board officers were supposed to be elected by secret ballot. Over time policies are often disregarded because they are perceived as inconsequential or not a big deal, but if it's important enough to be in writing, it's important enough for us to follow. If we pride ourselves on leadership, being apathetic cannot be an option.

Thank you,
Jada

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

**Lexington County School District One,

Defendant.**

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**ADDITIONAL AFFIDAVIT OF
ANDREW S. RADEKER
AS TO ATTORNEY'S FEES**

Personally appeared before me, Andrew S. Radeker, who first being duly sworn, deposes and says as follows:

1. My name is Andrew S. Radeker. I am a principal in the law firm of Harrison, Radeker & Smith, P.A. and am an attorney for the Plaintiff in the above-captioned lawsuit.
2. Submitted with this affidavit are Exhibits A and B, which are my firm's time and expense records for this case. They show the time Taylor Smith and I spent on this file to date.
3. Exhibit A is a report from the Timeslips software, which is a law firm billing software. Exhibit B is a report from the Smokeball law firm case management and billing software. We switched from using Timeslips to Smokeball while this case was going on.
4. Each of the entries in Exhibits A and B, regardless of the software used, was created at or near the time of the event the entry records and was created by someone with knowledge of the event recorded or created from information transmitted by such a person. The Smokeball program even automatically creates entries for work on emails and digitally saved documents that have been associated with a file, keeping very accurate time. Our firm made, makes, and keeps the records created by these entries in

the course of our regular business activity. They are trustworthy records of the time we spent and the expenses we incurred on any given file.

FURTHER AFFIANT SAYETH NOT.



Andrew S. Radeker

SWORN to before me this
28th day of February, 2020.

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: June 10, 2024

Selection Criteria

Slip.Transaction Date 1/1/2009 - Latest
Clie.Selection Include: Garris, Jada
Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID	Attorney	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Reference	Variance		
62543	Taylor Smith	0.20	275.00	55.00
3/15/2017	Draft	0.00	T@3	
Billed	G:41333 6/29/2017 Garris, Jada	0.00		
Draft engagement letter		0.00		
62544	Taylor Smith	0.20	275.00	55.00
6/15/2017	Correspondence	0.00	T@3	
Billed	G:41333 6/29/2017 Garris, Jada	0.00		
Email to client		0.00		
62576	Taylor Smith	0.10	275.00	27.50
6/23/2017	Review	0.00	T@3	
Billed	G:41333 6/29/2017 Garris, Jada	0.00		
Review email from client		0.00		
62589	Taylor Smith	0.75	275.00	206.25
6/27/2017	Review	0.00	T@3	
Billed	G:41333 6/29/2017 Garris, Jada	0.00		
Review emails and FOIA		0.00		
62590	Taylor Smith	0.25	275.00	68.75
6/27/2017	TC	0.00	T@3	
Billed	G:41333 6/29/2017 Garris, Jada	0.00		
Call Garris, Reply to email		0.00		
62594	Taylor Smith	0.40	275.00	110.00
6/28/2017	TC	0.00	T@3	
Billed	G:41333 6/29/2017 Garris, Jada	0.00		
Telephone Conference w/ client re. recent FOIA requests, strategy moving forward		0.00		
62638	Taylor Smith	0.40	275.00	110.00
6/29/2017	Draft	0.00	T@3	
Billed	G:41502 7/13/2017 Garris, Jada	0.00		
Draft email to client re. FOIA exemption question		0.00		

12/2/2019
10:18 AM

HARRISON RADEKER & SMITH, P.A.
Slip Listing

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Slip ID			Attorney	Units	Rate	Slip Value
Dates and Time			Activity	DNB Time	Rate Info	
Posting Status			Client	Est. Time	Bill Status	
Description			Reference	Variance		
62647	TIME		Taylor Smith	0.20	275.00	55.00
7/6/2017			Review	0.00	T@3	
Billed	G:41502	7/13/2017	Garris, Jada	0.00		
Review emails from client				0.00		
62726	TIME		Taylor Smith	0.10	275.00	27.50
7/26/2017			Review	0.00	T@3	
Billed	G:41529	7/31/2017	Garris, Jada	0.00		
Review email from cl				0.00		
63256	TIME		Taylor Smith	0.30	275.00	82.50
9/19/2017			Draft	0.00	T@1	
Billed	G:41864	10/13/2017	Garris, Jada	0.00		
Draft email to client re: case status, timeline				0.00		
63298	TIME		Taylor Smith	0.40	275.00	110.00
10/3/2017			Review	0.00	T@1	
Billed	G:41864	10/13/2017	Garris, Jada	0.00		
Review email from client re: executive session; respond				0.00		
63499	TIME		Taylor Smith	0.50	300.00	150.00
11/3/2017			TC	0.00	T@1	
Billed	G:42030	11/8/2017	Garris, Jada	0.00		
Telephone Conference with client regarding alleged November 2016 violation				0.00		
63523	TIME		DrewRadeker	0.20	350.00	70.00
11/3/2017			Meeting	0.00	T@1	
Billed	G:42030	11/8/2017	Garris, Jada	0.00		
Discuss with TMS				0.00		
63592	TIME		Taylor Smith	0.80	300.00	240.00
11/27/2017			File Review	0.00	T@1	
Billed	G:42041	11/30/2017	Garris, Jada	0.00		
File Review and research authority for drafting complaint				0.00		
63597	TIME		Taylor Smith	1.75	300.00	525.00
11/28/2017			Draft	0.00	T@1	
Billed	G:42041	11/30/2017	Garris, Jada	0.00		
Start Drafting Complaint				0.00		

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12/2/2019
10:18 AM

HARRISON RADEKER & SMITH, P.A.
Slip Listing

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity	Client Reference	Units DNB Time	Rate Rate Info	Slip Value
						Est. Time	Bill Status	
						Variance		
63606	TIME			Taylor Smith		6.20	300.00	1860.00
	11/29/2017			Draft		0.00	T@1	
	Billed	G:42041	11/30/2017	Garris, Jada		0.00		
	Drafting Complaint					0.00		
63627	TIME			Taylor Smith		5.50	300.00	1650.00
	12/5/2017			Draft		0.00	T@1	
	Billed	G:42136	12/11/2017	Garris, Jada		0.00		
	Finish drafting Summons and Complaint					0.00		
63628	TIME			Taylor Smith		0.30	300.00	90.00
	12/5/2017			Draft		0.00	T@1	
	Billed	G:42496	2/13/2018	Garris, Jada		0.00		
	E-File Summons and Complaint					0.00		
63629	TIME			DrewRadeker		0.35	350.00	122.50
	12/6/2017			Conference		0.00	T@1	
	Billed	G:42136	12/11/2017	Garris, Jada		0.00		
	Conference with TMS					0.00		
63630	TIME			DrewRadeker		0.74	350.00	257.54
	12/6/2017	3:55 PM		Draft		0.00	T@1	
	Billed	G:42136	12/11/2017	Garris, Jada		0.00		
	Draft discovery requests					0.00		
63642	TIME			DrewRadeker		0.10	350.00	35.00
	12/7/2017			Draft		0.00	T@1	
	Billed	G:42136	12/11/2017	Garris, Jada		0.00		
	Draft discovery requests					0.00		
64225	TIME			DrewRadeker		0.50	350.00	175.00
	3/19/2018			Conference		0.00	T@1	
	Billed	G:42873	4/17/2018	Garris, Jada		0.00		
	Conference with TMS					0.00		
65370	TIME			Taylor Smith		0.10	300.00	30.00
	9/24/2018			Correspondence		0.00	T@1	
	Billed	G:43406	9/27/2018	Garris, Jada		0.00		
	Reply to client email re: case status					0.00		
65371	TIME			Taylor Smith		0.30	300.00	90.00
	9/24/2018			Draft		0.00	T@1	
	Billed	G:43406	9/27/2018	Garris, Jada		0.00		
	Draft discovery request to Defendant					0.00		

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HARRISON RADEKER & SMITH, P.A.
Slip Listing

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Slip ID			Attorney	Units	Rate	Slip Value
Dates and Time			Activity	DNB Time	Rate Info	
Posting Status			Client	Est. Time	Bill Status	
Description			Reference	Variance		
65372	TIME		Taylor Smith	0.50	300.00	150.00
9/25/2018			TC	0.00	T@1	
Billed	G:43406	9/27/2018	Garris, Jada	0.00		
Talk with client re:discovery strategy				0.00		
65373	TIME		Taylor Smith	0.30	300.00	90.00
9/25/2018			Draft	0.00	T@1	
Billed	G:43406	9/27/2018	Garris, Jada	0.00		
Finish drafting discovery request				0.00		
65374	TIME		Taylor Smith	0.10	300.00	30.00
9/25/2018			Correspondence	0.00	T@1	
Billed	G:43406	9/27/2018	Garris, Jada	0.00		
Email to client discovery request				0.00		
65375	TIME		Taylor Smith	0.30	300.00	90.00
9/26/2018			Review	0.00	T@1	
Billed	G:43406	9/27/2018	Garris, Jada	0.00		
Review pleadings				0.00		
Grand Total						
			Billable	21.84		6562.54
			Unbillable	0.00		0.00
			Total	21.84		6562.54

923 Calhoun St
PO Box 50143
Columbia SC 29201

Time, Fees and Expenses

Harrison, Radeker & Smith, P.A

for 2017-3047-15 - Garris - Freedom of Information Act Request - Lexington County School District One

Time and Fee entries

Date	Activity	Subject	Description	Staff	Hours	Rate	Billable?	Write off?	Status	Total
02/27/2020	LEGAL	Research in support of motion for attorney's fees		Andrew S. Radeker	0.50	\$350.00	Yes	No	Invoiced	\$175.00
02/27/2020	REV	Review affidavits of Butcher and Bender		Andrew S. Radeker	0.30	\$350.00	Yes	No	Invoiced	\$105.00
02/26/2020		Professional legal services	- 2 emails sent/reviewed regarding Garris v. Lexington Sch. Dist. One (0.10 hrs)	Rhonda S. Schaub	0.10	\$150.00	Yes	No	Invoiced	\$15.00
02/26/2020		Professional legal services	- 1 email sent/reviewed regarding Message from "RNP58387917CAA3" (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
02/25/2020		Professional legal services	- 1 email sent/reviewed regarding Message from "RNP58387917CAA3" (0.2hs) - Email attachment reviewed - 20200218164542084 (0.1hs) - 1 email sent/reviewed regarding Garris v. Lexington Sch. Dist. One (0.1hs)	Andrew S. Radeker	0.40	\$350.00	Yes	No	Invoiced	\$140.00
02/25/2020		Professional legal services	- 2 emails sent/reviewed regarding Garris v. Lexington Sch. Dist. One (0.10 hrs)	Rhonda S. Schaub	0.10	\$150.00	Yes	No	Invoiced	\$15.00
02/25/2020	REV	Review affidavits of Bender & Butcher		Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
02/25/2020		Professional legal services	- 1 email sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.1hs) - 1 email sent/reviewed regarding Message from "RNP58387917CAA3" (0.1hs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
02/20/2020		Professional legal services	- 2 emails sent/reviewed regarding FOIA request email from client (0.1hs) - 1 email sent/reviewed regarding Message from "RNP58387917CAA3" (0.1hs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
02/13/2020		Professional legal services	- 10-24-19 Jada Garris v Lex School Dist One created (0.10 hrs)	Amanda Zeno	0.10	\$150.00	Yes	No	Invoiced	\$15.00
02/13/2020		Professional legal services	- 1 email sent/reviewed regarding Garris v. Lex-1 School District - Atty Fees Motion (0.20 hrs)	Andrew S. Radeker	0.20	\$350.00	Yes	No	Invoiced	\$70.00
02/13/2020		Professional legal services	- 1 email sent/reviewed regarding Garris v. Lex-1 School District - Atty Fees Motion (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
01/29/2020		Professional legal services	- 2 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.10 hrs)	Andrew S. Radeker	0.10	\$350.00	Yes	No	Invoiced	\$35.00
01/29/2020		Professional legal services	- clocked amended order created (0.10 hrs) - 7 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.90 hrs)	Taylor M. Smith IV	1.00	\$300.00	Yes	No	Invoiced	\$300.00
01/28/2020		Professional legal services	- 1 email sent/reviewed regarding Courtesy NEF RE: 2017CP3204435 (0.10 hrs)	Rhonda S. Schaub	0.10	\$150.00	Yes	No	Invoiced	\$15.00
01/27/2020		Professional legal services	- 1 email sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.1hs) - ASR/TMS - Garris v. Lexington Sch. Dist. One - hearing on post-trial motions (York, Judge McKinnon; 1675 York Hwy, York, SC 29745) attended (1.2hs)	Andrew S. Radeker	1.30	\$350.00	Yes	No	Invoiced	\$455.00

01/27/2020	Professional legal services	- ASR/TMS - Garris v. Lexington Sch. Dist. One - hearing on post-trial motions (York, Judge McKinnon; 1675 York Hwy, York, SC 29745) attended (1hs)	Taylor M. Smith IV	1.00	\$300.00	No	No	Invoiced	\$300.00
01/26/2020	Professional legal services	- 2 emails sent/reviewed regarding filing in your case (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
01/24/2020	Professional legal services	- 1 email sent/reviewed regarding Accepted Notice: Your filing, Re: 2017CP3204435 - (699) Special/Complex/Other - Affidavit/Affidavit of, was accepted (0.10 hrs) - 1 email sent/reviewed regarding Received Notice: Your filing, Re: 2017CP3204435 - (699) Special/Complex/Other - Affidavit/Affidavit of, was received (0.10 hrs) - 1 email sent/reviewed regarding Accepted Notice: Your filing, Re: 2017CP3204435 - (699) Special/Complex/Other - Transcript/Transcript of Testimony, was accepted (0.10 hrs) - 1 email sent/reviewed regarding Courtesy NEF RE: 2017CP3204435 (0.10 hrs)	Rhonda S. Schaub	0.40	\$150.00	Yes	No	Invoiced	\$60.00
01/23/2020	Professional legal services	- P's First Set of Discovery Requests reviewed (0.9hs) - 2 emails sent/reviewed regarding filing in your case (0.1hs) - ASR - Meet w/ Jada Garris attended (2hs)	Andrew S. Radeker	3.00	\$350.00	Yes	No	Invoiced	\$1,050.00
01/23/2020	Professional legal services	- 2 emails sent/reviewed regarding Courtesy NEF RE: 2017CP3204435 (0.20 hrs)	Rhonda S. Schaub	0.20	\$150.00	Yes	No	Invoiced	\$30.00
01/22/2020	Professional legal services	- 1 email sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.10 hrs)	Andrew S. Radeker	0.10	\$350.00	Yes	No	Invoiced	\$35.00
01/22/2020	Professional legal services	- 1 email sent/reviewed regarding Courtesy NEF RE: 2017CP3204435 (0.10 hrs)	Rhonda S. Schaub	0.10	\$150.00	Yes	No	Invoiced	\$15.00
01/22/2020	Professional legal services	- 2 emails sent/reviewed regarding filing in your case (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
01/21/2020	Professional legal services	- P's First Set of Discovery Requests reviewed (0.10 hrs)	Sarah M Larabee	0.10	\$175.00	Yes	No	Invoiced	\$17.50
01/21/2020	Professional legal services	- 1 email sent/reviewed regarding Garris Fee Petition (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
01/15/2020	Professional legal services	- Cause of Actions January 2020 reviewed (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
01/10/2020	Professional legal services	- Cause of Actions January 2020 reviewed (0.20 hrs) - 1 email sent/reviewed regarding Cause of Actions (0.20 hrs)	Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
01/08/2020	Professional legal services	- 1 email sent/reviewed regarding Garris Fee Petition (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
12/17/2019	Professional legal services	- 3 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.10 hrs)	Amanda Zeno	0.10	\$150.00	Yes	No	Invoiced	\$15.00
12/16/2019	Professional legal services	- 4 emails sent/reviewed regarding Garris (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
12/10/2019	Professional legal services	- 4 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.30 hrs)	Amanda Zeno	0.30	\$150.00	Yes	No	Invoiced	\$45.00
12/10/2019	Professional legal services	- 2 emails sent/reviewed regarding Garris v. Lex-1 - Depositions Invoice (0.30 hrs) - 4 emails sent/reviewed regarding Transcript (0.30 hrs) - 8 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.60 hrs)	Taylor M. Smith IV	1.20	\$300.00	Yes	No	Invoiced	\$360.00
12/09/2019	Professional legal services	- 2 emails sent/reviewed regarding media inquiry: Jada Garris FOI lawsuit (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
12/03/2019	Professional legal services	- 1 email sent/reviewed regarding Time & expenses records from Timeslips for Jada Garris (0.10 hrs)	Amanda Zeno	0.10	\$150.00	Yes	No	Invoiced	\$15.00
12/03/2019	Professional legal services	- 11 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.90 hrs)	Andrew S. Radeker	0.90	\$350.00	Yes	No	Invoiced	\$315.00

12/03/2019		Professional legal services	- Email attachment reviewed - D's excerpts of trial transcript filed w D's mot reconsider (0.10 hrs) - D's mot reconsider (filed) created (0.10 hrs) - P's mot attys fees & costs (combined & filed) created (0.10 hrs) - 8 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.90 hrs) - D's excerpts of trial transcript filed w D's mot reconsider created (0.10 hrs)	Taylor M. Smith IV	1.30	\$300.00	Yes	No	Invoiced	\$390.00
12/02/2019		Professional legal services	- 2 emails sent/reviewed regarding Time & expenses records from Timeslips for Jada Garris (0.50 hrs)	Amanda Zeno	0.50	\$150.00	Yes	No	Invoiced	\$75.00
12/02/2019		Professional legal services	- P's First Set of Discovery Requests reviewed (1.60 hrs) - 2 emails sent/reviewed regarding Time & expenses records from Timeslips for Jada Garris (0.20 hrs) - Email attachment reviewed - Slip Listing Garris (0.20 hrs) - ASR/TMS - Garris v. Lexington Sch. Dist. One - our deadline to move to reconsider attended (0.50 hrs)	Andrew S. Radeker	2.50	\$350.00	Yes	No	Invoiced	\$875.00
12/02/2019	DRAFT	Draft Affidavit, Mtn for Atty Fees		Andrew S. Radeker	2.20	\$350.00	Yes	No	Invoiced	\$770.00
12/02/2019	DRAFT	Draft Affidavit of Atty Fees & Mtn to Reconsider		Taylor M. Smith IV	2.20	\$300.00	Yes	No	Invoiced	\$660.00
12/02/2019		Professional legal services	- 1 email sent/reviewed regarding Garris case (0.40 hrs) - 3 emails sent/reviewed regarding Time & expenses records from Timeslips for Jada Garris (0.40 hrs) - Email attachment reviewed - Slip Listing Garris (0.20 hrs) - P's First Set of Discovery Requests reviewed (3.60 hrs)	Taylor M. Smith IV	4.60	\$300.00	Yes	No	Invoiced	\$1,380.00
11/26/2019		Professional legal services	- 1 email sent/reviewed regarding Garris case (0.10 hrs) - 2 emails sent/reviewed regarding Ruling mark up (0.80 hrs)	Taylor M. Smith IV	0.90	\$300.00	Yes	No	Invoiced	\$270.00
11/26/2019	CONF	Conference call w/Client		Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
11/25/2019		Professional legal services	- Order from trial filed 11-22-19 reviewed (0.2hs) - 3 emails sent/reviewed regarding Garris case (0.2hs) - 3 emails sent/reviewed regarding Judge's order (0.4hs)	Taylor M. Smith IV	0.80	\$300.00	Yes	No	Invoiced	\$240.00
11/15/2019		Professional legal services	- 3 emails sent/reviewed regarding Questions (0.80 hrs)	Taylor M. Smith IV	0.80	\$300.00	Yes	No	Invoiced	\$240.00
11/06/2019		Professional legal services	- 1 email sent/reviewed regarding Excuse (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
10/31/2019		Professional legal services	- 1 email sent/reviewed regarding Excuse (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
10/25/2019		Professional legal services	- FOIA statutes re open meetings edited (0.50 hrs) - P's First Set of Discovery Requests reviewed (0.80 hrs)	Taylor M. Smith IV	1.30	\$300.00	Yes	No	Invoiced	\$390.00
10/24/2019		Professional legal services	- 1 email sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.20 hrs) - Email attachment reviewed - Amended Answer to Amended Compl (0.10 hrs) - 1 email sent/reviewed regarding Follow ups (0.10 hrs) - 1 email sent/reviewed regarding Amended Answer (0.20 hrs) - TMS: Garris v. Lex-1 School District - Trial (Lexington County Judicial Center) attended (7.00 hrs)	Andrew S. Radeker	7.60	\$350.00	Yes	No	Invoiced	\$2,660.00
10/24/2019		Professional legal services	- TMS: Garris v. Lex-1 School District - Trial (Lexington County Judicial Center) attended (7.00 hrs)	Taylor M. Smith IV	7.00	\$300.00	Yes	No	Invoiced	\$2,100.00

10/23/2019	Professional legal services	- 5 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.40 hrs) - 2 emails sent/reviewed regarding Garris v. Lexington Sch. Dist. One (0.20 hrs) - 5 emails sent/reviewed regarding Trial Exhibits (0.40 hrs) - 5 emails sent/reviewed regarding Amended Answer (0.30 hrs) - 1 email sent/reviewed regarding Follow ups (0.10 hrs) - 3 emails sent/reviewed regarding Garris v. Lexington Sch. Dist. 1 (0.10 hrs) - 1 email sent/reviewed regarding minutes (0.10 hrs) - Trial preparation (5.60 hrs) - TMS: Trial prep w/ client (Our Office) attended (2.00 hrs) - Trial prep (2.10 hrs)	Andrew S. Radeker	11.30	\$350.00	Yes	No	Invoiced	\$3,955.00
10/23/2019	Professional legal services	- FOIA statutes re open meetings created (0.30 hrs)	Sarah M Larabee	0.30	\$175.00	Yes	No	Invoiced	\$52.50
10/23/2019	Professional legal services	- 1 email sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435) (0.20 hrs) - 2 emails sent/reviewed regarding Trial Exhibits (0.20 hrs) - 1 email sent/reviewed regarding Jada Garris v. Lexington County School District One; 2017CP3204435 (0.30 hrs) - P's First Set of Discovery Requests reviewed (1.20 hrs) - 1 email sent/reviewed regarding Garris, Billie (and 3 other transcripts) - E-Transcript File Delivery and Digital Exhibit 191017LM_EXH_01 (0.30 hrs) - TMS: Trial prep w/ client (Our Office) attended (2.00 hrs)	Taylor M. Smith IV	4.20	\$300.00	Yes	No	Invoiced	\$1,260.00
10/22/2019	Professional legal services	- 1 email sent/reviewed regarding Garris v. Lex-1 - Supplemental Discovery (0.1hs) - 1 email sent/reviewed regarding Garris, Billie (and 3 other transcripts) - E-Transcript File Delivery and Digital Exhibit 191017LM_EXH_01 (0.1hs) - Discuss w/ TMS; review deposition transcripts (1.4hs) - TMS/ASR: Garris v Lex-1 School District - Meet w/ opp counsel re fact stipulation, exhibits (Duff, Freeman & Lyon offices, Forest Drive) attended (0.75hs)	Andrew S. Radeker	2.40	\$350.00	Yes	No	Invoiced	\$840.00
10/22/2019	Professional legal services	- 1 email sent/reviewed regarding Various ways I've done deposition excerpts to be used in case in chief (0.1hs) - 4 emails sent/reviewed regarding Wednesday (0.3hs) - combined filed amended s&c exhibits and d's amended answer reviewed (0.1hs) - Cause of Actions 3 7 8 february 2019 reviewed (0.1hs) - 1 email sent/reviewed regarding Jada Garris v. Lexington County School District One; 2017CP3204435 (0.2hs) - 2 emails sent/reviewed regarding Garris v. Lex-1 - Supplemental Discovery (0.3hs) - 1 email sent/reviewed regarding [External] Jada Garris v. Lexington County School District One; 2017CP3204435 (0.3hs) - P's First Set of Discovery Requests reviewed (0.1hs) - 1 email sent/reviewed regarding Latest Document with Screenshots and Details (0.1hs) - 4 emails sent/reviewed regarding Garris, Billie (and 3 other transcripts) - E-Transcript File Delivery and Digital Exhibit 191017LM_EXH_01 (0.3hs) - 1 email sent/reviewed regarding January 15, 2019 meeting audio and agenda (0.3hs)	Taylor M. Smith IV	2.20	\$300.00	Yes	No	Invoiced	\$660.00

10/21/2019		Professional legal services	- 1 email sent/reviewed regarding Dropbox Time Stamp (0.10 hrs) - 1 email sent/reviewed regarding Document properties in .bmp format (0.20 hrs) - 3 emails sent/reviewed regarding Garris, Billie (and 3 other transcripts) - E-Transcript File Delivery and Digital Exhibit 191017LM_EXH_01 (0.20 hrs) - 2 emails sent/reviewed regarding Remaining Depos (0.10 hrs) - 1 email sent/reviewed regarding [External] Jada Garris v. Lexington County School District One; 2017CP3204435 (0.10 hrs)	Taylor M. Smith IV	0.70	\$300.00	Yes	No	Invoiced	\$210.00
10/18/2019		Professional legal services	- P's First Set of Discovery Requests reviewed (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
10/17/2019		Professional legal services	- Notice of 30b6 Deposition signed created (0.10 hrs) - 5 emails sent/reviewed regarding Remaining Depos (0.60 hrs) - P's First Set of Discovery Requests reviewed (0.40 hrs)	Taylor M. Smith IV	1.10	\$300.00	Yes	No	Invoiced	\$330.00
10/16/2019		Professional legal services	- 5 emails sent/reviewed regarding Remaining Depos (0.80 hrs) - P's First Set of Discovery Requests reviewed (0.40 hrs) - Plaintiff responses to Defendant first set discovery reviewed (0.40 hrs)	Taylor M. Smith IV	1.60	\$300.00	Yes	No	Invoiced	\$480.00
10/15/2019		Professional legal services	- 1 email sent/reviewed regarding J. Garris total (0.20 hrs)	Amanda Zeno	0.20	\$150.00	Yes	No	Invoiced	\$30.00
10/15/2019		Professional legal services	- 2 emails sent/reviewed regarding J. Garris total (0.20 hrs) - Affidavit of Attorney Fees signed created (0.10 hrs) - 2 emails sent/reviewed regarding Affidavit of Attorney Fees (0.30 hrs) - 1 email sent/reviewed regarding [External] Jada Garris v. Lexington County School District One; 2017CP3204435 (0.10 hrs) - 3 emails sent/reviewed regarding Garris - Facilitation of resolution (0.30 hrs) - Affidavit of Attorney Fees signed created (0.10 hrs) - P's First Set of Discovery Requests reviewed (1.40 hrs) - Filed Summons and Complaint reviewed (0.10 hrs) - 4 emails sent/reviewed regarding Settlement (0.40 hrs) - TMS: Garris - Attend School Board Meeting (Tarrar Springs Road, Lexington, SC) attended (3.00 hrs)	Taylor M. Smith IV	6.00	\$300.00	Yes	No	Invoiced	\$1,800.00
10/15/2019	PHONE	Phone call with Client		Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
10/14/2019		Professional legal services	- 1 email sent/reviewed regarding [External] Jada Garris v. Lexington County School District One; 2017CP3204435 (0.20 hrs) - 1 email sent/reviewed regarding J. Garris total (0.10 hrs) - 1 email sent/reviewed regarding Garris - Facilitation of resolution (0.20 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
10/10/2019		Professional legal services	- combined filed amended s&c exhibits and d's amended answer created (0.10 hrs)	Rhonda S. Schaub	0.10	\$150.00	Yes	No	Invoiced	\$15.00
10/10/2019		Professional legal services	- TMS: Garris - Mediation (Duff, Freeman & Lyon, 3700 Forest Drive, Suite 201, Columbia, SC 29204) attended (1.5hs)	Taylor M. Smith IV	1.50	\$300.00	Yes	Yes	Invoiced	\$450.00
10/08/2019		Professional legal services	- 26 emails sent/reviewed regarding Garris - Facilitation of resolution (1.20 hrs)	Taylor M. Smith IV	1.20	\$300.00	Yes	No	Invoiced	\$360.00
10/07/2019		Professional legal services	- 1 email sent/reviewed regarding Ed Mullins (0.20 hrs) - 7 emails sent/reviewed regarding Garris - Facilitation of resolution (0.80 hrs)	Taylor M. Smith IV	1.00	\$300.00	Yes	No	Invoiced	\$300.00
10/07/2019	CONFE	Conference call w/Client re mediation scheduling		Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
10/04/2019		Professional legal services	- 2 emails sent/reviewed regarding Mediation of a SCFOIA action (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00

10/03/2019	Professional legal services	- 1 email sent/reviewed regarding Mediation of a SCFOIA action (0.30 hrs) - 1 email sent/reviewed regarding Little late (0.10 hrs) - TMS: Deposition prep with client (Our Office) attended (1.00 hrs) - TMS: Garis - Deposition of client (100 Tarrar Springs Road, Lexington, SC 29072) attended (3.00 hrs)	Taylor M. Smith IV	4.40	\$300.00	Yes	No	Invoiced	\$1,320.00
10/02/2019	Professional legal services	- 1 email sent/reviewed regarding Garis v. Lexington One (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
10/01/2019	Professional legal services	- 1 email sent/reviewed regarding Garis v. Lexington One (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
09/30/2019	Professional legal services	- 1 email sent/reviewed regarding [External] Jada Garis v. Lexington County School District One; 2017CP3204435 (0.10 hrs) - 1 email sent/reviewed regarding Garis vs. LCSD1 - Re: Discovery Responses (0.10 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
09/27/2019	Professional legal services	- 1 email sent/reviewed regarding [External] Jada Garis v. Lexington County School District One; 2017CP3204435 (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
09/26/2019	Professional legal services	- 1 email sent/reviewed regarding [External] Jada Garis v. Lexington County School District One; 2017CP3204435 (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
09/24/2019	Professional legal services	- 1 email sent/reviewed regarding [External] Jada Garis v. Lexington County School District One; 2017CP3204435 (0.20 hrs) - 3 emails sent/reviewed regarding Deposition (0.30 hrs) - 2 emails sent/reviewed regarding Garis v. Lexington One (0.30 hrs)	Taylor M. Smith IV	0.80	\$300.00	Yes	No	Invoiced	\$240.00
09/20/2019	Professional legal services	- 2 emails sent/reviewed regarding Settlement (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
09/19/2019	Professional legal services	- 5 emails sent/reviewed regarding Settlement (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
09/18/2019	Professional legal services	- 1 email sent/reviewed regarding Settlement (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
09/17/2019	Professional legal services	- 6 emails sent/reviewed regarding Settlement (0.50 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
09/16/2019	Professional legal services	- 1 email sent/reviewed regarding Settlement (0.40 hrs) - 1 email sent/reviewed regarding Garis - Discovery Preview (0.10 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
09/06/2019	DRAFT	Finish drafting discovery requests to defendant	Taylor M. Smith IV	0.70	\$300.00	Yes	No	Invoiced	\$210.00
09/06/2019	HEAR	Attend trial roster	Taylor M. Smith IV	0.80	\$300.00	Yes	No	Invoiced	\$240.00
09/06/2019	Professional legal services	- P's First Set of Discovery Requests reviewed/edited (1.2hs)	Taylor M. Smith IV	1.20	\$300.00	Yes	No	Invoiced	\$360.00
09/05/2019	TC	Telephone Call w/ opp counsel re roster meeting	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
09/05/2019	DRAFT	Finish drafting discovery responses	Taylor M. Smith IV	1.80	\$300.00	Yes	No	Invoiced	\$540.00

09/05/2019		Professional legal services	- 3 emails sent/reviewed regarding Garris Trial (0.20 hrs) - 1 email sent/reviewed regarding Second Cause of Action Question (0.10 hrs) - June 2017 Agenda doc screenshot created (0.10 hrs) - 1 email sent/reviewed regarding Case 2017CP3204435-Jada Garris VS Lexington County School District One added to Court Roster for period 2019-06-24 through 2019-06-28. (0.10 hrs) - 1 email sent/reviewed regarding Garris Discovery (0.10 hrs) - 1 email sent/reviewed regarding Case 2017CP3204435-Jada Garris VS Lexington County School District One added to Court Roster for period 2019-09-09 through 2019-09-13. (0.40 hrs) - P's Discovery Responses edited and reviewed (1.40 hrs) - Production to Defendant created (0.10 hrs) - 1 email sent/reviewed regarding Answers to Interrogatories and Questions (0.20 hrs) - Cause of Actions 3 7 8 february 2019 reviewed (0.10 hrs)	Taylor M. Smith IV	2.80	\$300.00	Yes	No	Invoiced	\$840.00
09/04/2019	TC	Telephone Call w/ client re next steps, trial		Taylor M. Smith IV	0.60	\$300.00	Yes	No	Invoiced	\$180.00
09/04/2019		Continue drafting discovery responses	- P's First Set of Discovery Requests reviewed (0.9hs) - Debbie Gilly Facebook Message reviewed (0.1hs) - 2 emails sent/reviewed regarding Garris Discovery (0.1hs) - Grady Harmon Facebook messages reviewed (0.1hs) - Debbie Gilly Email reviewed (0.1hs) - 4 emails sent/reviewed regarding Answers to Interrogatories and Questions (0.2hs)	Taylor M. Smith IV	1.50	\$300.00	Yes	No	Invoiced	\$450.00
09/03/2019		Professional legal services	- 2 emails sent/reviewed regarding Answers to Interrogatories and Questions (0.20 hrs) - 1 email sent/reviewed regarding Garris Trial (0.10 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
08/30/2019		Professional legal services	- 1 email sent/reviewed regarding Answers to Interrogatories and Questions (0.30 hrs) - 1 email sent/reviewed regarding Answers (0.10 hrs) - 1 email sent/reviewed regarding Garris Trial (0.10 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
08/29/2019		Professional legal services	- 1 email sent/reviewed regarding Garris Discovery (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
08/21/2019		Professional legal services	- 3 emails sent/reviewed regarding Garris Discovery (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
08/19/2019		Professional legal services	- 3 emails sent/reviewed regarding Answers (0.1hs) - 2 emails sent/reviewed regarding Garris - Discovery (0.6hs) - 1 email sent/reviewed regarding Defendant's First Set of Interrogatories and First Set of Requests (0.4hs) - Cause of Actions 3 7 8 february 2019 reviewed (0.1hs) - P's First Set of Discovery Requests edited (0.6hs)	Taylor M. Smith IV	1.80	\$300.00	Yes	No	Invoiced	\$540.00
08/16/2019		Professional legal services	- TMS: Tour the Auditorium on meeting violations (Lexington, SC) attended (1.5hs)	Taylor M. Smith IV	1.50	\$300.00	Yes	No	Invoiced	\$450.00
07/31/2019		Professional legal services	- 2 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017CP3204435) (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
07/22/2019		Professional legal services	- 1 email sent/reviewed regarding Attorney General's Opinion (0.10 hrs) - 1 email sent/reviewed regarding Answers (0.10 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
07/17/2019		Professional legal services	- 1 email sent/reviewed regarding Defendant's First Set of Interrogatories and First Set of Requests (0.10 hrs) - Talk w/ client re discovery, questions (0.40 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00

07/16/2019		Professional legal services	- 1 email sent/reviewed regarding Garris v. Lexington One (0.20 hrs) - Ltr to Counsel - Re - Serving 1st Set of Disc Rqts - 03.08.19 created (0.10 hrs) - 1 email sent/reviewed regarding Garris suit - seeking updates (0.10 hrs)	Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
07/10/2019		Professional legal services	- Amended Summons and Complaint reviewed (0.5hs) - P's First Set of Discovery Requests created, edited (1.5hs)	Sarah M Larabee	2.00	\$175.00	Yes	No	Invoiced	\$350.00
07/10/2019		Professional legal services	- P's First Set of Discovery Requests reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
07/01/2019		Professional legal services	- 1 email sent/reviewed regarding Courtesy NEF RE: 2017CP3204435 (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
06/28/2019		Professional legal services	- 1 email sent/reviewed regarding Not concerning my case (0.3hs) - Call client re scheduling order (0.4hs) - TMS: Attend Status Conference (By Phone: (712) 432-3447. Passcode is 965019. Pin is 0923.) attended (0.4hs)	Taylor M. Smith IV	1.10	\$300.00	Yes	No	Invoiced	\$330.00
06/20/2019		Professional legal services	- 6 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017CP3204435) (0.60 hrs)	Taylor M. Smith IV	0.60	\$300.00	Yes	No	Invoiced	\$180.00
06/19/2019		Professional legal services	- 1 email sent/reviewed regarding Partial Approval Notice: Your filing, Re: 2017CP3204435 - (699) Special/Complex/Other - Proposed Order/Consent Order, was partial (0.1hs) - 1 email sent/reviewed regarding Audio and statement regarding lost records (0.2hs) - 4 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017CP3204435) (0.1hs) - Consent Order edited (0.3hs)	Taylor M. Smith IV	0.70	\$300.00	Yes	No	Invoiced	\$210.00
06/17/2019	DRAFT	Draft email to opp counsel re consent order		Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
06/17/2019	DRAFT	Draft email to court law clerk re consent order, scheduling conference		Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
06/17/2019		Professional legal services	- 6 emails sent/reviewed regarding Courtesy NEF RE: 2017CP3204435 (0.50 hrs) - 2 emails sent/reviewed regarding Jada Garris v. Lexington School District One (Case No. 2017CP3204435) (0.30 hrs) - 2 emails sent/reviewed regarding Partial Approval Notice: Your filing, Re: 2017CP3204435 - (699) Special/Complex/Other - Proposed Order/Consent Order, was partial (0.10 hrs)	Taylor M. Smith IV	0.90	\$300.00	Yes	No	Invoiced	\$270.00
06/17/2019	EMAIL	Read email from clerk re partial filing		Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
06/13/2019		Professional legal services	- 1 email sent/reviewed regarding Courtesy NEF RE: 2017CP3204435 (0.10 hrs) - Summons and Complaint reviewed (0.10 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
06/12/2019		Professional legal services	- 2 emails sent/reviewed regarding Case 2017CP3204435-Jada Garris VS Lexington County School District One added to Court Roster for period 2019-06-24 through 2019-06-28. (0.30 hrs) - Filed Summons and Complaint reviewed (0.10 hrs)	Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
06/12/2019	DRAFT	Draft email to opp counsel w consent order		Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
06/12/2019	DRAFT	Draft consent order re amending complaint		Taylor M. Smith IV	0.70	\$300.00	Yes	No	Invoiced	\$210.00

06/06/2019		Professional legal services	- 1 email sent/reviewed regarding Garriss v. Lexington One (0.10 hrs) - 3 emails sent/reviewed regarding Case 2017CP3204435-Jada Garriss VS Lexington County School District One added to Court Roster for period 2019-06-24 through 2019-06-28. (0.30 hrs)	Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
05/24/2019		Professional legal services	- 1 email sent/reviewed regarding Jay Bender (0.2hs) - 1 email sent/reviewed regarding Questions (0.1hs) - Polling research edited and reviewed (0.2hs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
05/23/2019		Professional legal services	- 1 email sent/reviewed regarding Case 2017CP3204435-Jada Garriss VS Lexington County School District One added to Court Roster for period 2019-06-24 through 2019-06-28. (0.40 hrs) - June 24 Nonjury Trial Roster edited (0.10 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
05/22/2019		Professional legal services	- Polling research edited (0.8hs)	Taylor M. Smith IV	0.80	\$300.00	Yes	No	Invoiced	\$240.00
05/21/2019		Professional legal services	- 3 emails sent/reviewed (0.60 hrs)	Taylor M. Smith IV	0.60	\$300.00	Yes	No	Invoiced	\$180.00
05/17/2019		Professional legal services	- Summons and Complaint reviewed (0.20 hrs) - 2 emails sent/reviewed (0.20 hrs)	Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
05/17/2019	TC	Telephone Call w/ client re timeline		Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
05/17/2019	DRAFT	Draft email to opp counsel re timeline		Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
05/15/2019		Professional legal services	- Summons and Complaint edited (0.4hs) - 4 emails sent/reviewed (0.3hs)	Taylor M. Smith IV	0.70	\$300.00	Yes	No	Invoiced	\$210.00
05/13/2019		Professional legal services	- 1 email sent/reviewed (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
05/09/2019		Professional legal services	- 1 email sent/reviewed (0.60 hrs)	Taylor M. Smith IV	0.60	\$300.00	Yes	No	Invoiced	\$180.00
05/08/2019		Professional legal services	- Filed Complaint Exhibits reviewed (0.1hs) - Timeline Mr. Smith reviewed (0.2hs) - 1 email sent/reviewed (0.2hs) - List of Violations Mr. Smith 10-10-17 reviewed (0.1hs) - Cause of Actions 3 7 8 february 2019 reviewed (0.1hs)	Taylor M. Smith IV	0.70	\$300.00	Yes	No	Invoiced	\$210.00
05/07/2019		Professional legal services	- 1 email sent/reviewed (0.10 hrs)	Rhonda S. Schaub	0.10	\$150.00	Yes	No	Invoiced	\$15.00
05/07/2019		Professional legal services	- 1 email sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
04/29/2019		Professional legal services	- Stipulated Facts.Draft.3.4.12 reviewed (0.10 hrs) - 3 emails sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
03/05/2019		Professional legal services	- 1 email sent/reviewed (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
03/04/2019		Professional legal services	- 1 email sent/reviewed (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
02/19/2019	CONFE	Conference call w/Client re amending the complaint		Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
02/19/2019		Professional legal services	- Filed Summons and Complaint reviewed (0.10 hrs) - 3 emails sent/reviewed (0.30 hrs) - Email attachment reviewed - Cause of Actions 3 7 8 february 2019 (0.20 hrs)	Taylor M. Smith IV	0.60	\$300.00	Yes	No	Invoiced	\$180.00
02/18/2019		Professional legal services	- 3 emails sent/reviewed (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
02/07/2019	2/7/2019		- 1 email sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
02/06/2019		3 emails sent/reviewed		Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00

02/06/2019	2/6/2019	- Talk w/ client re recent board activity, questions (0.20 hrs) - Talk w/ client re amending complaint (0.10 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
02/06/2019	TMS: Garris - Talk w/ opposing counsel (By phone) attended		Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
01/30/2019	1/30/2019	- 1 email sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
01/29/2019	1/29/2019	- 1 email sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
01/24/2019	1/24/2019	- 2 emails sent/reviewed (0.30 hrs) - Talk w/ David Lyon (By Phone) (0.20 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
01/22/2019	1/22/2019	- 2 emails sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
01/03/2019	1/3/2019	- 1 email sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
01/02/2019	1/2/2019	- 1 email reviewed from David Lyon (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
12/28/2018	12/28/2018	- Cheryl Layton Emails reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
12/19/2018	TC	Telephone Call w/ David Lyon	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
12/19/2018	12/19/2018	- 2 emails sent/reviewed (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
12/18/2018	PHONE	Phone call from Client	Taylor M. Smith IV	0.60	\$300.00	Yes	No	Invoiced	\$180.00
12/18/2018	12/18/2018	- Email attachment reviewed - Proposed Joint Statement 12-12-18.TMS.DNL (0.10 hrs) - 4 emails sent/reviewed (0.40 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
12/17/2018	TC	Telephone Call w/ David Lyon	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
12/17/2018	CONFE	Phone call w/Client	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
12/13/2018	12/13/2018	- Email attachment reviewed - Settlement Agreement and General Release.Sample.rv1 (0.20 hrs) - Email attachment reviewed - Proposed Joint Statement 12-11-18.DL (0.10 hrs) - 5 emails sent/reviewed (0.60 hrs) including email to opp counsel	Taylor M. Smith IV	0.90	\$300.00	Yes	No	Invoiced	\$270.00
12/12/2018	PHONE	Phone call with Client re settlement	Taylor M. Smith IV	0.90	\$300.00	Yes	No	Invoiced	\$270.00
12/11/2018	12/11/2018	- 2 emails sent/reviewed (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
12/11/2018	TC	Telephone Call w/ David Lyon re settlement	Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
12/05/2018	Read email	- Talk with client re first board meeting, settlement (0.50 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
12/04/2018	Read email	- Filed Summons and Complaint reviewed (0.10 hrs) - several emails sent/reviewed (0.60 hrs)	Taylor M. Smith IV	0.70	\$300.00	Yes	No	Invoiced	\$210.00
11/30/2018	Read email	- 3 emails sent/reviewed (0.20 hrs)	Taylor M. Smith IV	0.20	\$300.00	Yes	No	Invoiced	\$60.00
11/28/2018	Talk w client re settlement		Taylor M. Smith IV	0.40	\$300.00	Yes	No	Invoiced	\$120.00
11/28/2018	Read email	- 3 emails sent/reviewed including attachments (0.50 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
11/27/2018	Read email	- Filed Summons and Complaint reviewed (0.20 hrs) - 6 emails sent/reviewed (0.30 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
11/27/2018	Talk w/ opposing counsel re settlement		Taylor M. Smith IV	0.90	\$300.00	Yes	No	Invoiced	\$270.00
11/26/2018	Read email	- 4 emails sent/reviewed (0.30 hrs)	Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
11/19/2018	Read email	- 4 emails sent/reviewed (0.60 hrs)	Taylor M. Smith IV	0.60	\$300.00	Yes	No	Invoiced	\$180.00
11/15/2018	Get to TMS the amount Garris has paid HR&S to date. (Thank you.)		Taylor M. Smith IV	0.10	\$300.00	No	No	Invoiced	\$30.00
11/15/2018	Read email	- 1 email sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00

11/13/2018	Memo created, then edited - Jada Garris (called us)		Taylor M. Smith IV	0.30	\$300.00	Yes	No	Invoiced	\$90.00
11/13/2018	Read email	- 2 emails sent/reviewed (0.50 hrs)	Taylor M. Smith IV	0.50	\$300.00	Yes	No	Invoiced	\$150.00
11/13/2018	Matter review		Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
11/09/2018	Read email	- 2 emails sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
11/07/2018	Read email	- 1 email sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
10/24/2018	Read email	- 1 email sent/reviewed (0.10 hrs)	Taylor M. Smith IV	0.10	\$300.00	Yes	No	Invoiced	\$30.00
Total - Billable				133.00					\$40,865.00
Total - Non-Billable				1.10					\$330.00
Total - Write Off				90.00					\$450.00

Expense entries

Date	Activity	Subject	Staff	Quantity	Price	Billable?	Write off?	Status	Total
12/10/2019	TRANS	Transcript Cost	Amanda Zeno	1.00	\$271.00	Yes	No	Invoiced	\$271.00
12/03/2019	EFILE	E-Filing	Rhonda S. Schaub	1.00	\$31.74	Yes	No	Invoiced	\$31.74
10/24/2019	C.REP	Court Reporter	Amanda Zeno	1.00	\$1,233.78	Yes	No	Invoiced	\$1,233.78
06/04/2019	EFILE	E-Filing	Amanda Zeno	1.00	\$31.74	Yes	No	Invoiced	\$31.74
Total - Billable									\$1,568.26
Total - Non-Billable									\$0.00
Total - Write Off									\$0.00

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS
OF THE ELEVENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-32-04435

**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

Defendant Lexington County School District One ("Defendant" or "District"), by and through its undersigned counsel, submits this Supplemental Memorandum in Opposition to Plaintiff's Motion for Attorneys' Fees and Costs.

INTRODUCTION

Plaintiff initiated this action on December 6, 2017, when, while a citizen, she filed a Complaint against the District alleging 12 violations of the South Carolina Freedom of Information Act (FOIA). The Complaint asserted five meeting-related violations, and seven alleged violations regarding the production of public records. The District denied all of the alleged violations. On June 13, 2019, after Plaintiff had been elected to the Defendant's governing Board, Plaintiff amended her Complaint, dismissing the seven alleged public records violations. On October 24, 2019, the parties went to trial on the five remaining alleged meeting violations. Plaintiff prevailed on only one of her five causes of action.¹

On December 2, 2019, Plaintiff's counsel submitted a Motion for Attorneys' Fees and Costs, in the total amount of \$40,510.04. On January 27, 2020, this Court held a hearing on the parties' cross motions for reconsideration and the motion for attorneys' fees and costs. The Court

¹ A more detailed procedural history is presented in Defendant's Memorandum in Opposition to Plaintiff's Motion for Attorneys' Fees and Costs, filed on January 22, 2020.

denied the parties cross motions for reconsideration. The Court also declined to rule on the attorneys' fees motion at that time, in part because detailed billing statements had not been submitted prior to the hearing,² preventing defense counsel and the Court from properly considering the fee request. The Court set a new hearing for March 16, 2020.

On February 28, 2020, Plaintiff's counsel submitted updated invoices containing costs and fees totaling \$48,995.80. The billing entries begin on March 15, 2017, nine months before the first Complaint was filed, and end on February 27, 2020.³ According to the Plaintiff's counsel's affidavit, Plaintiff was charged on an hourly basis and has thus far been billed, and has paid, \$12,787.54 of the fees/costs. Smith Aff. ¶ 6(f).

For the reasons previously discussed in Defendant's Memorandum in Opposition to Plaintiff's Motion for Attorneys' Fees and Costs, this Court, in the exercise of its discretion in such matters, should decline to award any attorney's fees or costs. *See Kiriakides v. Sch. Dist. of Greenville Cty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) ("The awarding of attorney's fees, **if any**, and the amount awarded, is left to the discretion of the trial judge.") (emphasis added). If the Court decides to award attorney's fees, the award should be partial and limited, given that Plaintiff only prevailed on one of her five causes of action. *See* S.C. Code Ann. § 30-4-100(b) ("If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an **appropriate portion** of those attorney's fees.") (emphasis added). Here, an award of "an appropriate portion," if any, of the fees should be, at most, one-fifth of the fees

² Plaintiff's counsel provided copies of the invoices at the hearing.

³ Time charged between January 27, 2020 (when this hearing was originally set to occur), and February 27, 2020, when the last of Plaintiff's documents were filed, should not be considered by the Court, since this matter could have been concluded at the January 27 hearing, but for Plaintiff's counsel's failure to provide sufficient information prior to the hearing. This amount is approximately \$1,215, and the court may wish to deduct this amount from whatever award, if any, the court determines to be appropriate.

related to litigating the Amended Complaint, corresponding to Plaintiff having prevailed on one of five causes of action. *Id.*

In addition to the plain language of the FOIA statute regarding the partial award of attorney's fees for plaintiffs who prevail in part, any award should also be considered in light of the factors laid out in *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004). These factors are: "(1) nature, extent, and difficulty of the case; (2) time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Id.* Factor 5, "beneficial results obtained," is particularly relevant in this case and requires a significant reduction in any amount the Court, in its discretion, chooses to award.

Therefore, pursuant to § 30-4-100(b), *Burton*, and common law, the following are the reasons why the Court should deny, or severely limit, the attorney's fees requested in this case.

A. Plaintiff, as a member of the Defendant's Board of Trustees, is not entitled to recover fees against the District, to which she owes a fiduciary duty.

As this case was accepted by Plaintiff's counsel on an hourly-fee basis, any award of attorney's fees will be applied to Plaintiff's outstanding debt to her attorneys. Any award of fees benefits Plaintiff financially, and the fees will be paid from Defendant School District's general operating fund. Those funds comprise a pool of taxpayer dollars which Plaintiff, as a Board Member, has a duty to protect and preserve. If, as our Supreme Court has recognized, "every public officer is bound . . . to act *primarily* for the benefit of the public." *O'Shields v. Caldwell*, 207 S.C. 194, 35 S.E.2d 184 (1945), Plaintiff's attempt to be reimbursed for a debt she undertook and now owes to her attorneys is not primarily for the benefit of the public. It benefits only Plaintiff, to the detriment of the taxpayer and the District's operating funds. Since Plaintiff sits on the governing body of the District she has sued, a public entity to which she owes a fiduciary duty, she should not be entitled to recovery monies against that entity.

B. Alternatively, Plaintiff's recovery of fees should be severely limited for the following reasons:

1. Plaintiff is not a prevailing party as to claims she voluntarily dismissed when she filed her Amended Complaint.

It is clear from Plaintiff's counsel's billing statements and affidavits that Plaintiff seeks attorney's fees related not only to the five claims which were tried, but also to the other seven causes of action which Plaintiff dismissed voluntarily when she amended her Complaint in June 2019. This aspect of the fee request must be rejected.

As noted above, Plaintiff first filed suit in December 2017, asserting 12 violations of the FOIA. Plaintiff subsequently, and voluntarily, dismissed the seven public records violations when, on June 13, 2019, Plaintiff amended her Complaint. Plaintiff went to trial on the five causes of action asserting meeting-related violations contained in the Amended Complaint.

The Court should not award attorney's fees as to claims that have been dismissed. Dismissed causes of action should be considered as if those claims have never been filed. *See, e.g., McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 50, 378 S.E.2d 69, 71 (Ct. App. 1989)(stating that when the Plaintiff "voluntarily dismissed his case without prejudice, thus leaving his claim adjudicated upon the merits, the situation became the same as if he had never brought the suit"). Moreover, the District disputed the allegations in the dismissed causes of action, which generally involved allegations, that the District violated FOIA in regard to Plaintiff's records requests. Plaintiff chose not to pursue these claims in court, and the District has not had a chance to pursue its legitimate defenses to the allegations.⁴ Plaintiff cannot claim prevailing party status as to disputed claims which Plaintiff decided to dismiss without taking further action. If Plaintiff believed the violations had been established, she should have sought summary judgment on those

⁴To the extent documents were provided to Plaintiff during this litigation, whether in the manner of attorney discussions, discovery, or as part of settlement negotiations, the District has continued to deny that it violated the FOIA.

claims, not dismissed them. Moving for summary judgment would have put at issue Plaintiff's contention that she had prevailed on the record-disclosure claims and thus was entitled to an award of attorney's fees regarding that aspect of the case. However, Plaintiff failed to so move. Accordingly, Plaintiff cannot claim prevailing party status as to claims she simply dismissed, and the dismissed claims should not be considered in the Court's determination of prevailing party status in awarding attorney's fees.

2. Plaintiff is a prevailing party as to only one of the five causes of action at issue in the trial on this matter.

Section 30-4-100(b) provides in relevant part:

If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails **in part**, the court may in its discretion award him reasonable attorney's fees or **an appropriate portion** of those attorney's fees.

(emphasis added). The FOIA clearly distinguishes between prevailing in full and prevailing "in part" and explicitly makes reference to awarding an "appropriate portion" of requested fees in the event of prevailing partially. As Plaintiff has prevailed only in a small part, she should only recover, at most, only a portion of the fees requested.

Additionally, and relatedly, *Burton* requires the Court to consider the "beneficial results obtained." 358 S.C. at 358, 594 S.E.2d at 898. Beneficial results obtained must be considered in light of the entirety of the results. In this case, Plaintiff prevailed on only one cause of action out of five; thus, any fee award should reflect this limited degree of success or benefit, if any, obtained. The "appropriate portion" of attorney's fees here is, at most, one-fifth of the fees related to litigating the Amended Complaint. See, e.g., *Ballard v. Newberry County*, 2017 WL 10186868 (2017) (in which the circuit court awarded partial attorney's fees based on a "'split' result," where Plaintiff prevailed on two of her three legal claims). See Attachment A. One-fifth of the appropriate portion is based on a simple mathematical calculation given that Plaintiff

prevailed on one of five causes of action. This approach is sound given that counsel's time/activity sheets make no differentiation among time spent on the various causes of action.

3. Plaintiff's success on one cause of action is of no real benefit to Plaintiff or the public.

The Court found that on a single occasion, in November 2017, the District's Board opened its meeting in the Executive Board room and announced the reason for going into executive session with the door between the main room of the auditorium and the Board room closed.⁵ By the time this case was tried in October 2019, the District no longer opened its meetings in the Board room. The Court acknowledged that the practice had changed and denied Plaintiff's request for injunctive relief. There is little, if any, beneficial result to the Plaintiff or the public in the finding of violation in this one, remote-in-time occurrence. There was no allegation, much less proof, of any wrongdoing or secret decision-making. At most, the public was not able to hear the Board's reasons for going into executive session. However, the reasons for going into executive session were listed on the agenda, and Plaintiff never alleged that the reasons listed were insufficient to inform the public about the purpose for entering executive session.

In sum, the only result of this litigation, which consumed two years, unnecessarily, was a declaration that on a single occurrence, more than two years ago, the District's Board failed to have a door open. This result can hardly be considered "beneficial" to either the Plaintiff or the public. Since the benefit obtained is essentially non-existent, any award of attorney's fees should also be minimal and no more than one-fifth of the applicable attorney's fees.

⁵ The Court did not find a FOIA violation in the District's past practice of opening its meeting in the Board room with the door between the Board room and the main room of the auditorium open and then closing the door once the motion to go into executive session was made and voted upon.

4. Plaintiff's Counsels' hourly rate is excessive.

Burton instructs courts to consider the professional standing of counsel and the customary legal fees for similar services. Per his affidavit, Attorney Smith has been practicing law since May 19, 2014. When he began working on this case in 2017, he had approximately 3 years of experience as a lawyer. He has charged \$300/hour. Per his affidavit, Attorney Radeker has been practicing law since November 2005. When he began working on this case in 2017, he had approximately 12 years of experience. He has charged \$350/hour.

Plaintiff's counsel submitted affidavits from reputable attorneys attesting to their *bona fides* and concluding that the rates charged "are in line with rates of other experienced trial attorneys in South Carolina for similar cases." See Butcher Affidavit, Bender Affidavit. Plaintiff's counsel have not submitted any court Orders in which they have been awarded attorney's fees based on the rates requested here.

Fee petitions from recent cases suggest these rates for attorneys with Plaintiff's counsels' years of experience are high. See Attachment B – *Marimonti v. Richland Count School District One, et. al* – Affidavit of Attorneys' Fees and Costs by Attorney Johnathan Milling, an attorney since 1998, who charged \$300/hr. in a 2019 FOIA case); Attachment C – *Ballard v. Newberry County* – Affidavit of Attorney Fees and Costs by Joseph McCullough, an attorney since 1977, who charged \$300/hr., and Kathy Schillaci, an attorney in this state since 1999, who charged \$250/hr. in a 2016 FOIA case.

Here, Plaintiff's counsel charged higher rates than attorneys with more years of experience. These rates are approximately 15% higher than what attorneys with similar or greater experience have charged in similar recent cases. The Court should reduce counsel's rates and any fee award accordingly.

C. Proposed methodology for determining the base amount of attorney's fees if any.

Based on the above discussion of the statutory directives and the application of the *Burton* factors, the District proposes two methods by which the Court may establish an appropriate amount of attorney's fees to award, if any. These amounts may be further reduced, at the Court's discretion.

Initially, in making this proposal, Defendant relies upon the following totals in the billing statements submitted by Plaintiff's counsel on February 27, 2020:

- Fees - \$47,427.54
- Costs – \$1,568.26

The District does not dispute the costs of \$1,568.26. Therefore, the total amount of the fee request at issue is \$47,427.54.

1. Method 1 – 1/12th Success Rate

Method 1 takes into consideration that the original Complaint asserted 12 causes of action. Seven of the causes of action were dismissed voluntarily and under the circumstances discussed above. On the five causes of action adjudicated, Plaintiff prevailed on one. Therefore, the Court may consider 1/12th of the total fees to establish the maximum amount of fees to award.

- $\$47,427.54 \div 12 = \$3,952.295$

Given that the rates sought by Plaintiff are approximately 15% higher than the fees sought by more experienced attorneys in recent cases, this amount should be reduced by 15% to \$3,359.45. Accordingly, the Method 1 maximum amount (fees and costs) is \$4,927.71.

2. Method 2 – 1/5th Success Rate

Method 2 considers the fee request in light of the fees associated with litigating the five causes of action in the Amended Complaint. Therefore, the calculation of fees should begin with entries on or around June 12, 2019. The total from June 12, 2019 through the last billing entry is

\$34,668.26. As Plaintiff prevailed on only one of the five causes of action in the Amended Complaint, the fee total should be divided by a factor of five (5).

- $\$34,668.26 \div 5 = \$6,933.65$

Applying the 15% rate reduction to this figure, the amount should be \$5,893.60. Accordingly, the Method 2 total maximum amount (fees and costs) is \$7,461.86.

Again, the maximum award amounts proposed by either method assumes that the Court, in its discretion, decides not to deny the fee request altogether.

CONCLUSION

For the foregoing reasons, as well as those in Defendant's initial Memorandum, the Court should decline to award any attorney's fees to Plaintiff's counsel. Alternatively, the Court should award a limited amount of fees, reflective of Plaintiff's minimal success at trial and the negligible benefit of her partial success.

Respectfully Submitted,

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Attorneys for Defendant Lexington County
School District One

March 10, 2020
Columbia, South Carolina

ATTACHMENT “A”

Ballard v. Newberry County, 2017 WL 10186868 (2017)

2017 WL 10186868 (S.C.Com.Pl.) (Trial Order)
Court of Common Pleas of South Carolina.
Newberry County

Desa BALLARD,
v.
NEWBERRY COUNTY.

No. 2015CP3600141.
November 20, 2017.

Second Amended Order

Thomas A. Russo, Judge.

*1 THIS MATTER came before me for a non-jury trial beginning on September 6, 2016. Plaintiff was represented by Joseph M. McCulloch, Jr., Esq., and Kathy R. Schillaci, Esq. Defendant was represented by Boyd B. Nicholson, Jr., Esq. This matter involves an action for equitable relief against Defendant, Newberry County, pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. Section 30-4-10 *et seq.* (hereinafter “FOIA”), and the South Carolina Public Records Retention Act (hereinafter “Public Records Act”). Specifically, Plaintiff seeks a declaratory judgment that Defendant violated FOIA and the Public Records Act by: (1) failing to preserve documents as required by state law, failing to provide those documents as required by FOIA, and failing to provide other documents subject to FOIA in a timely manner; and (2) failing to properly announce the “specific purpose” of executive meetings as required by law. Additionally, Plaintiff seeks an award of attorney fees pursuant to S.C. Code Ann. Section 30-4-100(b).

PART I. DOCUMENT REQUESTS UNDER FOIA

1. The South Carolina Freedom of Information Act governs the public disclosure of the activities of public bodies. *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 760 S.E.2d 785 (2014). Our case law is consistent: “The essential purpose of FOIA is to protect the public from secret government activity.” *Id.*, 760 S.E.2d at 789; *see also Seauo v. Horry Cnty.*, 378 S.C. 414, 663 S.E.2d 38 (2008). Pursuant to FOIA, any person has the right to inspect and copy public records unless an exception applies. S.C. Code Ann. § 30-1-10, *et. seq.*

2. Defendant, Newberry County, is a public body subject to both FOIA and the Public Records Act. *See Id.* and S.C. Code Ann. § 30-4-20(a) (defining “public body” as “any state board, commission, agency, and authority, and public or governmental body or subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts ... including committees, subcommittees, advisory committees, and the like of any such body by whatever name known.”).

3. The record shows that while the majority of the 2,000 documents produced by the County were produced with no claim of exemption, the County did claim exemptions concerning the production of several documents. Concerning Plaintiffs Exhibit 16, the County wrote on the document itself that a portion had been “redacted as related to executive sessions matters.” *See* S.C. Code Ann. § 30-4-40(a)(7).

4. This court finds the documents sought—non-privileged litigation documents and county related emails/texts of the county administrator—are public records subject to FOIA. *See* S.C. Code Ann. § 30-4-20(c).

Ballard v. Newberry County, 2017 WL 10186868 (2017)

5. Plaintiff, Desa Ballard, is an attorney licensed in the State of South Carolina. This court finds Plaintiff has a right to inspect public documents. See S.C. Code Ann. § 30-4-30(a) (“Any person has a right to inspect or copy any public record of a public body ... in accordance with reasonable rules concerning time and place of access.”).

*2 6. On December 2, 2014, as part of her representation of a client, Plaintiff properly served a FOIA request upon Defendant seeking a number of documents. She ultimately narrowed her request to include email and text messages to and from Defendant's county administrator, Wayne Adams, related to the magistrate's court.

7. Administrator Adams selected Jay Tothacer, Defendant's county attorney as the “point person” in responding to Plaintiff's FOIA request. In this role, Mr. Tothacer served as Defendant's authorized representative.

8. Defendant concedes that as it relates to electronic data, it had no archiving policy, no document retention policy, and no FOIA compliance policy in place prior to receipt of the FOIA request.

9. As to the FOIA request for Administrator Adams' emails, Mr. Tothacer informed Plaintiff that the Adams' computer had crashed in March 2014, and that the emails from that computer had not been archived. Thus, Defendant could only provide emails from March 2014 forward.¹ Defendant presented no documentation evidencing the computer crash; however, Defendant's Information Technology Director at that time, Dylan Snyder, testified that he examined Adams' computer immediately after the crash. After running diagnostic tests on the computer, he found it to be “completely toasted.” In other words, the hard drive was so useless that no data could have been recovered without outsourcing for a recovery procedure that was both expensive and not guaranteed to be successful. Mr. Snyder then disposed of the hard drive. These events occurred in March of 2014, several months before Plaintiff's FOIA requests were made.

10. Plaintiff testified that the pre-March 2014 period of time was the most relevant in terms of her FOIA request, and it appears from the various exhibits and her testimony that she made this fact known to Defendant.

11. In responding to the FOIA request, Mr. Tothacer did not ask Administrator Adams for hard copies of his emails, and Mr. Tothacer did not inspect Administrator Adams' computer.

12. As to the FOIA request for Administrator Adams' text messages, none were provided. Although Mr. Adams testified that he may have conducted county business via text message (albeit “very seldom”), Defendant does not archive or save text messages in any way. Neither does Defendant's cellphone carrier, Verizon, maintain text messages over an extended period.

13. It appears to this Court from the exhibits and testimony that, as of the date of trial, Defendant had no system in place for backing up or archiving county emails, no connected email servers, no cloud storage, and no end user back-ups. As Mr. Tothacer testified, the only e-mail archiving done by Defendant is what individual users do on their computers.

DECLARATORY RELIEF AS TO FOIA

14. The Court finds that Plaintiff is entitled to a declaratory judgment that Defendant has violated the act and is entitled to relief. See S.C. Code Ann. § 30-4-100(a). While Plaintiff in her Complaint requested Defendant employ, at its expense, any necessary technology consultants to retrieve the records at issue, it appears from the evidence that such records were inadvertently destroyed.² As such, this relief does not appear to be available.

PART II. COMPLIANCE WITH THE PUBLIC RECORDS ACT

Ballard v. Newberry County, 2017 WL 10186868 (2017)

*3 1. A large portion of the trial of this matter dealt with accusations from Plaintiff regarding violations of the Public Records Act, S.C. Code Ann. Section 30-1-10, *et seq.* A threshold matter for consideration on this issue is whether Plaintiff has standing to bring a claim under the Public Records Act.

2. The statutory scheme for enforcing the Public Records Act creates no explicit private right of action. When determining whether a statute creates a private cause of action, the Court must consider legislative intent:

The legislative intent to grant or withhold a private right of action for violation of a statute, or the failure to perform a statutory duty, is determined primarily from the form or language of a statute... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes a provision to secure the safety or welfare of the public entity is not subject to a construction establishing a civil liability.

Whitworth v. Fast Fare Markets of S.C. Inc., 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985) (quoting 73 Am.Jur.2d, *Statutes* § 432 (1974)). When a statute does not specifically create a private cause of action, one can only be implied if the legislation was enacted for the special benefit of a private party. *Doe v. Marion*, 373 S.C. 390, 396-97, 645 S.E.2d 245, 248 (2007) (citing *Citizens of Lee Cnty. v. Lee Cnty.*, 308 S.C. 23, 416 S.E.2d 641 (1992)).

3. While the Public Records Act is silent as to a private right of action, it does specifically empower the Director of Archives to pursue civil remedies. *See* S.C. Code Ann. § 30-1-50 (“In addition, the legal custodian or the Director of the Archives may apply by verified petition to the court of common pleas in the county of residence of the person withholding the records and the court shall upon proper showing issue orders for the return of the records to the lawful custodian or the Director of the Archives.”) Furthermore, the Act provides criminal liability under sections entitled “Unlawful removing, defacing or destroying public records” and “Penalties for refusal or neglect to perform duty respecting records.” S.C. Code Ann. § 30-1-30 & 140. If the legislature intended for a private right of action, it could have easily stated so, and the fact that such language is missing from the statutory scheme indicates a legislative intent to not create a private right of action. *See. e.g., Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) (“The fact that [language regarding civil liability for making a false report] is missing from § 20–7–510 indicates the legislative intent was for the reporting statute not to create civil liability.”); *Byrd v. Irmo High Sch.*, 321 S.C. 426, 433–34, 468 S.E.2d 861, 865 (1996) (finding when one provision does not include a right that is included in a related provision, legislative intent is that a right will not be implied where it does not exist); *State v. Hood*, 181 S.C. 488, 188 S.E. 134 (1936) (“It is presumed that the Legislature was familiar with prior legislation, and that if it intended to repeal existing laws it would have expressly done so.”).

4. This Court finds Plaintiff has no standing to bring a private cause of action against Defendant under the Public Records Act, and therefore declines to make any further findings of fact or conclusions of law on this issue.

PART III. EXECUTIVE SESSIONS OF COUNTY COUNCIL

*4 1. Plaintiff seeks a declaration that Defendant violated FOIA—specifically, S.C. Code Section 30-4-70—with respect to numerous occasions whereby the Newberry County Council went into executive session but did not properly announce the “specific purpose” of the session as recorded in its minutes.

2. This court limits its review to those executive sessions held one year prior to the filing of this lawsuit. S.C. Code Ann. § 30-4-100.

3. Defendant concedes its county council meetings are governed by FOIA.

Ballard v. Newberry County, 2017 WL 10186868 (2017)

4. FOIA creates an affirmative duty on the part of public bodies to disclose information. *Burton v. York Cnty. v. Sheriff's Dep't*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). "The essential purpose of FOIA is to protect the public from secret government activity." *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 8-9, 760 S.E.2d 785, 789 (2014). "FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature." *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864-65 (2001) (citing *S.C. Dep't of Mental Health v. Hanna*, 270 S.C. 210, 241 S.E.2d 563 (1978)).

5. Although FOIA declares the public's right to attend all meetings of public bodies, it also provides for executive sessions, closed to the public for any of six specific purposes:

(a) A public body may hold a closed meeting for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee... or a person regulated by a public body or the appointment of a person to a public body

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

(6) The Retirement System Investment Commission

S.C. Code Ann. § 30-4-709(a). However, "[b]efore going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session." S.C. Code Ann. § 30-4-709(b). "Specific purpose" is defined as "a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section." *Id.* "No action may be taken in executive session except to (a) adjourn or (b) return to public session." *Id.*

6. A public body satisfies its obligation to identify the purpose of executive session when it "disclose[s] specifically what [is] going to be discussed." *Herald Publ'g Co. Inc. v. Barnwell*, 291 S.C. 4, 11, 351 S.E.2d 878, 882 (Ct. App. 1986).

7. Plaintiff alleges, and this court agrees, that when Defendant merely recited S.C. Code Section 30-4-70 verbatim, in whole or in part, and in such a general way that the specific topic of the actual executive session was hidden, the public had no way of knowing what was being discussed. For example, in reference to an August 20, 2014, County Council meeting, the Agenda (Pl.'s Ex. 16) contains redacted matters relating to executive session. The minutes then announce the executive session (PL's Ex. 12) as "the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege" which is identical to S.C. Code Section 30-4-70(a)(2).

*5 7. Based on a review of the minutes provided and liberally construing FOIA to carry out the purpose mandated by the legislature, this court finds Defendant violated both the letter and spirit of FOIA by not setting forth the "specific purpose" of executive session in its minutes. "FOIA is clear in its mandate that the 'specific purpose' of the session 'shall be announced.' Therefore, FOIA is not satisfied merely because citizens have some idea of what a public body might discuss in private." *Quality*

Ballard v. Newberry County, 2017 WL 10186868 (2017)

Towing v. City of Myrtle Beach, 345 S.C. 156, 164, 547 S.E.2d 862 (2001) (finding the mere description of executive session “Towing – Contractual Recommendation” in the meeting minutes of City Council violated FOIA).

8. As such, I find declaratory relief in favor of Plaintiff is appropriate.

DECLARATORY BELIEF AS TO EXECUTIVE SESSIONS

Because this court finds Defendant violated FOIA by not properly announcing the specific purpose of executive session, declaratory relief is appropriate. Specifically, per Defendant's County Council minutes, the executive sessions held on these occasions were not properly identified; as such, the non-privileged subject matter of these sessions must be disclosed to the public. Therefore, Defendant is ordered within thirty (30) days of the date of this Order to submit to Plaintiff any documentation which reflects the discussions during the executive sessions at issue, notwithstanding any material that the Court has determined to be attorney-client privileged. Additionally, in all future County Council meetings where executive session is utilized, Defendant is ordered to properly announce the specific purpose of the executive session and not merely recite the statutory language, as further explained by our Supreme Court in the case *Brock v. Town of Mount [illegible text]*, 415 S.C. 625, 785 S.E.2d 198 (2016).

Plaintiff further requested that the Court order Defendant, as part of its declaratory relief in this matter, to turn over the material redacted from Plaintiff's Exhibit 16. Normally, it would be within the Court's discretion to consider this relief for failure to properly announce the purpose of executive session. However, here, after a post-trial *in-camera* review of the material redacted from Defendant's August 20, 2014 County Council minutes, the Court has determined that material to be attorney work product. The Court finds that material is therefore protected from disclosure and need not be turned over to Plaintiff.

ATTORNEY FEES AND COSTS

Section 30-4-100 of the S.C. Code provides that if a person or entity seeking declaratory judgment and/or injunctive relief under FOIA prevails, she “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 [her] reasonable attorney fees or an appropriate portion thereof.” *See also Glassmeyer v. City of Columbia*, 414 S.C. 213, 224, 777 S.E.2d 835, 841 (Ct. App. 2015). “As a general rule, the amount of attorneys fees to be awarded in a particular case is within the discretion of the trial judge.” *Burton v. York Cnty. Sheriff's Dep't*, 358 S.C. 339, 357-58, 594 S.E.2d 888, 898 (Ct. App. 2004) (citing *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989)).

There are six factors for the trial court to consider when determining an award of attorneys' fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) **beneficial** results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). Upon request for attorneys' fees that are authorized by statute, the trial court should make specific findings of fact for each of these factors. *See Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 (“[O]n appeal, an award for attorneys fees will be affirmed so long as sufficient evidence in the record supports each factor.”); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993) (“When an award of attorneys fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor.”).

***6** In this case, based on a review of Plaintiff's Affidavits of Attorney Fees and Costs, the Court finds a partial award is appropriate. As to the nature, extent, and difficulty of the case, the Court finds that the Freedom of Information Act and related matters are complex, heavily regulated, and can present numerous legal issues, and so, justify the fees charged. As to time devoted, it appears from the filed affidavits that Plaintiff's counsel spent approximately one hundred combined hours on this case. The Court finds that both Joseph McCulloch and Kathy Schillaci have extensive reputations as litigators of the highest quality and have been practicing law for a number of years. *See Aff. of Attorney Fees and Costs for Joseph McCulloch* and *Aff. of Attorney Fees and Costs for Kathy Schillaci*. Contingency of compensation is not relevant because this was not a contingency

Ballard v. Newberry County, 2017 WL 10186868 (2017)

fee case. The Court also finds that the legal fees charged were appropriate and customary for similar services. Thus, the Court's award of attorney's fees hinges on the factor of **beneficial** results obtained. Of three overarching legal issues, Plaintiff prevailed on two, and one of those produced no benefit to Plaintiff. Based on the time devoted at trial to the issue of the Public Records Retention Act and a review of counsels' affidavits, it appears that a large bulk of time was spent on what was ultimately an unsuccessful legal argument, and no **beneficial** result was obtained for Plaintiff on that cause of action. Based on this "split" result, the Court awards Plaintiff \$9,867.00 in attorneys' fees and \$2,604.88 in litigation costs.

PART IV. CONCLUSION

Based on the forgoing, it is hereby ORDERED, ADJUDGED, AND DECREED that:

(a) Defendant must, within thirty (30) days of the date of this Order, submit to Plaintiff any documentation which reflects the discussions during the improperly announced executive sessions at issue, notwithstanding any material the Court has deemed to be privileged.

(b) Defendant is required in the future to properly announce the specific purpose of the executive session and not merely recite the statutory language.

(c) Defendant must, within thirty (30) days of the date of this order, pay to Plaintiff her awarded attorneys' fees and costs in the amount of Twelve Thousand Four Hundred Seventy One Dollars and Eighty Eight Cents (\$12,471.88).

AND IT IS SO ORDERED.

<<signature>>

The Honorable Thomas A. Russo

Presiding Judge

<<signature>>

This 7th day of November, 2017

Florence, South Carolina

Footnotes

- 1 It should be noted that Defendant did attempt to turn over some pre-crash emails by producing them from computers of other County employees and from hard copies that were available.
- 2 See T. p. 85, lines 9-14.

End of Document

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ATTACHMENT “B”

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Nancy Miramonti,)
Plaintiff,)
vs.)
RICHLAND COUNTY SCHOOL)
DISTRICT ONE, a body politic and)
corporate; and the BOARD OF)
COMMISSIONERS OF RICHLAND)
COUNTY SCHOOL DISTRICT ONE,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2019-CP-40-04931

**AFFIDAVIT OF ATTORNEYS FEES
AND COSTS**

PERSONALLY APPEARED BEFORE ME, the undersigned, who, being first duly sworn, deposes and says as follows:

1. The Milling Law Firm, LLC was retained by the Plaintiff in the above-captioned action to pursue declaratory judgment and injunction against the defendant as outlined in this action.

2. This case is an action for declaratory judgment and injunction against the Defendant and is brought pursuant to, and under the authority of 15-53-10, et seq., Code of Laws, known as the Uniform Declaratory Judgment Act, and 30-4-10 et. Seq., Code of Laws of South Carolina, as amended, known as the Freedom of Information Act ("FOIA"). FOIA provides that the Plaintiff is entitled to the recovery of attorneys' fees and costs as the instant action was necessitated by Defendant's conduct.

3. I am the attorney who has primarily handled the filing and pursuit of action on behalf of Plaintiff, and as such am aware of the attorneys' fees and collection costs incurred in this regard.

4. Under Dede v. Strickland, 414 S.E.2d. 134 (S.C. 1992), the Supreme Court of South Carolina has set forth the factors to be considered in an award of attorney's fees. These factors include nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:

- a. Nature, Extent, and Difficulty of the Legal Services Rendered. As stated earlier, this is a suit for declaratory judgment and injunction against Richland County School District One and the Board of Commissioners. Time was devoted to review of the FOIA as well as the School Board policies, minutes, meeting video, and meeting agendas. Additional time was devoted to the drafting and service of the pleadings in this matter.
- b. Time and Labor Necessarily Devoted to the Case. Fourteen and no/100 (14.0) hours were devoted to the case by my firm. I charged the hourly rate of \$300.00 per hour for this matter. The total fees billed are \$4,200.00. Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case.
- c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina, United States District Court for the District of South Carolina, Fourth Circuit Court of Appeals, Eleventh Circuit Court of Appeals, District of Columbia Court of Appeals, and United States Supreme Court. I completed law school in 1998, and have practiced law since that time. I began my legal career as a criminal prosecutor and began private practice in 2001. I opened the Milling Law Firm, LLC in 2007. My practice includes civil and criminal litigation, including appeals, in all Courts of this State. I have served as counsel in matters enforcing contractual rights and statutory provisions during my entire legal career. I have been recognized by Super Lawyers and Best Lawyers and have an AV Rating by Martindale Hubbell. Accordingly, I submit that I have a high professional standing in general and in this area of practice.
- d. Contingency of Compensation. This matter was billed at the rate of \$300.00 an hour.
- e. Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with clients, other attorneys in the Midlands region of South Carolina, and from my general familiarity with the legal profession that the fees charged by attorneys with twenty one (21) years of experience is \$300.00 per hour or more. As stated earlier, my hourly rate is within this range in this case. Accordingly, this rate is the fee customarily charged in this locality for similar services.

- f. Beneficial Results Obtained. This attorney obtained beneficial results for the Plaintiff in this action by securing a Judgment enforcing Plaintiff's claims. Accordingly, it is submitted that beneficial results were obtained by this firm on the Plaintiffs' behalf.

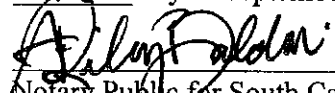
6. After due consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees to the full extent set forth in this Affidavit is appropriate; therefore, Plaintiffs are entitled to recover Four Thousand Two Hundred and 00/100 (\$4,200.00) Dollars.

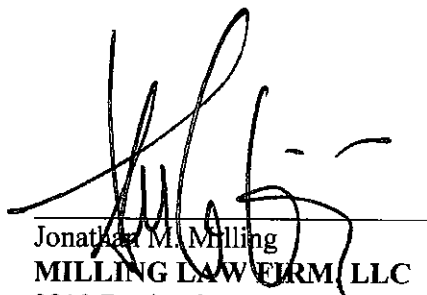
7. In conjunction with this Affidavit, Plaintiff's counsel submits the costs actually incurred through September 16, 2019, include a filing fee of \$180.32, and service costs totaling \$186.50 for a total of \$366.82. These costs include filing fees, service costs, and other miscellaneous costs. The costs are reasonable and necessary to pursue this action and are not, I believe, excessive given the nature, extent and difficulty of the legal services in this case, the time and labor devoted to this case, and the beneficial result obtained.

8. Accordingly, the total attorney's fees and costs sought in this case and allowable under the terms of the invoices total Four Thousand Five Hundred Sixty Six and 82/100 (\$4,566.82) Dollars.

FURTHER AFFIANT SAYETH NOT.

SWORN to before me this
16 day of September, 2019


Notary Public for South Carolina
My Commission Expires: 1/25/29


Jonathan M. Milling
MILLING LAW FIRM, LLC
2910 Devine Street
Columbia, SC 29205
(803) 451-7701
Attorney for Plaintiff

ATTACHMENT “C”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	CASE NO. 2015-CP-36-00141
Desa Ballard,	)	
Plaintiff,	)	
Vs.	)	AFFIDAVIT OF ATTORNEY
Newberry County,	)	FEEES AND COSTS
Defendant.	)	

THIS WITNESS, KATHY R. SCHILLACI, SWORN, DEPOSES AND STATES:

1. I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.
2. I am an attorney at law licensed to practice before the Courts of the State of South Carolina. I have been practicing law in this state since 1999. I have practiced at McCulloch & Schillaci, Attorneys at Law, formerly Law Offices of Joseph M. McCulloch, Jr., for over a decade and before that time, practiced civil litigation at Nelson, Mullins, Riley & Scarborough, LLP. I graduated with a Juris Doctor *cum laude* from the University of Arkansas School of Law where I was a finalist at the National Vanderbilt First Amendment Moot Court Competition and a recipient of the Donald J. Adams Memorial Scholarship for Trial Advocacy. My litigation experience includes trials in the Courts of Common Pleas, General Sessions, Family Courts, Magistrate Courts, and Administrative Law Court. I have appeared before both the South Carolina Court of Appeals and South Carolina Supreme Court. I hold an "AV" Martindale Hubbell rating.
3. I, along with Joseph M. McCulloch, Jr. represent Ms. Ballard in the above-captioned matter. My usual and customary fee for civil litigation is \$250.00 per hour.

4. I have reviewed the document attached as Exhibit A, and believe it to be a valid and accurate statement of reasonable attorney fees and costs related to the Ms. Ballard's costs and attorney fees in the above-captioned matter and this document has been prepared in support of her Motion for Attorney Fees and Costs, all pursuant to S.C. Code Ann. §30-4-100(b).

FURTHER AFFIANT SAITH NOT.

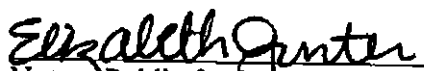
This 12th day of October, 2016.

Columbia, South Carolina



Kathy R. Schillaci
McCulloch & Schillaci, Attorneys at Law
1513 Hampton Street
P.O. Box 11623
Columbia, South Carolina 29211
(803) 779-0005

SWORN to and SUBSCRIBED before me
This 12 day of October, 2016


Notary Public for South Carolina

My Commission Expires:

12/7/25

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

Jada Garris, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

Lexington County School District One,

Defendant.

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

The Plaintiff, desiring to reply to the Defendant's memoranda, submits this memorandum in support of her motion for attorney's fees and costs in the above-captioned action. The Plaintiff has tried to avoid repeating here the same statements made in her motion for attorneys' fees and costs and in the affidavits she has filed in connection with this motion, though she reminds the court of those filings. The primary purpose of this memorandum is to reply to argument advanced by the Defendant in its memoranda.

In this action under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* ("FOIA"), the Plaintiff prevailed, securing a judgment by this court that the Defendant violated FOIA. Accordingly, she is entitled to recover her attorneys' fees and costs. S.C. Code Ann. § 30-4-100(b).

BEING ON SCHOOL BOARD DOES NOT BAR ATTORNEYS' FEES RECOVERY

The Plaintiff brought and prosecuted this case as an individual citizen of South Carolina. Coincidentally, the Plaintiff was elected to a seat on the Defendant's board during the pendency of this case. That does not bar the Plaintiff from recovering her attorneys' fees and costs, and the Defendant has offered no authority that stands for the proposition that she or any other similarly

situated litigant is, would be, or could be barred from attorneys' fee recovery under S.C. Code Ann. § 30-4-100(b).

PLAINTIFF SHOULD BE AWARDED THE FEES SHE HAS ACTUALLY INCURRED

The Defendant advances some interesting, but incorrect, arguments to the effect that the Plaintiff should not be allowed to recover *all* of the attorneys' fees she incurred in this case. She should. The approaches advocated by the Defendant are not only flawed, they run counter to existing authority in this area.

Typically, an award of attorney's fees "is made to the party, not to his lawyer[.]" and its purpose is to reimburse the party for the attorneys' fees he or she incurred as litigation expenses. Curtis L. Coltrane, Ethical Issues for Attorney Fees & Costs, in 2006 Master-in-Equity Bench/Bar 45, 48 (S.C. Bar Comm'n on Legal Educ. 2006) (citing Reid v. Reid, 280 S.C. 367, 312 S.E.2d 724 (Ct. App. 1984)). Accordingly, and since securing the attorney's fee award is part of securing the client's right to recovery, attorney's fee awards typically embrace the fees incurred in litigating post-trial motions, including the motion for attorney's fees. See Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 414-16, 438 S.E.2d 248, 249-50 (1993) (attorney's fee award in mechanic's lien case properly embracing fees for post-trial motions and appeal). The Plaintiff has provided the court with evidence that she has incurred \$48,995.80 in attorneys' fees and costs (which, of course, does not include those incurred for the time spent writing this memorandum). The Plaintiff has provided the court with multiple affidavits – those given by her lawyers and those given by attorneys Jay Bender and Robert Butcher – that speak to the six attorneys' fee award factors and discuss how all six support an award of all of the Plaintiff's incurred fees. See, e.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989). Awarding all of the Plaintiff's incurred fees would reimburse her for her litigation expenses and place her in the

position that is contemplated as that of a prevailing party under S.C. Code Ann. § 30-4-100(b), which she is. That would serve one of the primary purposes of an attorney's fee award. See Coltrane, supra at 48.

The Plaintiff having satisfied her duty to make a sufficient showing, the Defendant now tries to argue for why the court should depart from these principles and award the Plaintiff less than the total of the fees she has incurred in this case. The Defendant does so principally in two ways: attacking the Plaintiff's lawyers' hourly rates and arguing that the court should take a fractional approach.

The Defendant seems to acknowledge that the Plaintiff has made a satisfactory showing of the attorneys' fees factors. The Defendant does not present any evidence to the effect that the Plaintiff's lawyer's hourly rates are *not* reasonable, and the Defendant does not challenge the correctness of Messrs. Bender and Butcher's statements in their affidavits that the rates and fees incurred in this case are reasonable. What the Defendant has done is submit affidavits from lawyers in other cases in which those lawyers charged lower hourly rates. Respectfully, that is not a showing to the effect that Plaintiff's counsel charged fees at unreasonable rates; rather, it is a showing that some lawyers have charged at lower rates. Rates among lawyers differ, and some cases involve more work than others. In the absence of evidence that the incurred rate is not reasonable, though, nothing justifies a downward departure to award fees at a lower rate, as the Supreme Court held not two years ago in another FOIA school district case, Horton v. Jasper Cnty. Sch. Dist., 423 S.C. 325, 815 S.E.2d 442 (2018).

Further, reason does not support the fractional approach advocated by the Defendant. First of all, simply because the Plaintiff did not run the table and achieve success on all of her causes of action does not mean she is not the prevailing party. Second, yes, it is true that the Plaintiff

structured her complaint by listing each alleged FOIA violation as a separate cause of action; however, that was an organizational and editorial choice. It was not a choice that detracts from the fact that the Plaintiff pled that the Defendant violated FOIA and proved that the Defendant violated FOIA. The complaint could just as easily have pled one cause of action – violation of FOIA – and listed several particulars as instances of the Defendant’s violation of FOIA. The Defendant is elevating – and asking this court to elevate – form over substance. That is something courts typically decline to do. See, e.g., In re KBR, Inc. Burn Pit Litig., 893 F.3d 241, 263 (4th Cir. 2018). Instead, as set out in Rule 8(f), SCRCRCP, “[p]leadings are to be liberally construed to do substantial justice to all parties.” Shirley’s Iron Works, Inc v. City of Union, 403 S.C. 560, 573-74, 743 S.E.2d 778, 875 (2013). The purpose of a pleading is to put the other party on notice of the pleader’s position, id., and, here, the Plaintiff’s complaint and amended complaint put the Defendant on notice that the Plaintiff’s position was that the Defendant violated FOIA, then listing particular ways in which the Plaintiff alleged that that happened. This does not give the Defendant grounds to argue that the Plaintiff should get a fraction of her attorney’s fees where she provided that the Defendant violated FOIA.

All the “authority” that the Defendant offers to support this fractional approach is an unpublished trial-level order, which is no precedent at all. Such unpublished opinions “should not be cited except in proceedings in which they are directly involved.” Rule 268(d)(2), SCACR; accord Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 554-56, 813 S.E.2d 292, 297-99 (Ct. App. 2018); Higgins v. Med. Univ. of S.C., 326 S.C. 592, 601, 486 S.E.2d 269, 273 (Ct. App. 1997).

THE COURT MAY DECIDE THIS MATTER WITHOUT FURTHER HEARING

To avoid this motion being pending for too much longer, the court should decide this matter on the arguments submitted orally at the hearing in January and the parties' substantial written submissions. To award attorneys' fees, a court "is not required to take live testimony, provided the adverse party is allowed to present a full and complete presentation against the award of attorney's fees by affidavits." Seabrook Island Property Owners' Assn. v. Berger, 365 S.C. 234, 616 S.E.2d 431, 437 (Ct. App. 2005) (emphasis omitted). The Defendant has had that opportunity here and has submitted affidavits to avail itself of it.

This motion is ripe for decision, and the court should decide it.

CONCLUSION

The Plaintiff, the prevailing party, has shown that she has incurred \$48,995.80 in attorneys' fees and costs in this case, has shown that the six attorney's fee factors support an award of that amount. The court should so rule.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker

S.C. Bar No. 73743

Taylor M. Smith IV

S.C. Bar No. 101584

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ATTORNEYS FOR PLAINTIFF

March 17, 2020

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS
OF THE ELEVENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-32-04435

**DEFENDANT’S SUR-REPLY TO
PLAINTIFF’S MEMORANDUM IN
SUPPORT OF PLAINTIFF’S MOTION
FOR ATTORNEYS’ FEES AND COSTS**

Defendant Lexington County School District One (“Defendant” or “District”), by and through its undersigned counsel, submits this sur-reply to Plaintiff’s reply to Defendant’s Supplemental Memorandum in Opposition to Plaintiff’s Motion for Attorneys’ Fees and Costs.

Plaintiff asserts that her position on Defendant’s school board should not bar her recovery of attorney’s fees in this FOIA case. While it is true that Defendant has not located any case “on all fours,” Defendant has cited to legal principles in its prior filings which support the position that a public official should not be enriched from the very public funds she is duty-bound to protect. It is a conflict of interest in the truest sense, regardless of whether or not it would be an actionable conflict of interest under the South Carolina Ethics Act.

Plaintiff’s assertion that she be awarded **all** of the attorney’s fees incurred in this case is contrary to the explicit language of the FOIA, which distinguishes between parties who prevail in full and parties who prevail only in part, and which allows the court to award an “appropriate portion” of requested fees to a party who prevails partially. S.C. Code § 30-4-100(b). It is also contrary to the requirement that courts apply and make findings regarding each *Burton* factor in determining any discretionary award of attorney’s fees. Clearly, both the FOIA and *Burton* require the court to consider the appropriate amount of attorney’s fees in proportion to the

Plaintiff's degree of success or, as stated in *Burton*, the "beneficial results obtained." *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004). To award full fees for only partial success on claims with no real benefit to the FOIA petitioner or the public would encourage plaintiffs to allege and litigate near-meritless claims, alongside potentially legitimate and important claims, just to drive up their attorney's fees.

The unpublished circuit court case cited in Defendant's previous memorandum—*Ballard v. Newberry County*, 2017 WL 10186868 (2017)—is obviously not precedential and was not submitted as such. Instead, it was provided as an example of a circuit court properly considering a plaintiff's partial success under the FOIA and applying the *Burton* factors in order to determine the appropriate attorney's fee amount.

Regarding the reasonableness of Plaintiff's counsel's rates, both sides have presented evidence of what reasonable rates are for FOIA litigation. This court is now free to consider all of the evidence to determine what rate is reasonable in this case. Plaintiff's counsel cites to *Horton v. Jasper Cnty. Sch. Dist.*, 423 S.C. 325, 815 S.E.2d 442 (2018), wherein the Supreme Court found that the circuit court erred in awarding attorneys' fees at a rate of \$100 per hour, rather than the hourly rate presented by Horton's attorneys—\$295 for the lead attorney and \$250 for his associate. *Id.* at 331, 815 S.E.2d at 445. The Court found reversible error **not** for the rate reduction itself, but because the circuit court reduced the rate without basing that decision on any evidence. *Id.* at 332, 815 S.E.2d 442, 445. Here, this court has been presented with evidence of what rates are reasonable for FOIA litigation, including, of course, the statements made in the Bucher and Bender affidavits submitted by Plaintiff's counsel. Unlike in the *Horton* case however, this court has additional evidence that would support the 15% rate reduction Defendant has argued is appropriate.

Finally, Defendant recognizes that an award of attorney's fees can include time spent on post-trial motions. However, Defendant maintains that counsel's expenditure of time after the hearing date initially set for January 27, 2020, when the court determined the petition was not sufficiently supported to allow for a ruling, should not be considered.

CONCLUSION

For the foregoing reasons, and those put forth in Defendant's prior submissions, the Court should decline to award any attorney's fees, or alternatively should award a limited amount of fees, reflective of Plaintiff's partial prevailing party status and the negligible benefit to her or the public.

Respectfully Submitted,

DUFF | FREEMAN | LYON, LLC

By: s/David N. Lyon

David T. Duff, (SC Bar #1768)

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Attorneys for Defendant Lexington County
School District One

March 19, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

**Jada Garris, individually, and on behalf
of all others similarly situated,**

Plaintiff,

vs.

Lexington County School District One,

Defendant.

**MOTION TO CLARIFY AND
ORDER DEADLINE FOR PAYMENT**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff moves before this court pursuant to Rules 52 and 59, SCRPC, for a supplemental order clarifying or amending this court's order filed April 6, 2020, that awarded the Plaintiff her attorneys' fees and costs in the above-captioned action. The Plaintiff takes no issue with the substance of the April 6 order; rather, to clarify the order, the Plaintiff seeks a supplemental order that directs and enjoins the Defendant to pay the awarded fees and costs to the Plaintiff within a specified frame of time.

The Plaintiff so moves on the following grounds:

1. The April 6 order awarded the Plaintiff her attorneys' fees and costs but did not provide a deadline for the Defendant to pay the awarded sum to the Plaintiff.
2. Upon inquiry from Plaintiff's counsel about when and in what manner payment of the awarded fees and costs should be expected, Defendant's counsel advised that the Defendant is "considering the various options available moving forward." (See email exchange submitted with this motion.)
3. Defendant's counsel has also stated that the Defendant assumes that an appeal of the April 6 order would stay the Defendant's obligation to pay the awarded fees and costs. As Plaintiff's counsel reads the April 6 order, it either directs the delivery of personalty

- (money), enjoins the Defendant to pay the awarded fees and costs, or renders a money judgment against the Defendant (or a combination of those things). Orders that do any of those things are not automatically stayed by an appeal. See Rule 241(b)(1), (2) & (8), SCACR.
4. The April 6 order is not clear about in which of those categories it falls. If the Defendant does appeal the April 6 order, both parties would be helped by clarification in that regard with respect to the operation of the order while an appeal is pending.
 5. Plaintiff respectfully asks the court to clarify its ruling and provide a specific deadline for the Defendant to pay the awarded sum to the Plaintiff.
 6. In the present COVID-19 situation, with its attendant economic disruption, the Plaintiff and her attorneys would benefit greatly from prompt receipt of the awarded fees and costs. The Plaintiff and her counsel have waited more than long enough already.
 7. The Plaintiff respectfully suggests that the court order a payment deadline of April 27, 2020.
 8. In light of the present COVID-19 situation, the court should direct the Defendant to provide the awarded funds by wire transfer to Plaintiff's counsel's trust account, in order to minimize potential viral exposure for all people involved.
 9. Motions under Rules 52 and 59, SCRCP, may be decided without a hearing, and no hearing is warranted with regard to this motion, which simply seeks clarification and direction concerning the time and manner of payment of money already ordered to be paid.
 10. The Plaintiff of course does not object to the Defendant having a short time to file a response to this motion.

The undersigned has consulted with opposing counsel about the matter subject of this motion but has not yet reached a resolution of it.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

April 16, 2020

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-32-04435

**MOTION TO ALTER OR AMEND A
JUDGMENT PURSUANT TO RULE 59(e)**

Defendant Lexington County School District One (hereinafter, “Defendant” or “District”), by and through its undersigned counsel, and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, respectfully submits this Motion to Alter or Amend the Court’s Order dated April 6, 2020, regarding your Honor’s finding that Plaintiff’s counsel are entitled to an award of the full amount of the attorney’s fees and costs requested—\$48,995.80 (\$47,427.54 in attorneys’ fees and \$1,568.26 in costs). The Motion is based upon the grounds that the Court overlooked, misinterpreted or failed to apply South Carolina law and/or overlooked or failed to consider certain arguments presented, which necessitate reconsidering the Order. Additionally, the Defendant files this Motion to ensure all issues have been preserved for appellate review should the Defendant choose to appeal. In support of this Motion, Defendant respectfully asks that the Court reconsider and alter or amend the Order in the following respects:

1. Claims that Plaintiff voluntarily dismissed should not be considered in determining the fee amount.

At page 1 of the Order, the Court states: “Plaintiff filed suit in December 2017 asserting 12 violations of the FOIA. Prior to trial, but not before Plaintiff sought counsel and incurred costs, Defendant produced the documents Plaintiff had been seeking.” Additionally, at Page 7 of the Order, the Court states that Plaintiff is a “prevailing party concerning the documents Defendant

turned over prior to trial.” Based at least in part upon a finding that the Plaintiff was a prevailing party as to “documents turned over prior to trial,” the Court awarded Plaintiff her entire attorney’s fees request. These statements, and the resulting award of full attorney’s fees implies that as to every Cause of Action that Plaintiff voluntarily dismissed, the District unlawfully withheld documents and only provided them as a result of the lawsuit. This implication is not supported by the record.

First, as a matter of law, the Court should not have considered dismissed claims. As argued previously in Defendant’s Memorandum in Opposition to Plaintiff’s Motion for Attorney’s Fees and Costs, filed January 22, 2020, a voluntarily dismissal should be treated as if the action had never been filed. *See, e.g.*, 9 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2367 (3d. ed. 2014); *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 50, 378 S.E.2d 69, 71 (Ct. App. 1989) (finding that when the Plaintiff “voluntarily dismissed his case without prejudice, thus leaving his claim unadjudicated upon the merits, the situation became the same as if he had never brought the suit.”). Therefore, it was improper to consider dismissed claims in determining whether and to what extent Plaintiff is a prevailing party.

The Court cites to the *Sloan* cases¹ for the proposition that “when a public body produces the requested information after suit is brought under the FOIA, the plaintiff who sought the requesting information is still the prevailing party.” Order p. 3. Defendant contends that this general rule from the *Sloan* cases are premised on a court finding that the public body violated FOIA. In the *Sloan* cases, there was either a finding or a concession that the public entities did not comply with FOIA initially. Here, there has been no finding that the District did not initially

¹ *Sloan*, 409 S.C. 551, 762 S.E.2d 687, 689 (2014); *Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895, 897-98 (2011).

comply or substantially comply with the FOIA requests at issue. However, the Court's Order awarding Plaintiff's full fees strongly implies that the District violated FOIA with regard to the dismissed causes of action despite the District's repeated denials.

Second, to the extent it was even proper for the Court to consider claims Plaintiff voluntarily dismissed, the Court's decision appears to be based at least in part on facts not in evidence. As the Court is aware, most of the claims² voluntarily dismissed by Plaintiff involved allegations that the District did not comply with Plaintiff's FOIA requests. As argued throughout this litigation, the District's position has been and continues to be it complied or substantially complied with (that is, provided the documents requested) all but one of Plaintiff's document requests. The one item the District did not produce was a recording of a board retreat (Cause of Action 2, and redundantly included in the Complaint as COA 5), which the District asserted was exempt from disclosure. Defendant has previously argued that a separate merits hearing would be required if the Court were to consider whether and to what degree the District complied with Plaintiff's FOIA requests, prior to being served with the lawsuit. No such hearing was held; therefore, it is improper for the Court to assume facts not in evidence and conclude, apparently, that the District violated the FOIA on all seven dismissed claims.³

² COA 4 was not actually in the nature of a FOIA violation.. Instead, COA 4 alleged that the District had failed to comply with "H. 3720, the General Appropriations Bill for Fiscal Year 2017-2018, and specifically Proviso 1.26 of Section I, H.630, Department of Education" requiring that the District post certain financial information on its website. Plaintiff sought declaratory judgment on this issue. After the suit was filed, the District voluntarily provided documentation from the Comptroller General indicating that the District was in compliance with the proviso. This is an example of the nuance in each dismissed cause of action that has been glossed over in Plaintiff's counsel's filings asserting that the District 'finally provided documents after the lawsuit was filed.'

³ The attached correspondence between counsel for the parties demonstrates the nature of the ongoing dispute as to allegations regarding documents which were subject to the dismissed claims.. See Attachment A to Defendant's Memorandum in Opposition to Plaintiff's Motion for Attorney's Fees and Costs, filed January 22, 2020, and Exhibit 1 to this Memorandum.

2. The District does dispute the time Plaintiff's attorneys spent preparing the case.

The Court found at page 5 of the Order, that “Defendant does not contest the amount of time Plaintiff’s attorney spent preparing, nor do they context the amount of labor that preparation included.” The Court misunderstands the Defendant’s position and the District wishes to clarify. In arguing that the Court should not consider the seven dismissed claims in its fee award, the District was absolutely disputing the time and labor Plaintiff’s counsel put into the case. Stated plainly, the time and labor devoted to the case was excessive, to the extent it includes the time and labor devoted to claims that were ultimately voluntarily dismissed. Defendant asserted, as an alternative, that the Court could base its calculation method on a 1/12 portion of the total fees submitted, but Defendant in no way conceded the point that the time and labor that went into the seven dismissed causes of action should be considered in the determination of the fees awarded.

3. The Court disregarded its own findings regarding the beneficial results obtained.

The Court found that “Defendant prevails on the last [*Burton*] factor” and then apparently ignored that factor in awarding Plaintiff her full award of attorney’s fees. While it is an accurate statement of law that none of the *Burton* factors is controlling, that does not allow the Court to simply disregard its findings as any one factor. In a FOIA case, ignoring the “beneficial results obtained” factor is especially troubling given the fact that Plaintiff is barely a prevailing party in this case. The Court correctly notes that the FOIA does not define the term “prevailing party” citing to *Sloan* for the definition of prevailing party as “one who successfully prosecutes an action **or successfully defends against it**, prevailing on the main issue, even though not to the extent of the original contention” and “the one in whose favor the decision or verdict is rendered and

judgment entered.”). 393 S.C. at 156, 711 S.E.2d at 897 (quoting *Heath v. Cty. of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990)). (emphasis added). The Court also notes, citing *Heath*, that a party is not required to prevail on every allegation to be found a prevailing party. However, the full legal statement in *Heath* also states that “[a] court determines the prevailing party by evaluating the degree of success obtained” *Heath*, 302 S.C at 183, 394 S.E.2d at 711 (citing *Commissioner, Immigration and Naturalization, et al. v. Marie Lucie Jean*, 496 U.S. 154 (1990)). Furthermore, in *Heath*, the court found that the individual prevailed against the City of Aiken “on the main issue, as well as the majority of issues.” *Id.* at 183, 394 S.E.2d at 711–12.

In this case, the District prevailed on four of the five causes of action at trial; therefore, the District could arguably be called the prevailing party under the definition in *Heath*. Of course, under the FOIA, the District cannot seek attorney’s fees even if, as here, it prevails in large part. Because the District cannot seek its own attorney’s fees as a prevailing party, its relative degree of success versus the Plaintiff’s relative degree of failure should be acknowledged in a reduction in the amount of attorney’s fees awarded to the party that prevails to a lesser degree.

CONCLUSION

For the reasons stated above, the District respectfully requests that the Court reconsider and alter or amend its Order in accordance with the principles outlined above.

[SIGNATURE BLOCK FOLLOWS ON NEXT PAGE]

Respectfully Submitted,

DUFF | FREEMAN | LYON, LLC

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Attorneys for Defendant Lexington County
School District One

April 16, 2020
Columbia, South Carolina

EXHIBIT “1”

David Lyon

From: David Lyon
Sent: Tuesday, January 21, 2020 9:30 AM
To: Taylor Smith
Cc: Dave Duff; Kim Chatman
Subject: RE: Garris Fee Petition

Taylor,
 Thanks for clarifying your position regarding what was produced and when.

Your affidavit and press statements state that you negotiated the release of "several" document requests. Based on my review, the only FOIA request for which the District did not provide the requested, non-exempt documents, was the FOIA request seeking the February 11 Recording. Here is a point-by-point breakdown of the other FOIA COAs from the initial Complaint.

- Re: COA 6- You've stated that these were provided via email on November 28, 2018. I've reviewed that email. Initially, I'll note that email was marked as being subject to Rule 408, settlement negotiations, so it really shouldn't come into play at all. Nevertheless, what I provided was the public packet and the board packet. In doing so, I meant to show the negligible difference between the public board packet, which was initially and timely provided in response to Ms. Garris' FOIA request on June 19, and the packet that the Board received, which included what the District considered exempt material. Specifically, I was attempting to show you that what had been withheld were student travel request forms, which contain FERPA protected student information. The public packet provided to Ms. Garris actually included more than what was in the board's packet. I view the District as having substantially complied with this request prior to the suit.
- Re: COA 9 – You've stated a written determination regarding the availability of these records was provided to you on May 10, 2018, which is accurate. However, as my letter stated, the District had given the same response to Ms. Garris on July 3, 2017, about 5 days after she requested that information. The District complied with this FOIA request prior to the suit.
- Re: the requests in COA 9 and 10 – I have copies of the District's responses to these – the letters are dated December 6, which is the same date the lawsuit was filed. It does appear that these were not mailed/emailed to Ms. Garris until the next day, December 7. However, this is still one day after the lawsuit was filed, and approximately three months before the district was served. Therefore, these documents were not provided as a result of the lawsuit as in the *Sloan* cases, because the District didn't know about the suit when it responded to these FOIA requests.

If you disagree with the above, please let me know.
 David

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ATTORNEYS AND COUNSELORS AT LAW

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From: Taylor Smith <Taylor@harrisonfirm.com>
Sent: Wednesday, January 15, 2020 4:10 PM
To: David Lyon <dlyon@dfi-lawfirm.com>
Cc: Dave Duff <dduff@dfi-lawfirm.com>; Kim Chatman <kchatman@dfi-lawfirm.com>
Subject: RE: Garris Fee Petition

David,

I've heard back from my client regarding your question of when the records subject to our allegations in the original complaint were provided to my client. Please allow this email to state when my client was provided with each as it relates to the causes of action identified in the complaint.

COA 10: Provided December 7, 2017 via email to Ms. Garris, except for records associated with the Architectural Selection regarding awards that you indicated were lost; the statement regarding the lost records was provided to me via memorandum on June 24, 2019

COA 11: Provided December 7, 2017 via email to Ms. Garris

COAs 2 & 5: Provided via letter to me on June 17, 2019

COA 6: Provided via email to me on November 28, 2018

COA 9: Written determination regarding the availability of these records was provided via letter to me on May 10, 2018

I've looked back at the original complaint and it appears every other cause of action either related to an issue we didn't pursue in our amended complaint (the "proviso" fourth cause of action) or was an alleged open meeting violation. For frame of reference: the complaint was e-filed at 12:10 p.m. on December 6, 2017. Of course, let me know if you have any questions or concerns. Thanks.

Taylor M. Smith IV



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From: David Lyon <dlyon@dfi-lawfirm.com>
Sent: Wednesday, January 8, 2020 9:05 AM
To: Taylor Smith <Taylor@harrisonfirm.com>

Cc: Dave Duff <dduff@dfi-lawfirm.com>; Kim Chatman <kchatman@dfi-lawfirm.com>

Subject: Garris Fee Petition

Hi Taylor,

I hope your new year is off to a good start.

A question about your Motion for Fees and Costs: At paragraph 5, you refer to the original complaint as seeking disclosure of documents under FOIA, and conclude by stating that "Defendant finally produced all the documents it had that were response to those requests in June 2019." In your Affidavit, at paragraph 5f, you state that "I was also able to negotiate the release of several records from Defendant which were included as causes of action in the filed Summons and Complaint in this matter. Specifically, Ms. Garris received records pertaining to five causes of action in June 2019, as she testified at trial."

It is my recollection that the only item that Ms. G. FOIA'd that wasn't initially provided, but was only provided after the lawsuit, was the recording of the February 11 Board Workshop.

Since you take the position that the provision of documents after the suit was filed is relevant to Ms. G's prevailing party status, I think it is important that we be very specific as to what was FIOA'd prior to the suit and what was provided only after the suit. Therefore, please let me know specifically what other docs you contend were first provided only after the lawsuit was filed.

Thanks,

David

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

Jada Garris, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

Lexington County School District One,

Defendant.

**MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION TO ALTER
OR AMEND ORDER AWARING
ATTORNEYS' FEES AND COSTS**

The Plaintiff submits this memorandum in opposition to the Defendant's Rule 59(e), SCRCF, motion to alter or amend this court's April 6, 2020, order that awarded the Plaintiff her attorney's fees and costs in the above-captioned action. That motion should be denied expeditiously. Rule 59, SCRCF, provides for motions made under that rule to be decided without a hearing, and there is no need for a hearing on the Defendant's motion.

A motion under Rule 59(e) is properly made "to call the court's attention to a possible misapprehension of an earlier argument" and "to revisit a previously raised argument." Elam v. S.C. DOT, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). The purpose of such a motion is to allow the court to decide whether the decision it previously made was proper, on the basis of what was before the court at that time, and to preserve arguments for appeal. Id.; I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993); Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992); Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 372, 628 S.E.2d 902, 919 (Ct. App. 2006).

Here, the court got it right.

The court did not get the law wrong about the documents the Defendant originally withheld and then later produced to the Plaintiff, and there is evidence in the record that supports the court's findings about that. When a public body only produces the requested information after suit is brought under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* ("FOIA"), that moots the cause of action seeking production of those documents; however, the plaintiff who sought the requested information is still the prevailing party – because the plaintiff obtained the requested information. Sloan v. S.C. Dept. of Revenue, 409 S.C. 551, 762 S.E.2d 687, 689 (2014); Sloan v. Friends of the Hunley, Inc., 393 S.C. 152, 711 S.E.2d 895, 897-98 (2011). The Defendant is wrong to contend that either of the Sloan cases requires a court to determine whether there was an applicable exemption to the requested information. See 762 S.E.2d at 689; 711 S.E.2d at 897-98. For one thing, that would be inconsistent with the concept of mootness. Our courts decide live controversies, and a moot matter no longer presents a live controversy. Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). For another, in FOIA cases about disclosure of information, "[t]he burden of proving that an exemption exists lies with the government." Evening Post Publ'g Co. v. Berkeley Cnty. Sch. Dist., 392 S.C. 76, 83, 708 S.E.2d 745, 748 (2011); accord Evening Post Publ'g Co. v. City of N. Charleston, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (to advance purpose of FOIA, "government has the burden of proving that an exemption applies"); Fowler v. Beasley, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996) (same). The Plaintiff testified about what she requested from the Defendant under FOIA, that the Defendant denied her FOIA requests, and that the Defendant later provided her with the responsive documents it had while this case was pending. (Transcript of trial p. 65 ln. 2 through p. 66 ln. 18, p. 74 ln. 24 through p. 75 ln. 5.) The Defendant put up no evidence tending to prove that a FOIA exemption applied to the requested material. Even if the requirements of the Sloan

cases were as stringent as the Defendant argues – which they are not – the record in this case would still show they were satisfied.

The time and labor devoted to this case was not excessive. The Defendant says it disputes whether that time and labor was necessary, but it never pointed to any instances of time or labor it contended were not necessary to the development of the Plaintiff's case. The Plaintiff, however, provided four affidavits attesting to the reasonableness and necessity of the time and labor Plaintiff's counsel spent on this case.

In its April 6 order, the court did not misapprehend misinterpret, overlook, or fail to consider any relevant point of fact or of South Carolina law. The court did not disregard its own finding or findings, despite the Defendant's contention that it did, and the court was correct in its evaluation of the six factors used in assessing the reasonableness of attorney's fee awards.

The court made the correct decision. There are no grounds to grant the Defendant's motion. The court should deny the Defendant's motion expeditiously.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker

S.C. Bar No. 73743

Taylor M. Smith IV

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ATTORNEYS FOR PLAINTIFF

April 17, 2020

State of South Carolina
County of Lexington

Court of Common Pleas

Jada Garris	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2017-CP-32-04435
	)	
Lexington County School	)	
District One	)	
	)	
Defendant.	)	

October 24, 2019
Lexington, South Carolina

B E F O R E:

The Honorable William McKinnon, Judge.

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

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Drew Radeker, Esquire
Attorneys for the Plaintiff

David Duff, Esquire
David Lyon, Esquire
Attorneys for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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P R O C E E D I N G S

* * *

MR. DUFF: That's correct, Your Honor. David Duff for the defendant, Lexington County School District One. By agreement from plaintiff's counsel, the amended answer is to be admitted and filed.

THE COURT: Has it been submitted to the clerk's office?

MR. DUFF: Not at this time. But we're prepared to --

THE COURT: Does that accurately reflect --

MR. RADEKER: That's correct. They gave us a copy of it yesterday. So we've seen it and we agree to that. Drew Radeker here for the plaintiff. My partner, Taylor Smith, is here with me.

THE COURT: That may help the court reporter. If everyone can just go ahead and identify themselves, I think that would be helpful.

MR. RADEKER: Certainly. Sitting beside me is Jada Garriss, who is the plaintiff. I already got Taylor.

MR. DUFF: Again, David Duff and David Lyon for Lexington County School District One. And there are officials from the district here, who I will

1 introduce in a moment.

2 MR. RADEKER: One thing I wanted to bring to
3 the Court's attention: Ms. Garris let us know that
4 she and the court reporter know one another. I
5 don't see that as being a problem considering the
6 court reporter's job is simply to accurately
7 transcribe the proceedings, but we just wanted to
8 not hide it.

9 THE COURT: The court reporter had mentioned
10 that to me as well.

11 So do you want to do any kind of questioning or
12 anything?

13 MR. DUFF: We have no problem with that
14 whatsoever.

15 THE COURT: Okay. I appreciate that, Counsel.

16 MR. DUFF: Your Honor, as we mentioned in
17 chambers, we've also agreed that all of the
18 documents, which have been made into exhibits, which
19 we have exchanged, will come directly into evidence
20 without the need for a foundation or a sponsoring
21 witness.

22 THE COURT: I appreciate that.

23 MR. RADEKER: That's correct, Your Honor. And
24 I think we've both put copies of our paper exhibits
25 up on the bench for Your Honor. Ours is in that

1 little three-ring bound notebook.

2 THE COURT: Thank you.

3 MR. RADEKER: I've also put a copy of our
4 memorandum up there. I guess, just for housekeeping
5 purposes, if it please the Court, we just jointly
6 move those into evidence at this time so there's no
7 question about whether they're put in. Ours would
8 be Defendant's 1 through 16. They've already been
9 provided to the court reporter -- or rather,
10 Plaintiff's 1 through 16. I'm sorry. And, I
11 believe, it's Defendant's 1 through 6.

12 THE COURT: I've got Defendant's 1 through 6
13 here. And I see that the notebook has Plaintiff's
14 Exhibit 1 through --

15 MR. RADEKER: We've got 1 through 15 in there.
16 16 is a flash drive that contains the audio
17 recording and video recording we're going to be
18 showing today.

19 THE COURT: Okay. So Plaintiff's 1 through 16
20 and Defendant's 1 through 6 are in evidence without
21 objection; is that correct?

22 MR. DUFF: Correct, Your Honor.

23 (Plaintiff's Exhibit Nos. 1 - 16 marked for
24 identification and admitted into evidence.)

25 (Defendant's Exhibit Nos. 1 - 6 marked for

1 identification and admitted into evidence.)

2 THE COURT: All right. What's next?

3 MR. RADEKER: Well, Your Honor, before we begin
4 with opening, if I can kindly ask defense counsel to
5 go ahead and open back up his laptop. It looks like
6 it's gone to sleep. We're going to be playing a
7 video early in our case.

8 THE COURT: Okay.

9 MR. RADEKER: Thank you, Your Honor. Just
10 briefly about the history of this case and what's at
11 issue here, this case is a Freedom of Information
12 Act, FOIA case. Originally, it was brought with
13 causes of action that are no longer pled in the
14 pleadings concerning the production of documents.
15 That's because those were produced to us, thus
16 mooted that issue as the case went forward.

17 What remains are FOIA meeting violations
18 concerning notices, agenda, and executive session,
19 primarily. And if there's anything that the
20 defendant would like to say in opening to
21 characterize the case, I turn it over to them.

22 THE COURT: Thank you, sir.

23 Yes, sir?

24 MR. DUFF: Again, Your Honor, for the record,
25 David Duff and David Lyon for the defendant,

1 Lexington County School District One.

2 And, by way of background, the education
3 landscape here in Lexington County is not unlike the
4 education landscape in York County where Your Honor
5 hails from. There are several school districts in
6 each county. There are fairly large and
7 fast-growing districts like Lexington 1 and, I
8 think, up your way, Fort Mill, maybe Clover. And,
9 you know, overall, the quality of education in both
10 counties is quite good.

11 And, in fact, this courthouse is situated in
12 Lexington One. And Lexington One happens to be the
13 seventh largest school district in the state and, as
14 I said, is a fast-growing district. They've built a
15 lot of schools in recent years. The Lexington One
16 School Board consists of seven members, and several
17 of them are here in the courtroom and I'll refer to
18 them in a moment.

19 So in terms of the evidence, you're going to
20 hear from two witnesses on behalf of the district.
21 And they would be Mary Beth Hill, who is sitting on
22 the first row. She happens to be the chief
23 communications officer and she's knowledgeable
24 about, particularly, the posting of agendas on the
25 district's website, which is an important issue in

1 this case.

2 Our other witness will be the current board
3 chair, Ms. Cynthia Smith. She will testify as well.
4 And, of course, Ms. Smith is knowledgeable about the
5 opening and the conducting of board meetings, which
6 is really the other big issue in the case.

7 THE COURT: She was the vice chair when the
8 events at issue in this case occurred; is that
9 correct?

10 MR. DUFF: That's correct. That's correct.
11 Because the events in this case -- this case has a
12 lot of age on it, which is rather unusual for a FOIA
13 suit. The events cover the period from December of
14 2016 until November of 2017. And the case was filed
15 two years ago. And, you know, our position,
16 frankly, is that there's been a definite failure to
17 prosecute this case on behalf of the plaintiff
18 because it's dated.

19 The big picture that I think you're going to
20 get is that in Lexington One, there is a very strong
21 and definite commitment toward opening government.
22 And that's evidenced through the posting of agendas,
23 which I think you will hear is done in a very
24 systematic and acceptable way so that the public
25 knows what the Board will be taking up at its

1 meeting.

2 And then the meetings themselves have been
3 conducted in public or at least in settings that are
4 clearly understood by the public as to where the
5 Board is sitting, where the Board is meeting, the
6 one exception being, of course, legitimate executive
7 sessions matters, which is not an issue in this
8 case.

9 Now, the plaintiff, Ms. Garris, is currently a
10 board member. She was elected back in November of
11 2018. She's also a former employee of the district.
12 She worked as a bus driver for the district, I
13 think, until 2017. Ms. Garris was not a member of
14 the board when she filed this action in December of
15 2017.

16 As I said, the case really has a lot of age on
17 it and we certainly are interested in having it, you
18 know, resolved at this time. Under the amended
19 complaint, as counsel has mentioned, there are now
20 five alleged FOIA violations. Three of them pertain
21 to the posting of board meeting agendas on the
22 district website.

23 What's not at issue is the posting of meeting
24 agend as in other places, such as on the door of
25 every school, on the door of the board meeting

1 location; it's all about the website posting. And
2 there -- as I said, there are three allegations
3 related to the posting of the agenda.

4 There are two alleged violations having to do
5 with precisely where the Board opened its meetings.
6 And you're going to hear and see from the video what
7 the auditorium complex looks like. You'll see a
8 large auditorium area and you're going to see an
9 immediately adjoining board conference room which we
10 maintain is really part of the auditorium.

11 And the issue is, when the meeting notice,
12 which goes up, says the meeting will convene in the
13 auditorium, the plaintiff is contending that, to the
14 extent that the Board opened its meeting in the
15 board meeting with the door open, with staff looking
16 out for anyone who might come into the main room,
17 inviting them into the conference room, the
18 plaintiff's position is that if you opened in the
19 boardroom, you're not really opening in the
20 auditorium. And the Board opens up in a precise
21 location that is at odds with the notice. Of
22 course, we disagree with that contention --

23 THE COURT: So there were only two allegations.
24 So on the other dates, did the Board -- why only two
25 dates? Did the notice say the boardroom on other

1 dates or did they start in the other part of the
2 building?

3 MR. DUFF: I believe the notices have always
4 said Board will convene in the auditorium. What you
5 will hear is that most meetings start with an
6 executive session dealing with personnel, property
7 issues, legal matters. And those executive sessions
8 occur in that board conference room that adjoins the
9 main part of the auditorium. And those -- so the
10 meeting opens up at 6:00, typically, and certainly
11 from --

12 THE COURT: Dinner at 5:30, right, and --

13 MR. DUFF: They have some food prepared for the
14 board members who wander in between 5:30 and 6:00.
15 At 6:00 and not a minute before 6:00, the meeting is
16 officially called to order and, historically, it has
17 occurred in the conference room. Rather than having
18 the Board get up whenever they finish whatever food
19 they may be consuming, walking to the dais podium in
20 the auditorium, saying, I hereby open the meeting,
21 do I have a motion to go in executive session and
22 then, you know, marching right back in, they have
23 historically started the meeting, started the
24 executive session, or moving into an executive
25 session in that adjoining boardroom; again, door

1 open, staff making sure that anyone who comes in is
2 aware that the Board is opening the meeting at 6:00.
3 They can't come into executive session anyway.

4 THE COURT: Right. My question is what is
5 different about the two incidents at issue in this
6 case?

7 MR. DUFF: They just happen to be the two where
8 the plaintiff -- actually, not herself, but through
9 her witnesses who will testify, are going to testify
10 that the Board opened up its meetings on two
11 occasions, and those occasions would be -- those
12 occasions would be the December 6th, 2016 meeting,
13 which is a special meeting. You'll hear all about
14 it. They were swearing in new board members, having
15 a brief reception for them, and then moving into a
16 training workshop.

17 And the other meeting occurred on November 14,
18 2017. So in 2016 and 2017 are the only two alleged
19 occasions where the Board supposedly opened up its
20 meeting in the wrong place.

21 THE COURT: Okay. But, again, I'm still a
22 little unclear. Are you saying that the Board acted
23 differently on those two occasions than it typically
24 did or these are just the two occasions that the
25 plaintiff has chosen to raise an issue about?

1 MR. DUFF: Correct; the latter.

2 THE COURT: I'm just trying to figure out
3 what's special about these two meetings.

4 MR. RADEKER: Well, the point that we have is
5 the factual contention to prove that the allegations
6 raised concerning the custom, the practice of them
7 for the better part of 50 years in accordance with
8 that 30(b)(6) that we'll read out, is that in these
9 specific instances, we can prove, as a matter of
10 fact, that these actually did occur.

11 THE COURT: Okay.

12 MR. DUFF: Correct. And I think it's important
13 for Your Honor to understand. I mean, our position
14 is that the alleged violations, if they are
15 violations, which we don't think they are, are
16 extremely technical, hypertechnical violations that
17 have no consequence on the right of the public to
18 know what selected school board members are doing.

19 And the law which -- you know, we've cited the
20 law in our pretrial brief. You don't have to have
21 perfect compliance with FOIA to avoid a violation
22 finding. Substantial compliance where there's no
23 harm results in a finding of no violation of FOIA,
24 and we'll argue that in closing.

25 But there's no allegation, for example, that

1 the Board met secretly or, in executive session,
2 took an illegal vote to award a contract to a
3 construction company. There's none of that. It's
4 agenda posting on the website, not in other places,
5 and exactly what is the precise location where they
6 open the meeting and go into executive session where
7 the public is not permitted to be anyway. So --

8 THE COURT: Okay. I think I have a very good
9 grasp of what the issue is on the two claims
10 involving the location. Can you tell me a little
11 about the agenda posting issues?

12 MR. DUFF: I certainly can, if they want to go
13 first. But the allegedly late -- the allegation is
14 that the website postings were, quote, late. And by
15 late --

16 THE COURT: Not within 24 hours of the --

17 MR. DUFF: Not within the requirement of FOIA
18 Section 30-4-80 that the agendas be posted no later
19 than 24 hours prior to the meeting.

20 So the two similar instances are March 21 of
21 2017 and July 18 of 2017, where -- regarding the
22 March meeting, the allegation is that the agenda was
23 posted approximately three hours into the 24-hour
24 period. And for the July 18, 2017 meeting, the
25 allegation is that the agenda did not appear on the

1 website until approximately two hours into the
2 24-hour period.

3 Now, that's going to be the plaintiff's
4 testimony as to when she saw the agendas on the
5 website --

6 THE COURT: Are those disputed factual issues,
7 when the postings went --

8 MR. DUFF: Yes.

9 THE COURT: Okay.

10 MR. DUFF: Our evidence will be different in
11 terms of when the agendas were posted. The agendas
12 sometimes can be amended in a non-substantive way
13 and be reposted. And the final posting might be
14 within the 24-hour period. But you'll hear from
15 Mary Beth Hill on this when she testifies.

16 THE COURT: All right.

17 MR. DUFF: The third agenda posting allegation
18 is somewhat unique. The third one occurred on June
19 15, 2017. What you will hear is that was a
20 7:30 a.m. meeting for the sole purpose of going into
21 executive session to consider recommendations for
22 the hiring of teachers or administrators. This was
23 in the middle of the summer where they needed to
24 fill vacancies. 7:30 a.m. in the morning, open up,
25 go into executive session, hear from the HR

1 director, go out and vote in public to accept the
2 recommendation to hire those administrators or
3 teachers.

4 There appears not to be an agenda per se for
5 that, but there's no dispute there was a meeting
6 notice that was posted outside of the 24-hour
7 period, which essentially said open up executive
8 session for personnel, back to open session, take a
9 vote.

10 And our position is that under those
11 circumstances, the notice services the purpose of an
12 agenda. Nothing happened in public that the --
13 nothing happened in the opening session that the
14 public really participates in. It's a vote on a
15 recommendation that is received in executive session
16 on -- related to personnel. So, obviously, that's
17 an overview.

18 I would say that regarding the November --
19 well, first of all, the December 16th, 2016 board
20 meeting, interestingly, the plaintiff, Ms. Garris,
21 didn't attend any of these five meetings. She
22 attended a lot of board meetings before she became a
23 board member, but wasn't in any of the meetings, at
24 least not any of the portions of the meetings that
25 are at issue here.

1 So her witness for the December 6th, 2016 board
2 meeting where, supposedly, it was improperly
3 conducted in the boardroom, is a Ms. Debbie Gilly
4 who, I think, will testify, is the only witness on
5 that for them.

6 And then the witness for the November 14, 2017
7 meeting where, again, it's alleged that the Board
8 was improperly in the boardroom, is Ms. Garris'
9 daughter, Billie, who will testify as to what the
10 plaintiff wants to put forward on that claim.

11 So that's more than a slight preview of the
12 evidence, from the District's standpoint.

13 THE COURT: Okay. Anything the plaintiff wants
14 to add to that summary?

15 MR. RADEKER: I won't belabor it much further
16 but, I guess, would say this is -- we disagree
17 somewhat with some of the characterizations. We
18 don't think anything that we're going to show could
19 be regarded as merely technical or insubstantial.
20 But I would note this is on the defendant's
21 contention that a merely technical or insubstantial
22 violation of FOIA, that that's not a violation of
23 FOIA, that's not the law. And we'll talk about that
24 when we get to closing.

25 THE COURT: Okay.

1 MR. RADEKER: And, I guess, if there is nothing
2 further, we're ready to go.

3 THE COURT: Let's do it.

4 MR. RADEKER: Thank you, Your Honor. We'd call
5 Debbie Gilly to the stand.

6 DEBBIE GILLY

7 being first duly sworn, testified as follows:

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please be seated in the
10 witness stand. Once you're seated, please state
11 your name, spelling your last name for the record.

12 THE WITNESS: My name is Debbie Gilly,
13 G-I-L-L-Y.

14 DIRECT EXAMINATION

15 BY MR. RADEKER:

16 Q. Good morning, Ms. Gilly.

17 A. Good morning.

18 MR. RADEKER: Your Honor, if it pleases the
19 Court, what I'd like to do is, with the exception of
20 Plaintiff's Exhibit 16, just for streamlining our
21 case with our witnesses, take these Plaintiff's
22 Exhibits 1 through 15 and move them up to the
23 witness stand where the witnesses can look at them.

24 THE COURT: Any objection?

25 MR. DUFF: No objection.

1 THE COURT: Let's do it that way.

2 BY MR. RADEKER:

3 Q. All right. We'll set these here because we may
4 review these with you.

5 A. Okay.

6 Q. Debbie, where do you work?

7 A. Lexington District One.

8 Q. What do you do there?

9 A. I'm a school bus driver.

10 Q. How long have you had that job?

11 A. Six years, approximately.

12 Q. Do you know Jada Garris, the plaintiff?

13 A. Yes.

14 Q. How do you know her?

15 A. From the bus lot, meeting her as a bus driver.

16 Q. Okay. Do you have any relatives who go to
17 Lexington One district schools?

18 A. I have two granddaughters.

19 Q. Okay. All right. Did you attend a meeting of
20 the Lexington School District One board on December
21 6th, 2016?

22 A. Yes.

23 Q. Okay. When did you get there?

24 A. Probably about 7:35-ish.

25 Q. When was the meeting to start?

1 A. The portion that I was going to attend started
2 at 7:30.

3 Q. Okay. Was there a portion of the meeting that
4 was to happen earlier?

5 A. Yes.

6 Q. When was that to start?

7 A. I believe 6:00.

8 Q. Why did you show up at 7:30 or 7:35?

9 A. Because I'm a school bus driver, I don't always
10 get off in time to get there to the early portion
11 and with my granddaughter, so we just were a little
12 late.

13 Q. And what was your understanding at that time of
14 when school board meetings would traditionally
15 start? When in the day?

16 A. Well, the session that I never went to would be
17 at 6:00, but the public section was at 7:30.

18 Q. All right. Take a look for me at Plaintiff's
19 Exhibit 1. Tell me, is that the agenda for this
20 December 6th, 2016 meeting we're talking about?

21 A. It appears to be. Yes.

22 Q. All right. Looking at it, do you --

23 THE COURT: What exhibit number, Counsel?

24 MR. RADEKER: That's our Exhibit 1, Your Honor.

25 THE COURT: All right.

1 BY MR. RADEKER:

2 Q. In looking at it, do you see anything on it
3 listing an executive session in any way?

4 A. I see the general session is at 7:30. I would
5 imagine the executive session was during the --
6 general session part would be that.

7 Q. Do you see the words executive session on that?

8 A. Executive session.

9 Q. Let me ask you this, because I see you reading
10 through it: Would you agree with me that you don't
11 see the words executive session on that page?

12 A. Correct. I don't see it.

13 Q. When you got to the meeting about 7:30, 7:35,
14 where did you go for that meeting?

15 A. Into the front door to the auditorium.

16 Q. When you got into the auditorium, what was
17 going on in there?

18 A. Nothing.

19 Q. Okay.

20 A. It was empty. The hallway where you come in
21 and sign in, there's generally people there, but
22 there was nobody there.

23 Q. And what's in evidence as Plaintiff's Exhibit
24 2, is that a picture of that auditorium?

25 A. Yes.

1 Q. And I'd like to show you, if I may, the video
2 that is Defendant's Exhibit 4.

3 MR. RADEKER: Your Honor, the volume is not so
4 much an issue with this as the auditory would be
5 later. So if you -- for some reason, you feel you
6 need to hear it, but there's not any -- and I think
7 they would agree with me this is not done for the
8 purposes of audio. So if you need the audio --

9 THE COURT: Is this, like, a video tour of what
10 it looks like?

11 MR. RADEKER: Exactly, Your Honor.

12 THE COURT: Okay.

13 BY MR. RADEKER:

14 Q. And if you could just tell us as, we go through
15 the video, for the benefit of the Judge, like, what
16 portion of the building we're going through; like,
17 what room, hallway, et cetera, as we're going
18 through, while we play.

19 A. This is the front door entrance to the
20 auditorium. This is the hallway. Usually on that
21 table, there's sign-in sheets. This is the doorway
22 to the auditorium from there.

23 Q. What room is this?

24 A. This is the auditorium. The door to the right
25 or middle of the screen now is the doorway to the

1 boardroom.

2 Q. What does that sign say beside the door?

3 A. I believe it said boardroom.

4 Q. Is this the boardroom we're looking at now?

5 A. Yes, sir.

6 Q. What's through that door we're looking at right
7 now?

8 A. I've never been in that area, but it appears to
9 be a kitchen.

10 Q. Is this the hallway out here?

11 A. This is the hallway that, if you continue
12 forward, to the left is the entrance door. And
13 that's the other door to the auditorium.

14 Q. Okay. Take a look for me, if you would, at
15 Plaintiff's Exhibit 3. It looks like the same
16 photograph that's in as Plaintiff's Exhibit 2,
17 except it's got a red marking on it.

18 A. Yes.

19 Q. Do you know who made that marking?

20 A. I did.

21 Q. And what does that marking represent?

22 A. It indicates the approximate position that my
23 granddaughter and I were seated at, at the December
24 6th meeting.

25 Q. Okay. So you got there 7:00, 7:35?

1 A. 7:35-ish. Yes.

2 Q. How long were you there?

3 A. Until 10:00 or 10:00-ish, maybe a little after.

4 Q. What was going on during that time?

5 A. There was -- when we got in there, the lights
6 were dimmed. It wasn't as bright as it usually is.
7 There were some chairs set up and there was no one
8 in the auditorium. We could hear talking from the
9 boardroom area.

10 Q. Okay. How well could you hear what was going
11 on in the boardroom?

12 A. Depending on how loud they spoke, you could
13 hear some very clear. But most of it was murmuring
14 sounded; it was not very clear.

15 Q. So could you tell me now what topics were
16 discussed?

17 A. What I heard a little bit -- or the little bit
18 that I did hear, it sounded like someone giving
19 scenarios and having people figure out how to react
20 to those scenarios and then discussion on that on
21 and off.

22 Q. While you were there, at any time, did anybody
23 come out into the auditorium?

24 A. No.

25 Q. It's kind of a long time to be there, the

1 better part of two and a half hours. What were you
2 and your granddaughter doing while you were there?

3 A. Well, I was just kind of listening and
4 thinking, well, probably they're finishing up
5 something and they'll come out into the auditorium.
6 She was enjoying using some internet because we do
7 not have internet at our home.

8 Q. They have wifi there she could use?

9 A. Or wifi. I'm sorry. Yes.

10 Q. Was she doing homework or something?

11 A. Yes. I imagine.

12 Q. Okay. All right. You say that you eventually
13 left. Why did you leave?

14 A. Because, from what I heard, they were
15 adjourning the meeting in the boardroom.

16 Q. Okay. All right. Have you ever been in the
17 boardroom before?

18 A. Before that?

19 Q. Uh-huh.

20 A. Well, I never been in the boardroom until after
21 that, I believe. There was one other night that I
22 was invited back to the boardroom.

23 Q. Okay.

24 A. And I was there for my deposition.

25 Q. Okay. So you were there for your deposition?

1 A. Yes.

2 Q. But you were also there another time, right?

3 A. Another time, yes.

4 Q. Tell me about that.

5 A. My granddaughter and I showed up probably 7:30,
6 7:35-ish, and no one was in the auditorium. So we
7 just sat there for a little bit. And someone came
8 out and spoke to us, and I told them we were here
9 for the board meeting. And they kind of -- I don't
10 remember that they said that they'd be out in a
11 little bit, but my indication from them was that,
12 you know, they'll probably come out in a little bit.

13 So they went away, came back again several --
14 few minutes, ten minutes, maybe, later, and just
15 chitchatted for a minute. And then probably another
16 similar time frame, they came back out and asked --
17 and invited me -- said that I could come back and
18 sit in on the meeting.

19 Q. Did you do that?

20 A. I did.

21 Q. Who was it that came out and invited you?

22 A. Cheryl Layton, I believe the last name is.

23 Q. What's her role with regard to the school
24 district?

25 A. I believe that she works with Dr. Little.

1 Q. Did you, at any point, approach the boardroom
2 door on the evening of December 6th, 2016?

3 A. No.

4 Q. Why not?

5 A. I just figured the boardroom was like -- they
6 always had their sessions beforehand in private in
7 there. It was like a -- not an area you would go
8 into. You wouldn't walk into someone's bedroom
9 without being invited. So I didn't go in there.

10 Q. Were there any signs or anything indicating a
11 meeting was being held in the boardroom?

12 A. I do not remember seeing any signs.

13 Q. If you had seen such a sign, how would you have
14 behaved differently?

15 A. I might have probably walked over and stuck my
16 head around the corner.

17 Q. Okay. Is it important to you to be able to
18 attend school board meetings if you want to?

19 A. Yes.

20 Q. Okay. You have an interest in what the School
21 Board does?

22 A. Yes. I have two grandchildren that are in the
23 district -- district schools. And I work for the
24 district. So...

25 Q. All right. Finally, I'd ask you to take a look

1 at what's been marked as Plaintiff's Exhibit 4.

2 Now, does that look like the minutes of the December
3 6th, 2016 meeting?

4 A. It appears to be.

5 Q. Okay. Look over that for me and tell me if you
6 see anywhere on there an indication that the Board
7 was ever in executive session.

8 A. I see they called to order at 7:30, but I don't
9 see anything for an executive session.

10 MR. RADEKER: Thank you very much. Please
11 answer any questions that defense counsel may have.

12 CROSS-EXAMINATION

13 BY MR. DUFF:

14 Q. Good morning, Ms. Gilly.

15 A. Good morning.

16 Q. How are you?

17 A. I'm well.

18 Q. Good. If you would again take a look at
19 Plaintiff's Exhibit 1, which is the notice and
20 agenda.

21 A. Yes.

22 Q. You see at the top where it says: December
23 6th, special call board meeting?

24 A. Yes.

25 Q. And do you see where the notice and agenda says

1 that at 6:30, that Judge Spence will swear in the
2 new board members? Do you see that?

3 A. At the top line?

4 Q. Yes.

5 A. Yes. I see that it says that they will be
6 sworn in.

7 Q. At 6:30?

8 A. At 6:30.

9 Q. And you've testified that you arrived at 7:30?

10 A. Correct.

11 Q. And you see where after it says there will be a
12 swearing in, there will be a break and a reception
13 for the new board members?

14 A. Correct.

15 Q. And then do you see, toward the bottom of the
16 page, that at 7:30, there will be a general session?
17 Do you understand general session is not executive
18 session? It's something different, right?

19 A. Right. Yes.

20 Q. And that was to occur at 7:30. So you arrived,
21 essentially, when the general session was to begin?

22 A. Correct.

23 Q. Okay. So you were not present at 6:30 when the
24 Board opened up and convened the meeting, were you?

25 A. Correct.

1 Q. You did not hear what the then-board chair,
2 Ms. Debbie Knight, may have said about what the
3 Board would be doing, correct?

4 A. Correct.

5 Q. Now, is it -- is it your understanding that
6 when the Board conducted the new board orientation
7 beginning at 7:30 -- and you've said they were in
8 the conference room, the adjoining conference room,
9 correct?

10 A. In the boardroom. Yes.

11 Q. So you're not saying, are you, that the Board
12 was in executive session at that time?

13 A. No.

14 Q. Your answer is no, right?

15 A. No.

16 Q. They were in general session, correct?

17 A. Correct.

18 Q. And the door was open, was it not?

19 A. Correct.

20 Q. And you've testified that you heard the goings
21 on in that conference room, although you continued
22 to sit in the larger auditorium area?

23 A. Correct. I could hear part of what they were
24 saying.

25 Q. You heard part of what they were saying?

1 A. And it appeared to be, to me, a private
2 meeting.

3 Q. With the door open?

4 A. Well, they didn't have anyone in the
5 auditorium. I don't know their reasoning for
6 leaving the door open.

7 Q. Did you go to the door and ask, can I come in,
8 if this is a general session?

9 A. No.

10 Q. Why not?

11 A. Well, because it stated that it would be in the
12 auditorium. So I figured the part that I wanted to
13 attend, they would be holding that in the
14 auditorium.

15 Q. That's not what the notice says, does it?

16 A. I believe it did say that it would be --
17 special-called board meeting in the auditorium
18 building. And nowhere there says that they will
19 move to the boardroom. So that was my impression.

20 Q. So are you saying that -- I guess what you're
21 saying is that you thought you could not go into the
22 conference room, even though the door was open?

23 A. Correct.

24 Q. All right. Again, since you were not there at
25 6:30 when Board Chair Debbie Knight explained what

1 the Board would be doing, you would not have heard
2 her say that the Board will conduct the orientation
3 in the conference room? You would not have heard
4 that? You weren't present?

5 A. No, I wasn't present for that.

6 Q. No further questions.

7 THE COURT: Ms. Gilly, I just have a couple
8 questions.

9 EXAMINATION

10 BY THE COURT:

11 Q. So when the video started, the outside of the
12 building is labeled the auditorium.

13 A. Yes.

14 Q. Within the building, are there further room
15 labels or how do you know?

16 A. Yes. I believe there's -- I believe there's a
17 sign or a label on the door that says that that's
18 the boardroom door.

19 Q. I can see a little -- I can't read it. But
20 there's a little gray -- looks like a little gray
21 sign --

22 A. Correct.

23 Q. -- to the right of the door. And you think
24 that says boardroom?

25 A. I believe so.

1 Q. Okay. What about outside the room we're
2 looking at now? Is there a sign on the door?

3 A. I really don't remember that.

4 Q. Okay.

5 A. I know there are other doors that are marked in
6 the district office.

7 Q. But the outside of the building labels the
8 whole area the auditorium?

9 A. Correct.

10 Q. Okay.

11 THE COURT: Anything else, Counsel, y'all want
12 to follow up with?

13 MR. RADEKER: I do.

14 REDIRECT EXAMINATION

15 BY MR. RADEKER:

16 Q. Is it your understanding that the boardroom is
17 the auditorium?

18 A. No.

19 Q. Why not?

20 A. Well, because the auditorium, to me, indicates
21 a larger room where numerous people could attend.

22 And a boardroom would indicate a smaller room for a
23 small group of people who are having a board
24 meeting; would be a more confined area, so to speak.

25 Q. And in your experience, as your understanding

1 of what auditorium means, is that a generally held
2 understanding?

3 A. I believe so.

4 Q. Okay. And look, for me, again at Plaintiff's
5 Exhibit 1, if you would.

6 A. Yes.

7 Q. Look in the first paragraph that's a real
8 paragraph under the heading area.

9 A. Uh-huh. Starts on Tuesday.

10 Q. And you see on the second line there where it
11 says: There will be a board meeting in the
12 auditorium of Building 1?

13 A. Correct.

14 Q. Okay. Now, in your experience -- you've been
15 to some board meetings here, right?

16 A. Yes.

17 Q. In your experience, what is that conference --
18 that -- call it a conference room. It's labeled
19 boardroom. What do they use that for --

20 MR. DUFF: Your Honor, this is going way beyond
21 redirect. This sounds like questions he should have
22 asked the first time.

23 MR. RADEKER: No. It goes to rebut inferences
24 that was made that it was unreasonable for her to
25 have stayed out in the auditorium and she should

1 have gone and looked in the boardroom.

2 THE COURT: I'm going to sustain the objection.

3 This is going quite a bit beyond cross.

4 MR. RADEKER: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 Anything else from the Defense?

7 MR. DUFF: No, Your Honor.

8 THE COURT: Thank you, ma'am. You may step
9 down.

10 MR. RADEKER: Your Honor, at this time, we
11 would call Billie Garris to the stand.

12 THE COURT: All right.

13 BILLIE GARRIS

14 being first duly sworn, testified as follows:

15 THE WITNESS: Yes.

16 THE CLERK: Thank you. Please be seated in the
17 witness stand. Once you're seated, please state
18 your name, spelling your last name for the record.

19 THE WITNESS: My name is Billie Garris,
20 G-A-R-R-I-S.

21 DIRECT EXAMINATION

22 BY MR. RADEKER:

23 Q. Billie, how are you doing this morning?

24 A. Good.

25 Q. All right. Billie, what is your relationship

1 with Jada Garris, the plaintiff?

2 A. She's my mother.

3 Q. All right. How old are you?

4 A. 17.

5 Q. Do you attend high school?

6 A. Yes, sir.

7 Q. Where do you attend high school?

8 A. Gilbert High School.

9 Q. Is that a Lexington School District One school?

10 A. Yes.

11 Q. All right. Did you attend a meeting of the
12 Lexington School District One School Board that was
13 held on November 14th, 2017?

14 A. Yes, sir.

15 Q. Okay. And tell me about when you got there.

16 A. We arrived there around 5:45.

17 Q. Who's we?

18 A. Me and my mom.

19 Q. Okay. And what did you do there?

20 A. I walked into the auditorium -- got out of the
21 car, walked into the auditorium, and sat down.

22 Q. Okay. All right. So you're there at 5:45.

23 You go in the auditorium and sit down. Why did you
24 come there, first of all?

25 A. To, like, come to the board meeting.

1 Q. Okay.

2 A. Because I wanted to -- well, my mom wanted me
3 to see if they would come out of the boardroom into
4 the auditorium and announce they were going into
5 executive session.

6 Q. How long did you stay there after you got there
7 about 5:45?

8 A. Probably 30 minutes; left around 6:15.

9 Q. When you got there at 5:45, what was going on?

10 A. Nothing really. I don't remember anyone else
11 being in the boardroom when I walked in.

12 Q. Take a look for me at what's in evidence as
13 Plaintiff's Exhibit 5. Is that the agenda for that
14 November 14th, 2017 meeting?

15 A. Yes.

16 Q. Okay. Now, when does it say that the executive
17 session is supposed to start?

18 A. It says call to order at 6:00 p.m.

19 Q. Okay. Look in that paragraph above that and
20 tell me if I say this right. That paragraph begins:
21 On Tuesday, November 14th, 2017, at 7:30 p.m., the
22 Lexington School District One Board of Trustees will
23 hold its regular monthly meeting in the auditorium
24 of Building 1 of Central Services and gives its
25 location.

1 A. Yes.

2 Q. But you're there at 6:00 to see if anybody
3 comes out to announce anything about going into
4 executive session, right?

5 A. Yes.

6 Q. Anybody come out and do anything like that?

7 A. No.

8 Q. Who, if anyone, was there besides you?

9 A. When I arrived, I don't believe there was
10 anyone there. But, later on, within the period that
11 I was there, between 5:45 and 6:15, one of my
12 friends Cason and her dad came and Ms. Layton came
13 in there and asked me if I wanted something to
14 drink.

15 Q. What did you tell her?

16 A. I think I said, no, I'm fine.

17 Q. When you say Ms. Layton, that's Ms. Cheryl
18 Layton?

19 A. Yes.

20 Q. Take a look for me at Plaintiff's Exhibit 6.
21 Now, that looks like that same photograph that's in
22 evidence as Plaintiff's Exhibit 2 that we were
23 talking about earlier.

24 A. Yes.

25 Q. But on Plaintiff's Exhibit 6, there's some red

1 markings on there. What do those markings
2 represent?

3 A. I made them to show where I sat at, roughly.

4 Q. What are the two little lines there?

5 A. Those are rows, the chair rows.

6 Q. Rows of chairs?

7 A. Yes.

8 Q. Indicating where you were sitting in those rows
9 of chairs?

10 A. Yes.

11 Q. Okay. All right. Was there anybody in the
12 boardroom during the time you were there between
13 5:45 and 6:15?

14 A. I'm not allowed back there.

15 Q. Was the door open?

16 A. No.

17 Q. All right. Did you come back after you left
18 about 6:15?

19 A. Yes.

20 Q. What did you come back for?

21 A. For the regular board meeting at 7:30.

22 Q. Okay. If the Board was in executive session or
23 went into it at any time during the 30-minute period
24 you were there, starting at 5:45, do you know what
25 they went into executive session to talk about?

1 A. No.

2 Q. And that's because nobody told you anything
3 about it, right?

4 A. Right.

5 Q. In fact, do you know whether they were in
6 executive session at that time?

7 A. No.

8 Q. Okay. Take a look for me at Plaintiff's
9 Exhibit 7 and tell me what that is.

10 A. This is the attendance sign-in sheet.

11 Q. Is that for the November 14th, 2017 meeting of
12 this school board?

13 A. Yes.

14 Q. Whose name is the first name on it?

15 A. My name.

16 Q. Okay. Let me ask you this: Do you have any
17 interest in being able to attend school board
18 meetings if you want to to see what's going on
19 there?

20 A. Yes.

21 Q. You attend a Lexington School District One
22 school, don't you?

23 A. Yes.

24 MR. RADEKER: Thank you very much. I don't
25 think I have any further questions.

1 THE COURT: Mr. Lyon.

2

3

4

CROSS-EXAMINATION

5

BY MR. LYON:

6

Q. Ms. Garris, how are you?

7

A. Good.

8

Q. You said, currently, you're 17?

9

A. Yes.

10

Q. At the time when you went to this meeting, how

11

old were you?

12

A. November 17th, I would have been 16.

13

Q. You would have been 16 --

14

A. Wait a second. I'm really bad at math. I

15

would be 15.

16

Q. What grade were you in -- would you have been

17

in at that point?

18

A. My sophomore year -- my freshman year.

19

Q. Okay. You think sophomore --

20

A. Yeah.

21

Q. You're currently a senior, right?

22

A. Yes.

23

Q. You said you got there at 5:45. Now, you seem

24

pretty sure of that. How are you so sure?

25

A. Because my mom is not late anywhere. On time

1 is 15 minutes early, at least.

2 Q. That's the reason you know, because of your
3 mom's habit. But --

4 A. Right.

5 Q. -- do you recall looking at a clock, for
6 example?

7 A. I don't remember.

8 Q. Okay. And, again, you're pretty sure about the
9 time you left. You said 6:15. Do you remember
10 looking at a clock to know that at all?

11 A. I don't remember looking at a clock.

12 Q. I'm sorry?

13 A. I don't remember.

14 Q. Okay. Tell me again why you were coming to
15 this meeting at 6:00 p.m.

16 A. To see if they would come out of the boardroom
17 and go into the auditorium and announce they were
18 going into executive session.

19 Q. What was your understanding of the significance
20 of that? Why was that important to you?

21 A. Well, because my mom wanted to see if they
22 would actually come out and announce they were going
23 into executive session.

24 Q. So your mother sent you in there to determine
25 that particular point, is that what you're saying?

1 A. Yes.

2 Q. Do you know why your mom didn't go in?

3 A. Yeah. Because she had a whole bunch of work to
4 do. And I don't have a problem going in on, like,
5 board meetings and stuff like that.

6 Q. What sort of work was she doing while she was
7 in the car?

8 A. I have no idea.

9 Q. Is she a court reporter? Isn't that her job?

10 A. She wasn't a court reporter at the time, I
11 don't believe.

12 Q. And what did your mom tell you to find out when
13 you went in that meeting?

14 A. She said just sit down and see if anyone comes
15 out and announces they're going into executive
16 session.

17 Q. Okay. What were you doing while you were in
18 the auditorium, in the building there?

19 A. I was on my phone. I was texting her. I don't
20 remember.

21 Q. So you were texting back and forth?

22 A. Uh-huh.

23 Q. And you-all have not provided those texts. You
24 don't have them anymore; is that correct?

25 A. I don't even have the same phone.

1 Q. Did you take any pictures?

2 A. Not that I remember.

3 Q. Okay. You said you didn't see anyone in the
4 building; is that accurate?

5 A. When I arrived, I don't remember seeing anyone.
6 But while I was there in that 30-minute period, I
7 did see people.

8 Q. Okay. And tell us again who you saw.

9 A. That would be Cheryl Layton and one of my
10 friends from school.

11 Q. Do you know about what time you saw Cheryl?

12 A. I don't.

13 Q. Would it have been before the 6:00 time period
14 or between 5:45 and 6:00 or 6:00 and 6:15?

15 A. I don't remember.

16 Q. Do you recall what she said to you, if
17 anything?

18 A. Yeah. She just asked me if I wanted something
19 to drink.

20 Q. Did you ask her anything about the meeting?

21 A. I don't remember.

22 Q. When it was going to occur? Why isn't it
23 occurring? Did you ask any of those questions?

24 A. No, because I knew what time it was supposed to
25 start.

1 Q. Okay. And then you said you were texting back
2 and forth with your mom. What were you texting with
3 your mom about?

4 A. I was asking her how much longer I had to stay.

5 Q. So you didn't want to be there?

6 A. Well, I mean, it wasn't I didn't want to be
7 there; I just didn't know how long I had to stay.

8 Q. So your mom said you could go after 6:15?

9 A. Correct.

10 Q. At some point, I guess you realized it's after
11 6:00 and the general session was supposed to start
12 at 6:00; is that correct?

13 A. Correct.

14 Q. Did you go look for anybody to ask, is the
15 meeting going to start late, do I need to know
16 something?

17 A. No. I didn't feel like I had to.

18 Q. Why not?

19 A. Because I felt it was their job to come and
20 inform me if something was wrong.

21 Q. Okay. Okay. Was your mom already talking with
22 her attorney about a lawsuit in this case?

23 A. I don't know.

24 Q. You don't know if at that time she was already
25 working on preparing for a lawsuit?

1 A. I don't know.

2 Q. So you guys didn't think about saving your
3 texts or taking photos --

4 MR. RADEKER: Objection; asking her to think
5 about what somebody else was thinking.

6 THE COURT: The question was you didn't think
7 about...

8 MR. RADEKER: The question was, so you guys
9 didn't think about...

10 THE COURT: I'm going to ask you to rephrase
11 the question.

12 BY MR. LYON:

13 Q. Did you-all think --

14 MR. RADEKER: Same question.

15 BY MR. LYON:

16 Q. Did you think about saving your texts or taking
17 any photos to document what you were seeing?

18 A. No.

19 Q. Okay. All right.

20 MR. LYON: Let me confer with Mr. Duff here.

21 (Brief pause in the proceedings.)

22 BY MR. LYON:

23 Q. Ms. Garris, is it your position that executive
24 session had already started at 5:45?

25 A. Did I know? Is that what you're asking me?

1 Q. Yeah.

2 A. No, I did not know.

3 Q. And, again, and you didn't ask anyone?

4 A. No.

5 MR. LYON: Okay. I think that's all. Thank
6 you.

7 THE COURT: Any redirect, Mr. Radeker?

8 MR. RADEKER: Just one follow-up.

9 REDIRECT EXAMINATION

10 BY MR. RADEKER:

11 Q. Mr. Duff had asked you about how you knew that
12 you were there around 5:45, right?

13 A. Uh-huh.

14 Q. Did you make certain to be in that auditorium
15 by the time 6:00 hit?

16 A. Yes.

17 MR. RADEKER: Thank you. That's all I've got.

18 THE COURT: Any recross?

19 MR. LYON: No.

20 THE COURT: You may step down.

21 You may call your next witness.

22 MR. RADEKER: Your Honor, at this time, we
23 would ask to read into the record the excerpts from
24 the deposition of the defendant's 30(b)(6) deponent
25 that we took.

1 THE COURT: Any objection?

2 MR. DUFF: No, Your Honor.

3 THE COURT: Okay. Go right ahead.

4 MR. RADEKER: Your Honor, the designations I
5 did hastily yesterday, and some of them may have
6 actually just started with the answer. So for the
7 sake of clarity, I think I'll probably start with
8 the question with regard to some of these
9 designations.

10 THE COURT: I think we need the questions to go
11 with the answers.

12 MR. RADEKER: Yes, sir. I apologize ahead of
13 time. I may have --

14 THE COURT: Any objection from the Defense?

15 MR. DUFF: No, Your Honor.

16 THE COURT: Normally, if it was a jury trial,
17 I'd ask my law clerk to read in; but since there's
18 not a jury, I don't have an objection to counsel
19 reading, if you want to.

20 MR. RADEKER: Your Honor, I plan to do the
21 question and he'll do the answer, just for clarity.

22 THE COURT: That's fine.

23 MR. RADEKER: And if the Court, please -- for
24 everybody's ease of reference, I've got highlighted
25 copies of the pages that have the excerpts in them.

1 So if you want to follow along, I can hand those.

2 THE COURT: Thank you, sir.

3 MR. DUFF: Thank you.

4 MR. RADEKER: Your Honor, we'll be beginning on
5 Page 11.

6 Question: Okay. If you were advising a
7 constituent on what the best way is to learn the
8 activities of the Board, what would you -- that
9 would -- okay. What is the best way to learn the
10 activities of the Board? What would you advise them
11 to do?

12 MR. DUFF: Answer: I would encourage them to
13 attend board meetings and understand -- and they
14 would hear how we govern the board -- I mean, how we
15 govern the district. Excuse me.

16 MR. RADEKER: Question: Why is that better
17 than sending e-mails or calling?

18 MR. DUFF: Well, if they want to understand how
19 the District works, I think they see a global
20 picture when they come to a board meeting. If they
21 just send an e-mail about, say, their own child,
22 that is a pretty narrow focus.

23 So, I think, if you want to learn about the
24 board and the governing of the district, it's best
25 to attend board meetings, because everything is done

1 out in the open except what, by law, the business,
2 we have to conduct in executive session.

3 MR. RADEKER: On Page 17, question: And I just
4 want to know, have you gotten any indication from
5 the school board association, the ethics commission,
6 or anyone else about how executive session is to be
7 used by the Board?

8 MR. DUFF: Yes. Dr. Tiffany Richardson, when
9 she joined us for our last training session, she
10 specifically gave examples and talked about the
11 yeses and noes of executive session.

12 MR. RADEKER: Okay. Did they address at all
13 the placement of executive session before the open
14 session of a meeting?

15 MR. DUFF: No. That is up to the Board. And I
16 know -- I do know Boards do it different ways. The
17 way we just -- the way we do it is just the way we
18 do it.

19 MR. RADEKER: Okay. Do you understand when
20 they may have started with the Board?

21 MR. DUFF: I think in 1952.

22 MR. RADEKER: So, to your knowledge, the Board
23 has always done it that way? Is that your
24 understanding?

25 MR. DUFF: I think so. I'm not sure. But I

1 know for the 20 years that I've been on the board,
2 we've always done it prior to open session.

3 MR. RADEKER: Okay. Have you ever understood
4 why it was first done like that; why it was decided
5 to do it that way?

6 MR. DUFF: I think it's so that when we went
7 out and voted, we would have the information we
8 needed to cast the votes.

9 MR. RADEKER: Okay. Moving to Page 19.

10 Question: Okay. At the -- do you recall at
11 the December 6, 2016 meeting?

12 MR. DUFF: I believe the question was, do you
13 remember at all the December 6th, 2016 meeting?

14 And the answer is: That was a special-called
15 board meeting where the new board members were sworn
16 in. Yes, I do recall that because it was an
17 atypical meeting.

18 MR. RADEKER: Moving to Page 20.

19 Question: Uh-huh. And just to make sure I'm
20 clear about the December 2016 board meeting, did the
21 training and swearing-in occur at the same meeting?

22 MR. DUFF: Yes.

23 MR. RADEKER: Okay.

24 MR. DUFF: But there was a gap. We broke to go
25 to the reception which was held out there by the --

1 where you sign in. And then we broke for maybe 35
2 or 40 minutes. And, I apologize, I don't recall the
3 direct time. And then we came back into this room
4 and we opened the doors. And Attorney Andrea White
5 joined us to conduct the training session.

6 MR. RADEKER: Okay. This is the last question.

7 Question on Page 22 at the bottom: And you
8 were, like, herding cats, I assume, bringing
9 everyone together to come back in to one place to
10 start the public portion of the meeting; is that
11 right?

12 MR. DUFF: Right. Well, the whole meeting has
13 been public. We never went into executive session
14 that night. There was no executive session and the
15 whole meeting was open session.

16 MR. RADEKER: Thank you for correcting me. So,
17 at that point, the idea is to start the business
18 portion of the meeting? Is that the idea of
19 bringing a general session part?

20 MR. DUFF: Yes. Yes.

21 MR. RADEKER: Okay. And that was to occur in
22 here or in the auditorium?

23 MR. DUFF: It occurred in here. And Ms. Nidea
24 announced that it was moving to this room, but that
25 the public was welcome. In fact, we had

1 constituents join us.

2 MR. RADEKER: Okay. Moving to Page 28.

3 Question: On this particular evening, why did
4 you decide to have the doors open?

5 MR. DUFF: Because it was open session.

6 MR. RADEKER: Okay. And in light of the
7 changing of the location, did you have any concerns
8 that people may go into the auditorium instead of
9 coming here?

10 MR. DUFF: No. In fact, we always listen and
11 watch and we can hear the doors. So we have people
12 that watch and they invite people in and tell them
13 that it's just right because we consider this part
14 of the auditorium.

15 MR. RADEKER: All right. Moving to the last
16 question on 37: Okay. Do you remember at all if
17 there is anyone else who might recall where you-all
18 were for executive session on that particular
19 evening?

20 MR. DUFF: Well, all executive sessions are
21 conducted in here, so that for the 20 years that
22 I've served on the board, other than when we had to
23 relocate because they were remodeling this building
24 and the walls were torn out, executive sessions are
25 always conducted in here.

1 MR. RADEKER: Okay. Let's just go through that
2 process generally.

3 MR. DUFF: Sure.

4 MR. RADEKER: At least as it existed back then
5 when the start time was 7:30 for the open session.

6 MR. DUFF: Right.

7 MR. RADEKER: So what would board members do
8 when they arrived if the executive session was
9 listed prior to the regular session?

10 MR. DUFF: They would -- we would go into
11 executive session at 6:00 p.m. That would be
12 conducted in the open. And then we would shut the
13 doors and we would go into executive session. And,
14 depending on how long it takes, we would conclude
15 that agenda. And then once the items on the
16 executive session agenda are concluded, then we
17 would either wait until 7:30 or, if it just happened
18 to dovetail, we would just step out and open the
19 meeting.

20 MR. RADEKER: Okay. Going to the top of Page
21 40. Question: Okay. So they usually eat in here?

22 MR. DUFF: Yes.

23 MR. RADEKER: Okay. And that is -- and then at
24 approximately 6:00 p.m., that is when the meeting is
25 called into executive session?

1 MR. DUFF: Correct.

2 MR. RADEKER: Okay. So do they do that here?

3 MR. DUFF: It depends. For the first
4 50-something years of this district, yes, that did
5 happen in here. And in the last -- I don't know the
6 date. Now, we go out there and call executive
7 session.

8 MR. RADEKER: Okay.

9 MR. DUFF: But the doors were open and anyone
10 who wanted to come in and hear us call that we were
11 going into executive session, they were more than
12 welcome.

13 MR. RADEKER: Anyone who wanted to come in to
14 hear the call, you said, to executive session?

15 MR. DUFF: Yes.

16 MR. RADEKER: Okay. So that would be the vote
17 to an executive session?

18 MR. DUFF: Correct.

19 MR. RADEKER: Okay. They would not be allowed
20 here, I assume, after the vote is taken?

21 MR. DUFF: No. Once the vote is taken and we
22 are in executive session, generally speaking, it's
23 Ms. Hill and Ms. Layton that stand up and shut the
24 door. And Ms. Layton departs. She does not stay
25 for executive session unless there is something we

1 need to have discussed with her. She is not
2 typically in executive session. It's the senior
3 leadership team and the board members.

4 MR. RADEKER: Okay. Skipping down to Line 13
5 on 41. Question: But on that particular day and
6 time, do you recall where the vote was taken to
7 enter executive session?

8 MR. DUFF: I do not.

9 MR. RADEKER: You reference the first 50 years.
10 The vote was taken in here or in a boardroom?

11 MR. DUFF: Well, maybe 60 years, maybe 70
12 years, because we've been established since 1952.

13 MR. RADEKER: Okay. Moving to Page 42, Line 5.

14 Question: I understand. Do you know if that
15 policy, as you described it, that had existed for so
16 long was written down anywhere?

17 MR. DUFF: No.

18 MR. RADEKER: So it was more just an informal
19 practice, would you say?

20 MR. DUFF: An informal practice, yes.

21 MR. RADEKER: Okay. And it's pretty much
22 a practice by most --

23 Hold on, excuse me.

24 MR. DUFF: You say okay. And I say: And it's
25 pretty much a practice by most of the governing

1 bodies in Lexington County. The Lexington County
2 Council uses the same practice and the Town of
3 Lexington uses the same practice.

4 MR. RADEKER: So we're being clear, that would
5 be calling into executive session in the same room
6 you're having your executive session?

7 MR. DUFF: Yes, exactly.

8 MR. RADEKER: All right. Moving to Page 44,
9 Line 13. Question: All right. Do you recall at
10 all when the executive session was began for the
11 November of 2017 if they announced anything
12 different than what was on the agenda?

13 MR. DUFF: We did not because, by law, we have
14 to follow the agenda. So I can -- I don't recall
15 that. But I can say, yes, we follow the agenda.

16 MR. RADEKER: Question: I understand. Do you
17 follow the agenda to each word or in the context of
18 what I'm talking of? Would you give more
19 information sometimes than what the agenda says?

20 MR. DUFF: Never.

21 MR. RADEKER: Never give more information?

22 MR. DUFF: No. You follow the agenda. That is
23 not fair to our constituents.

24 MR. RADEKER: That concludes the reading, Your
25 Honor.

1 THE COURT: Thank you, Counsel.

2 Counsel, I'm thinking about taking a 10-minute
3 break to go stretch your legs and give the court
4 reporter a break. Is now a good time to do that?

5 MR. RADEKER: That's fine, Your Honor. We have
6 one more witness to call.

7 THE COURT: All right. Let's take a recess,
8 about 10 minutes.

9 (Short break.)

10 THE COURT: Mr. Radeker, you can call your next
11 witness, please.

12 MR. RADEKER: Your Honor, I'll let Mr. Smith do
13 that, if it pleases the Court.

14 THE COURT: Certainly.

15 MR. SMITH: Your Honor, at this time, we call
16 the plaintiff, Ms. Jada Garris to the stand.

17 JADA GARRIS
18 being first duly sworn, testified as follows:

19 THE CLERK: Please be seated. Once you're
20 seated, state your name, spelling your last for the
21 record.

22 THE WITNESS: My name is Jada Garris,
23 G-A-R-R-I-S.

24 DIRECT EXAMINATION

25 BY MR. SMITH:

1 Q. Good morning, Ms. Garris.

2 A. Good morning.

3 Q. Ms. Garris, if you could, start with where do
4 you live.

5 A. Gilbert, South Carolina.

6 Q. Is that here in Lexington County?

7 A. Yes, sir.

8 Q. All right. What do you do as your profession?

9 A. I'm a court reporter.

10 Q. How long have you been doing that?

11 A. About two and a half years.

12 Q. I understand you're also a board member with
13 Lexington County School District One; is that
14 correct?

15 A. Yes, sir.

16 Q. When were you elected?

17 A. November of 2018.

18 Q. Now, before you were a court reporter, what
19 were you doing?

20 A. I was a school bus driver with Lexington
21 District One.

22 Q. So the same party as the -- in this litigation?

23 A. Yes, sir.

24 Q. So when were you a bus driver?

25 A. I started driving in 2011 and I resigned in

1 2017.

2 Q. Okay. How was your time as a bus driver
3 working for the District?

4 A. I loved driving a bus.

5 Q. Did you ever run into any problems with
6 supervisors or have any complaints concerning the
7 district and its leadership?

8 A. Yes.

9 Q. Can you tell me about some of those?

10 A. Yes. There were several instances where I had
11 meetings with district office staff. A lot of
12 employees got together. Some of them filed
13 grievances. I helped walk them through that
14 process.

15 There were several issues during that time
16 which, ultimately, led -- you know, we followed the
17 chain of command. We started with the supervisor,
18 the director, all through this. At one point in
19 time, I even went and talked to the superintendant,
20 who as Dr. Woodward at the time.

21 From there, we contacted a board member, board
22 members, I don't remember which one. But,
23 ultimately, nothing was ever resolved. Grievances
24 were ignored. Or, at one point in time, an employee
25 was told, you know, we're not so much concerned

1 fixing what's wrong with the grievance, we just want
2 to know who's giving this information from the
3 inside.

4 So that's when I started following the Board.
5 When I realized after, contacting the Board, that
6 was our last stop, like, what's really going on? So
7 I started attending board meetings and then
8 submitting FOIA requests.

9 Q. Let's talk about that. Around what time are we
10 talking about here when you started being concerned
11 about the Board's activity and attending board
12 meetings?

13 A. That would be 2015. Late 2015. Yeah, I
14 believe.

15 Q. What, if anything, did you witness about the
16 Board's activities at that time?

17 A. Very little information is gained by attending
18 board meetings.

19 Q. What do you mean?

20 A. If you -- I mean, it's really not a way to
21 figure out -- get details on anything. They may
22 say -- there may be something on the agenda that
23 says, I don't know, items for board information, but
24 we don't know what they discussed under that item.
25 And then if you e-mail board members, only one would

1 respond to you and not any others.

2 Q. Okay. So what did you decide to do in trying
3 to learn more about the District and the Board and
4 the way they operated?

5 A. I started submitting FOIA requests or e-mailing
6 the Board.

7 Q. With regards to the FOIA requests, do you
8 recall what FOIA requests you submitted?

9 A. I think my first -- and I can't be certain.
10 But my first FOIA request to the District, I
11 believe, would have been for a letter that another
12 bus driver had written. And the District declined
13 that, saying, I believe it was an invasion of my
14 privacy. And then other things were architectural
15 selection committee, documents, investigations of
16 the Department of Labor, things such as that.

17 Q. Okay. And were you satisfied with the
18 responses you were getting to your FOIA requests?

19 A. No.

20 Q. Was this around the time that you came and
21 hired our firm to represent you on potential
22 violations?

23 A. Yes. Well, I had missed a board workshop in
24 February of 2017, and I requested an audio from that
25 meeting. And the District said that this is not a

1 public document. So I got the Attorney General's
2 opinion and I brought that back to them during
3 citizens participation at a board meeting. And I
4 said, I have the Attorney General's opinion and he
5 believes that, you know, you've misconstrued FOIA;
6 that this is a public document. I didn't hear
7 anything back from them.

8 So in May, I re-sent my FOIA request thinking,
9 well, now they have the Attorney General's opinion,
10 they'll just turn it over. And they stood firm on,
11 this isn't a public document. So that is when I
12 came to you because there were other requests as
13 well that I had submitted that just never were
14 filled. They were just ignored.

15 Q. And, in the end, I guess, you did end up hiring
16 our firm to bring a lawsuit against the District;
17 isn't that correct?

18 A. Yes, sir.

19 MR. SMITH: Your Honor, I'm going to hand the
20 defendant the summons and complaint. It's the
21 summons and complaint in this case, filed of record
22 in this case. And that's for her reference as we go
23 through some of the initial FOIA request violations.
24 We will then, of course, be moving to the actual
25 causes of action that are at play here in this case.

1 THE COURT: Okay.

2 MR. LYON: Your Honor --

3 THE COURT: What's the relevance to allegations
4 that aren't being currently prosecuted?

5 MR. SMITH: So, Your Honor, we have authority
6 in South Carolina that provides that if you are a
7 FOIA requester, FOIA requests are denied, litigation
8 has begun concerning them and, during the course of
9 the litigation, before a final determination on the
10 merits of that case, the public body provides the
11 documents that you initially sued them on and the
12 Court then makes a decision, proper under the law,
13 that that may have mooted those claims.

14 You have an argument, as satisfied in several
15 cases which I'll hand up shortly, that you are the
16 prevailing party as to those causes of action
17 concerning requests. Now, again, Your Honor, we're
18 not here on the request. This case was modified;
19 meaning, they offered and provided many of the
20 documents that she originally sued them on. We, in
21 exchange for the providing of documents, amended the
22 complaint to reflect moving forward on only these
23 five causes of action before Your Honor today.

24 So what I'm doing now, Your Honor, is providing
25 the factual basis for Your Honor to make a

1 determination pursuant to Sloan vs. South Carolina
2 Department of Revenue, that you have the ability,
3 factually now, to determine when she received the
4 records throughout this litigation, such that if
5 Your Honor decides she later is the prevailing
6 party, you will know what may be an appropriate
7 remedy as to reasonable attorneys' fees at that
8 point in the litigation.

9 THE COURT: Okay. So the relevance of this
10 testimony is on the issue of attorneys' fees?

11 MR. SMITH: If we are the prevailing party,
12 correct, Your Honor.

13 MR. LYON: Your Honor, we take the position
14 that attorneys' fees is a separate hearing. The
15 other issue here is, as Mr. Smith mentioned, the
16 original complaint, again, filed in December of
17 2017, had 12 causes of action.

18 The current -- the amended complaint has five.
19 Okay? So the complaint was -- those seven were,
20 essentially, dropped or emended. What was -- they
21 were dropped and then an amended complaint was
22 filed.

23 There was an agreement -- and I don't even know
24 if we should do this here or if we should do this
25 back there. But we can talk about it. There was an

1 agreement to allow this party, the plaintiff, to
2 amend the complaint if we provided, one, the
3 recording that Ms. Garris just referred to and a --
4 I recall a -- a statement from our office that a
5 prior FOIA complaint had been answered in full. We
6 did not have any further documents as to that
7 complaint.

8 So I think in our production, we actually have
9 the consent order that I can dig up and we can look
10 at to show what the -- what the District actually
11 consented to to give -- to come up with this amended
12 complaint.

13 Again, Your Honor, I think, you know,
14 prevailing party goes to current issues in the
15 amended complaint and not necessarily to the issues
16 in the prior complaint. And it's been a while since
17 I've read the Sloan case, but I'm not sure,
18 procedurally, we're in the same ballpark as far as
19 amended complaint.

20 As I understand it, if the District were to
21 have provided documents after a lawsuit, then the
22 plaintiff would file a summary judgment motion to
23 say, we won, they're providing the documents now.
24 And that would be the way to establish your
25 prevailing party status as to that particular FOIA

1 request of the alleged violation.

2 THE COURT: So are you arguing because they
3 amended their complaint and without filing summary
4 judgment motion, they're not a prevailing party on
5 these FOIA requests?

6 MR. LYON: Correct; not a prevailing party on
7 the seven causes of action that were dropped. Now,
8 in my opinion -- I mean, we can probably have that
9 argument. But, to me, that's an argument that is
10 more suited to an award of attorneys' fee hearing,
11 if there are such.

12 MR. SMITH: Your Honor --

13 THE COURT: If the pleadings speak for
14 themselves, what do we need -- I mean, I --

15 MR. SMITH: Right. The pleadings, Your Honor,
16 is so that she is able to refer to what is, frankly,
17 a rather detailed analysis provided by the defendant
18 concerning the availability of the records that we
19 pled initially in the summons and complaint such
20 that she will be able to describe to Your Honor, at
21 the time, why this case was initiated such that she
22 needed to file suit to pursue those.

23 I believe if I were to hand up the authority,
24 Your Honor, you would see that, under Sloan, the
25 court in this case advised the trial court, if you

1 had made a determination regarding when these
2 records were provided in the context of that
3 litigation, there wouldn't be another hearing
4 necessary to determine what the award of attorneys'
5 fees may be, as a matter of fact.

6 As a matter of law, of course Your Honor can
7 always award reasonable attorneys' fees at a point
8 in litigation, but as to when the documents were
9 provided in the context of the litigation, that
10 would be a separate inquiry where additional
11 witnesses would have to be potentially called
12 concerning when they got the documents. So, Your
13 Honor, that's why --

14 THE COURT: Is that a disputed issue in this
15 case or is that something we can stipulate to?

16 MR. LYON: What?

17 THE COURT: When the documents were received by
18 the plaintiff.

19 MR. LYON: Your Honor, we're not here currently
20 on documents. So in preparation --

21 THE COURT: Right. I'm just trying to save us
22 work. I mean, can we stipulate to when the
23 documents were received?

24 MR. LYON: Again, which documents?

25 THE COURT: The documents that she requested

1 under the seven causes of action that were --

2 MR. LYON: We haven't prepared that because the
3 complaint has been amended. I mean, we would --
4 here's our position as to most of the document
5 requests that Ms. Garris initially made: And one
6 was not a document request, necessarily. I mean,
7 there are seven causes of action, which are
8 extensive. I would say, just from my memory, having
9 dealt with this case all along, five of them of the
10 seven are document requests.

11 And it was our position, throughout that, the
12 initial response by the District in response to
13 those FOIA requests were complete, were made before
14 any lawsuit. And so, essentially, what we agreed to
15 when we allowed the amended complaint was to provide
16 the recording that Ms. Garris referred to. There
17 was a dispute as to whether or not it was a public
18 document. But we agreed to, essentially, settle
19 that dispute in exchange for amending the complaint.

20 The other provision of that was to simply say
21 we have reviewed our prior FOIA response in this
22 particular records request. She mentioned the
23 architectural subcommittee. Okay? She reviewed the
24 document we've sent to you, and those are the
25 documents we have. We don't have further documents;

1 i.e. or ergo, our initial response to you was
2 complete.

3 So if -- just, Your Honor, if this hearing --
4 this trial today is going to get into the seven
5 other aspects of this complaint that we consider no
6 longer on the table because of the amendment, then
7 I'm not really prepared to tell you -- I'm not
8 really prepared to argue on those because that's not
9 what I believed we were here to do, other than to
10 say, you know, our answer to that complaint was we
11 deny that we failed to respond to this FOIA request.

12 THE COURT: Mr. Smith, my inclination is put
13 this off. It seems to me -- I mean, putting these
14 aside, on the five issues we're here for today, if I
15 rule in your favor, you're going to file a motion
16 for attorneys' fees later, correct? I think that
17 the better is just -- I think when you file that
18 motion, then you would include these claims as part
19 of that motion. We'll have a hearing on that motion
20 and decide it all then.

21 MR. SMITH: Thank you, Your Honor. If I may
22 make a quick suggestion to streamline? As you said,
23 along those lines, I was going to go through,
24 obviously, the procedural nature of how this case
25 started. It was going to be a full thing Your Honor

1 could look at and why she made the FOIA requests,
2 why she attended the meetings, et cetera.

3 In light of it, the authority, though, and what
4 I was trying to do with the questioning, Sloan
5 indicates that when the documents were received,
6 meaning the last, basically, of the documents, as
7 long as that was considered by the trial court
8 factually, then you're done there.

9 So I could, basically, finish this entire
10 inquiry with one question, which is, basically, when
11 was the last document you got? And that would end
12 the inquiry and satisfy --

13 THE COURT: If you think asking one question
14 now would be helpful, go for it.

15 MR. SMITH: Okay. Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. LYON: Your Honor, may I just say one more
18 thing just to reserve my objection? This isn't a
19 case about documents.

20 THE COURT: I understand. But there's no jury.
21 Go ahead.

22 MR. SMITH: Thank you, Your Honor.

23 BY MR. SMITH:

24 Q. We were just discussing the FOIA violations
25 that we brought concerning document requests that

1 were either unfulfilled or denied. When, during the
2 course of my representation, was the time you
3 received the last of those documents in this
4 litigation, initially?

5 A. June of 2019.

6 Q. Thank you. All right. Moving along to what's
7 at issue in this case. If you wouldn't mind, please
8 pick up what's been marked as Exhibit 8. What is
9 Exhibit 8?

10 A. Board minutes of the November 14th, 2017
11 meeting.

12 Q. Was that the meeting that your daughter
13 referenced earlier that she attended?

14 A. Yes, sir.

15 Q. I believe she testified, and tell me if this is
16 true, that you were in the car outside.

17 A. Yes, sir.

18 Q. Why did you not go inside?

19 A. I had work to do and she likes going to board
20 meetings. But, at the time, I had already met with
21 you and turned everything over that I was under the
22 assumption would be included in this lawsuit. So,
23 to me, it wasn't -- just along the way I would send
24 you e-mails and say, hey, I witnessed this FOIA
25 violation or, hey, I saw this today. So if I had

1 known this would have been a bigger deal, I would
2 have went in myself and I would have recorded
3 everything.

4 Q. Looking at Exhibit 8, does that reflect an
5 executive session was held?

6 A. Yes, sir.

7 Q. So how do you know one was held, considering
8 the testimony earlier?

9 MR. LYON: Objection, Your Honor. I'm not sure
10 she was there.

11 THE COURT: I'm going to allow the question
12 since we're not with a jury.

13 BY MR. SMITH:

14 Q. Would you like me to repeat the question?

15 A. Yes.

16 Q. How do you know the executive session was held?

17 A. The minutes say that there was an executive
18 session.

19 Q. Now, we decided, in this case, to bring certain
20 causes of action concerning agenda. Can you tell me
21 about what the purpose of an agenda is in your eyes?

22 A. That gives the public the ability to know what
23 their Board or county government or whatever will be
24 discussing during meetings.

25 Q. When you were thinking about attending meetings

1 in the past, would you often look at the agenda?

2 A. Yes, always.

3 Q. Is it your understanding, now as a board
4 member, that your constituents rely on the agenda?

5 A. Yes.

6 Q. Tell me about how the District goes about
7 notifying the public with regards to an upcoming
8 meeting and the use of their agenda.

9 A. They would post the agendas on a news release
10 page on their website. That's how -- before I came
11 on the board, that's how I always got the agenda. I
12 would just -- on a daily basis -- I always kept an
13 eye on their news release page because, not only was
14 the agenda there, but everything that you may not be
15 able to find on social media or anywhere else would
16 be listed on that news release page. So it was
17 something I look at, even now as a board member,
18 several times a day.

19 Q. And earlier I believe you referenced how you
20 had sent a FOIA request in for audio. How did that
21 relate to you checking the news release page?

22 A. Well, once I realized that they weren't going
23 to turn the audio over and they weren't going to
24 comply with FOIA, then I started keeping an even
25 closer eye on things, like I said, so I could send

1 you things.

2 So I believe in the -- during the month of
3 March, that's when I took a screenshot of the news
4 release -- or either I e-mailed Mary Beth and
5 said -- I believe that's the day I e-mailed Mary
6 Beth and said, hey, it's March 20th, you know, I
7 don't see the agenda.

8 Q. All right. Now we're talking about March 2017;
9 is that right?

10 A. Right.

11 Q. Can you tell me what you were doing on, I
12 guess, March 20th, if the meeting was supposed to be
13 held March 21st?

14 A. I don't recall exactly what I was doing on
15 March the 20th. But I do recall that's the day that
16 I sent Mary Beth an e-mail and said, have you posted
17 the agenda for tomorrow; I don't see that.

18 Q. Would you mind picking up what's been marked as
19 Exhibit 9.

20 A. Yes.

21 Q. Okay. Is that the e-mail you just referenced?

22 A. It is.

23 Q. Okay. How did she reply?

24 A. She replied with a link that linked to the news
25 release page, the one I'm keeping an eye on.

1 Q. What -- after receiving that reply e-mail, what
2 did you do?

3 A. I clicked on that link and opened the document
4 up and then went to the document properties to see
5 when it was created.

6 Q. Would you mind picking up what's been marked as
7 Exhibit 10.

8 A. Yes.

9 Q. Before we move on, for the Court's
10 understanding, you mentioned Mary Beth earlier. Who
11 is Mary Beth?

12 A. Oh, Mary Beth Hill. And she's asked that I
13 call her Mary Beth. I was calling her Ms. Hill for
14 a long time.

15 Q. Okay. And what is her role with the district?

16 A. She is the chief communications officer.

17 Q. Okay. Thank you. So we're looking at
18 Plaintiff's Exhibit 10. Can you tell me what we're
19 seeing there?

20 A. Yes. This is the agenda and the properties for
21 the March 21st, 2017 agenda.

22 Q. Okay. And what do the document properties tell
23 you?

24 A. They tell me the title, the author, subject,
25 keywords, created, modified, things of that nature.

1 Q. Okay. And those document properties are of the
2 agenda that was provided to you by Mary Beth
3 pursuant to the hyperlink?

4 A. Yes. By going to the hyperlink and downloading
5 the agenda, this is what I came up with.

6 THE COURT: Counsel, let me ask, what is the
7 redaction at the top of Plaintiff's 9?

8 MR. SMITH: Your Honor, you can -- that is
9 attorney-client privileged information she provided
10 to me initially. And we provided these -- you can
11 look at the very bottom, Your Honor, you see a 001.

12 THE COURT: Okay.

13 MR. SMITH: This was provided to the defendant
14 in discovery months ago. They graciously allowed us
15 to just -- conceded to its admissibility, even
16 though it doesn't look as clean as we had hoped.

17 THE COURT: Okay. So the response was from --
18 okay. I understand. Okay. Go ahead. Sorry.

19 MR. SMITH: That's okay.

20 BY MR. SMITH:

21 Q. So looking at the document properties on
22 Exhibit 10 --

23 A. Yes.

24 Q. -- when does it indicate the document was
25 created?

1 A. March 20th, 2017 at 6:42 p.m.

2 Q. What was your understanding as to when the
3 meeting would occur the next day?

4 A. March 21st, 2017, at 6:00 p.m.

5 Q. Okay. Did anything concern you about looking
6 at these particular creation and modified dates as
7 you were looking forward to the meeting the next
8 day?

9 A. Yes. The agenda needs to be posted within 24
10 hours of the meeting. And the meeting started at
11 6:00 and the e-mail I sent was at 7:26 p.m. And the
12 document was not created until 6:42 p.m. the night
13 before.

14 Q. Okay. All right. If you wouldn't mind telling
15 me what Plaintiff's Exhibit 11 is in front of you.

16 A. This is a screenshot for the month of March of
17 2017 and some notes about the defendant board
18 meeting in June of 2017.

19 Q. Let's pertain to this question of what's
20 happening at the top.

21 A. Okay.

22 Q. If you can, kind of explain to the Court what
23 we're looking at up there at the top.

24 A. This would be a screenshot that was taken after
25 my e-mail and whereas prior to my e-mail, there was

1 no board meeting agenda listed, but after my
2 e-mail -- and this could have been days later,
3 obviously. It still looks the same. Above the
4 public notice of the board of trustees meeting, you
5 can see the board meeting agenda. And, out to the
6 side, there's a date of 3/16/2017.

7 Q. Okay. And just so we're clear with the Court,
8 because I believe he's trying to look at it, that is
9 in the middle of the page?

10 A. Yes, sir.

11 Q. All right. And so what, looking at this form
12 on this particular page, were you thinking when you
13 were looking at it?

14 A. Are you asking what I understand these dates to
15 mean?

16 Q. I'm asking -- yes. What were you looking at
17 when you were seeing them? What were you thinking
18 it was trying to tell you?

19 A. That the board meeting agenda was posted on
20 March 16th of 2017.

21 Q. Why do you think that?

22 A. Because it has been my experience, in looking
23 at news releases, that the date out to the side is
24 usually the date when it's posted on the news
25 release page.

1 Q. All right. Thank you.

2 A. Uh-huh.

3 Q. Did you go to this particular meeting, the
4 March 21st, 2017 board meeting?

5 A. Yes, sir.

6 Q. Okay. So I guess you were able to confirm the
7 meeting did occur?

8 A. Yes, sir.

9 Q. Okay. What other way do you usually go about
10 checking to see if meetings occur if you weren't
11 able to attend?

12 A. I'd pull the meetings off of the website or --
13 Debbie and I, we kind of worked together. If I knew
14 I was going to miss a meeting, she would show up at
15 a meeting. But the final word on what went on at
16 the meeting was I would just read the minutes.

17 Q. Okay. If you could pick up, if you don't mind,
18 Exhibit 12.

19 A. Yes.

20 Q. What is Exhibit 12?

21 A. This is the regular board meeting minutes from
22 March the 21st of 2017.

23 Q. Okay. And does that -- do those minutes
24 include an executive session?

25 A. Yes, sir.

1 Q. Okay. And, if you don't mind, could you read
2 me the top two lines or so on the heading on the
3 minutes from March 21st, 2017 on Exhibit 12?

4 A. Okay. The heading says: Lexington County
5 School District One regular board meeting minutes,
6 March 21st, 2017.

7 Q. And beneath that, please read that first or
8 second line.

9 A. The Lexington County School District One Board
10 of Trustees convened an executive session at
11 6:00 p.m. on Tuesday, March 21st, 2017, in the
12 Lexington County School District One boardroom
13 located at 100 Tara Springs.

14 Q. Okay. Move along to June. You indicated
15 earlier that you had some concerns about what
16 occurred with the June meeting and the agenda. Can
17 you explain more about that?

18 A. Yes, sir. The June meeting -- like I said,
19 after I came and spoke with you, I started keeping a
20 closer eye on any kind of FOIA violations just so I
21 could pass those along. And I remember it was on a
22 Tuesday and I had checked the news release page.
23 All of a sudden, that afternoon, I saw the agenda up
24 here for the previous meeting that was on Thursday.

25 Q. Okay. So let's get specific here on dates. Do

1 you know what date that meeting was for, what date
2 the meeting was on?

3 A. The meeting was on June the 15th.

4 Q. Okay. Had you looked online on the news
5 release page to see if an agenda was posted the day
6 before?

7 A. Yes.

8 Q. What about the day of the meeting?

9 A. Yes.

10 Q. Did you check the day of the meeting to see if
11 they had posted an agenda?

12 A. Yes.

13 Q. When did you notice the agenda being posted for
14 that meeting?

15 A. On the Tuesday after the meeting. So it was
16 the 22nd, I believe.

17 Q. Okay. And what, to your understanding, is the
18 problem with an agenda coming out after the meeting?

19 A. Well, if someone wanted to attend that meeting,
20 they may not know there is a meeting.

21 Q. And when you finally did notice the posting on
22 the news release page, what did you do after that?

23 A. I just took a screenshot and I e-mailed you and
24 I said, hey, Mr. Smith, something along these lines:
25 I was just sitting here and realized they just

1 posted the agenda for the meeting several days ago.

2 Q. And, if you don't mind, could you pick up
3 Plaintiff's Exhibit 13. And what is that?

4 A. At the top is the June 15th, 2017 agenda and at
5 the bottom is a screenshot.

6 Q. Okay. Let's talk about the top of that page
7 for a second. What does that show?

8 A. This shows the June 15th, 2017 agenda and the
9 document properties.

10 Q. Okay. And what does a review of the document
11 properties show you about the document?

12 A. Specifically, for this document, it tells us
13 the title, that it was created on June 19th, 2017 at
14 11:54, and it was modified on June 19th at 11:54.

15 Q. Okay. Thank you. Did you go to the June 15th
16 2017 board meeting?

17 A. I did not because it was at 7:30 in the
18 morning.

19 Q. How do you know they didn't just cancel it?

20 A. I would refer to the minutes online and see if
21 they had a meeting and what took place.

22 Q. Okay. Would you mind picking up what's been
23 marked as Exhibit 14. What is that document?

24 A. It's the minutes from the June 15th, 2017 board
25 meeting.

1 Q. Okay. What is -- if you don't mind doing what
2 you did last time, if you could read, not the
3 heading, but the top line on Plaintiff's Exhibit 14.

4 A. The Lexington County School District One Board
5 of Trustees convened in executive session at 7:30
6 a.m.

7 Q. Okay. Can you do one more line for me, if you
8 don't mind.

9 A. On Thursday, June 15th, 2017, in the Lexington
10 County School District One Central Services office
11 boardroom.

12 Q. Okay. Thank you. Does this minutes for June
13 15th, 2017 that we were discussing, does it refer to
14 executive session?

15 A. Yes, sir.

16 Q. Okay. All right. Let's move to July 2017. On
17 July 17th, do you recall at all whether or not you
18 were looking at the news release page for the July
19 18th meeting?

20 A. I was.

21 Q. What did you find?

22 A. That was the night my son had football practice
23 and I was running late. So I was just sitting in my
24 car watching them. They were huddled up, so I was
25 checking the news release page, as I was in the

1 habit of doing. And I knew that as of 7:42, the
2 agenda had not been posted for the meeting the
3 following day. So I just took a shot of it.

4 Q. Okay. If you wouldn't mind picking up
5 Plaintiff's Exhibit 15 and looking at the very
6 bottom.

7 A. Yes.

8 Q. What is that on the very bottom?

9 A. That is the screenshot that I took at 7:42 p.m.
10 on July 17th.

11 Q. Okay. Why is that screenshot significant?

12 A. It shows that all the news releases posted on
13 the website from June 28th, 2017, to July 11th,
14 2017. But that's why I date-stamped this, is
15 because there were no -- the next thing that would
16 have been posted on the news release page was, I
17 believe, July 19th. So, somewhere along the way,
18 there's a screenshot that shows after the fact as
19 well.

20 Q. What was your understanding at the time of when
21 the meeting was the next day?

22 A. 6:00.

23 Q. Okay. Do you recall if you ended up attending
24 the July 18th, 2017 board meeting?

25 A. I did. I was there.

1 Q. Okay. Do you recall if you were there for the
2 executive session portion at 6:00 p.m.?

3 A. No.

4 Q. Okay. All right. Would you please pick up
5 what's been marked as Exhibit 15?

6 A. Okay.

7 Q. What is Exhibit 15?

8 A. Minutes from the July 18th, 2017 board meeting.

9 Q. Okay. All right. Does -- do these minutes
10 reflect, at the top, an executive session?

11 A. Yes, sir.

12 Q. Okay. All right. Put aside 15 for now. Let's
13 fast-forward to November of 2018. It's my
14 understanding that that's when you were elected to
15 the school board; is that correct?

16 A. Yes, sir.

17 Q. Tell me what that was like.

18 A. Well, coming in, there was a little hostility.
19 So I think you and I talked and we talked about
20 settling it. As one board member put it, this is
21 the elephant in the room. So you and I talked about
22 settling the case.

23 For one reason or another, I don't remember,
24 that did not work out. So I said, well, it's just
25 time to get down to business. I ran on

1 transparency. So, as a board member, I have
2 fulfilled my duties as being transparent.

3 But when it comes to the District and the
4 Board, they're still not being very transparent. I
5 figured I could come in and kind of, you know -- and
6 there's been times during executive session where
7 I've said, hey, wait, we can't approve minutes back
8 here or we can't talk about this back here, you
9 know, different things.

10 But, more specifically, I know we have to talk
11 about what's related to this lawsuit. There has
12 been a point in time when we have entered executive
13 session in the boardroom.

14 Q. Okay. And how would you say your efforts have
15 gone in trying to create greater transparency that
16 you promised your constituents?

17 A. Like I said, I fulfill my duties, as far as the
18 district. It is a struggle. They don't want to be
19 transparent. We've had training. Even during the
20 training with the attorney, they were arguing their
21 case for why they needed to hold board meetings
22 outside of district lines or why it was okay to have
23 group text messages or, you know, we have to do it
24 this way, this is the way we've always done it.

25 You know, I have worked really hard to bring

1 about change. I mean, it started as a citizen, you
2 know, attending board meetings and then, you know,
3 submitting FOIA requests, suing the District,
4 running for school board. And now we're here today.
5 I mean, the only thing that I see would make them
6 adhere to the law is Your Honor telling them this is
7 what you have to do; you know, these are FOIA
8 violations; you can't do this any longer; just
9 because this is what you've always done, you
10 can't -- that's not a good reason for continuing to
11 do that.

12 Q. Have you -- I think you mentioned this earlier,
13 but if you can kind of just instruct the Court:
14 Have you noticed any FOIA violations while on the
15 board akin to violations that are concerned with
16 this trial today?

17 A. Yes.

18 Q. Okay.

19 MR. LYON: Your Honor, do we need to go further
20 into additional FOIA violations alleged that are not
21 included in the amended complaint here?

22 THE COURT: Mr. Smith, what's the point in
23 going into violations outside of the complaint?

24 MR. SMITH: Your Honor, I think it would be
25 appropriate for Your Honor to deny injunctive relief

1 in the event a violation that -- as Mr. Duff pointed
2 out in opening, that was about a year and a half to
3 two years ago was an isolated event.

4 But to the extent evidence is adduced by the
5 plaintiff in testimony that there's an additional
6 violation or additional violations of the same kind
7 that she has witnessed now that she, in a role of
8 someone who can witness firsthand the use of
9 executive sessions in places that are noticed, I
10 believe that's relevant for Your Honor's
11 consideration as to whether or not an injunction was
12 necessary.

13 THE COURT: I'll allow the question.

14 MR. LYON: Your Honor, one more point: Can we
15 limit it to the types of claims that are in this
16 lawsuit; i.e., executive session in a noticed
17 location and postings on the website? I'm concerned
18 that there will be other allegations that are sort
19 of unrelated to the kinds of allegations that are in
20 the complaint.

21 THE COURT: That seems reasonable.

22 MR. SMITH: Your Honor, we don't intend to go
23 much further. We provided the next exhibit that
24 we'll be playing concerning the violations, so
25 they're aware of how far we'll be going. It is not

1 going to last much longer.

2 THE COURT: Okay.

3 MR. SMITH: Your Honor, what we're about to do,
4 and she'll explain what we're hearing, is an audio
5 portion of the session.

6 BY MR. SMITH:

7 Q. Ms. Garris, do you -- do you recall this year's
8 January 15th board meeting?

9 A. Yes, sir.

10 Q. Why do you recall it?

11 A. Because we entered executive session in the
12 boardroom. We took a vote back there.

13 MR. LYON: Excuse me.

14 BY MR. SMITH:

15 Q. Why was that a problem for you?

16 A. Because, as I've said, during my time as a
17 board member, I've sent e-mails, even as a
18 constituent, and said we've got to do better; we're
19 lacking transparency. You know, the people aren't
20 well-served.

21 So for them to already have a lawsuit pending
22 with an allegation of entering executive session in
23 the boardroom, taking a vote back there and
24 announcing the reasons for it to take place while
25 I'm on the school board shows, you know, that

1 they're really not interested in adhering to the
2 law.

3 Q. Okay. And where was the January 15th, 2019
4 meeting noticed to begin?

5 A. I mean, without having the agenda --

6 Q. In terms of the location. I'm sorry. Where
7 was it supposed to begin, the January 15th meeting,
8 the board meeting? If you don't remember, you can
9 just say you don't remember.

10 A. Yeah. I don't remember.

11 Q. Okay. Did you decide to record what you heard
12 on that day --

13 A. Yes.

14 Q. -- with the board members?
15 Why did you decide to do that?

16 A. To show that there are ongoing FOIA violations.

17 Q. Okay. Be sure you speak up so the court
18 reporter and judge can hear you.

19 A. To show there are ongoing FOIA violations.

20 Q. Okay. I'm going to start playing it now.

21 (Audio played.)

22 BY MR. SMITH:

23 Q. All right. Now, Ms. Garris, we're only eight
24 seconds into what's going to be about a minute long.
25 What are we hearing right there? What is happening

1 with your recording device?

2 A. That's just board members talking before
3 entering executive session.

4 Q. Where are you right now in the actual room?
5 The judge saw the video earlier. Help explain to
6 him where you are at this moment.

7 A. On that particular day, I can remember because
8 there was a -- well, the agenda said student appeal.
9 But it was actually a student waiver. So I was
10 seated -- as you walk into the boardroom from the
11 auditorium, Dr. Tally would have been on the end and
12 then I was seated directly to her left.

13 Q. Okay. So, to be clear, you're seated in the
14 boardroom while we're hearing this?

15 A. Correct.

16 Q. Is that the location of where this is being
17 recorded throughout the duration of it, for the
18 minute or so we're going to play this?

19 A. Yes.

20 (Audio continued.)

21 BY MR. SMITH:

22 Q. Okay. Whose voice is that?

23 A. That is Ms. Cynthia Smith's voice saying, do I
24 hear a motion? And then I hear Mary Beth talking as
25 well, kind of -- you can hear that. But I can hear

1 everything Ms. Smith is saying. She's reading from
2 the agenda.

3 Q. And give us an idea of the makeup of the room
4 here. Are all of -- the board members, are a
5 majority of them present?

6 A. All of the board members are present and all of
7 the members of -- I can't say on that specific date
8 every member of the senior leadership team was
9 present, but they're usually, 99 percent of the
10 time. All the Board meets and the Senior Leadership
11 meet together. There's very seldom that just the
12 Board meets.

13 Q. Okay. Let's talk about the placement of the
14 room. I think, on the video earlier, we saw three
15 doors that are in the boardroom. Are any of the
16 doors open?

17 A. On that particular day, I don't remember.

18 Q. Okay. Now I'm going to continue playing the
19 video.

20 (Audio continued.)

21 BY MR. SMITH:

22 Q. What did we just hear?

23 A. We heard Anne Marie Green make a motion to
24 enter executive session reading from the agenda;
25 Dr. Brent Powers seconded it, and then we entered

1 executive session.

2 Q. Again, this was in the boardroom, not the
3 auditorium?

4 A. Correct.

5 Q. What did you decide to do after recording this
6 with the audio?

7 A. I don't remember how soon thereafter, but, at
8 some point in time, I let Ms. Smith know that we had
9 entered executive session in the boardroom when we
10 should have entered out in open session. Or I just
11 said we entered executive session in the boardroom.

12 As I see things, I may e-mail them to her or --
13 I mean, that's usually -- I can recall a couple
14 times in the past where I've sent her an e-mail
15 saying, hey, this has happened, it doesn't need to
16 happen again, things of that nature.

17 Q. What do you hope to accomplish with this case?

18 A. That they will follow FOIA, that they will
19 adhere to the law, because the public is not
20 well-served if our district is not being
21 transparent.

22 MR. SMITH: Thank you.

23 Your Honor, at this time, I don't have any
24 further questions.

25 THE COURT: Thank you. Mr. Duff? Mr. Lyon?

1 MR. LYON: I think it's going to be me, Your
2 Honor. Thank you.

3
4 CROSS-EXAMINATION

5 BY MR. LYON:

6 Q. Ms. Garris, how are you?

7 A. Good. How are you?

8 Q. Good.

9 A. Good.

10 MR. LYON: If you don't mind --

11 MR. SMITH: Do whatever you need to.

12 MR. LYON: I'm going to sort of set it down
13 here for now. We won't be using this again.

14 MR. SMITH: I guess I need to ask -- Your
15 Honor, we have a thumb drive of this. I don't know
16 if Your Honor has a copy of it up there with you. I
17 don't know if you intend to look at this later or
18 you want to see the video again. We're about to
19 close our case, so --

20 THE COURT: I don't have the thumb drive.

21 MR. RADEKER: It's right there, the orange and
22 white thumb drive.

23 MR. SMITH: Before we close our case, I was
24 going to actually ask Your Honor, but since he
25 brought it up, do you intend to look at it again?

1 Do you want us to play it again before he takes the
2 computer down?

3 I will actually play the video later. But I'm
4 not going to play it between now and what I assume
5 will be lunch after this testimony.

6 BY MR. LYON:

7 Q. Ms. Garris, I'm actually going to switch myself
8 up a little bit here. We just heard this recording
9 that I imagine -- I understand this was -- the date
10 on this was January 2019; is that correct?

11 A. Correct.

12 Q. You were a board member then, were you not?

13 A. Yes, sir.

14 Q. Okay. And how did you record this, this part
15 of the meeting?

16 A. On iPhone.

17 Q. So you had your iPhone out on the table
18 recording it?

19 A. No; it was in my purse.

20 Q. So your iPhone was in your purse secretly
21 recording this meeting?

22 A. Correct.

23 Q. How much of the meeting did you record -- the
24 executive session did you record?

25 A. I do not remember.

1 Q. I mean, the whole thing?

2 A. I really don't remember. I'm not sure how much
3 I sent to my attorney.

4 Q. Well, since we're talking about sending it, did
5 you send it to anyone else?

6 A. No.

7 Q. Is this the first time you've recorded a board
8 meeting?

9 A. No.

10 Q. You've recorded at an executive session before?

11 A. Yes -- well, I don't know about before that.

12 Q. Let me start over. But January 15, 2019, that
13 would have been your first board meeting?

14 A. No, sir.

15 Q. Second?

16 A. No. It probably -- I think we had two in
17 December and then one or two in January.

18 Q. Okay. So this was the 15th. I'm thinking
19 that's going to be the first of the January
20 meetings. Does that sound right?

21 A. No, because, usually, our special-called
22 meetings would be -- I don't know. I don't know.

23 Q. So this was one of the first few meetings that
24 you were a board member?

25 A. Correct.

1 Q. And you made that recording for what purpose?

2 A. For my own purposes. I mean, occasionally
3 there's some disagreement about what was said and
4 who said it. And I'm not talking about just being
5 on the board; I'm talking about in general with
6 myself and the district over the years.

7 Q. I guess my question is, what was the purpose
8 of -- what was the purpose of us listening to this
9 right now?

10 A. To show that the Board and the District are
11 still willfully violating FOIA.

12 Q. In your opinion?

13 A. Correct.

14 Q. Okay. And you don't recall if the door was
15 open in this meeting?

16 A. I do not.

17 Q. Okay. The Board voted to go into executive
18 session, correct?

19 A. Yes.

20 Q. Did I miss it? I didn't hear anyone oppose
21 that.

22 A. Correct.

23 Q. So you did not oppose it?

24 A. I did not.

25 Q. Why not? Did you vote for it?

1 A. Yes.

2 Q. You did vote to go into executive session?

3 A. Yes.

4 Q. But you believe that you were doing the wrong
5 thing; is that correct?

6 A. No. I was voting to enter executive session
7 based on the motion set before me to vote to enter
8 executive session to discuss contractual matters and
9 a student appeal.

10 Q. But I think you're playing this tape to say
11 that they were going into executive session
12 improperly?

13 A. Correct.

14 Q. So you voted to go into executive session with
15 them improperly?

16 A. Correct.

17 Q. Okay. If you thought they were -- and at the
18 time, I assume, you already had a position as to
19 whether or not going into executive session the way
20 that the Board has historically done it was a
21 violation of FOIA; is that correct?

22 A. Correct.

23 Q. You understand -- that was a long question, but
24 you understand what I'm saying. Go ahead.

25 A. I assume you're saying that I understood that

1 entering executive session in the boardroom was a
2 violation of FOIA.

3 Q. But, nevertheless, you voted for it?

4 A. Correct.

5 Q. Why didn't -- as a board member, you could have
6 voted to oppose it, correct?

7 A. I could have. Yes.

8 Q. And, moreover, you could have actually stood up
9 and said, this is wrong, this is a violation of
10 FOIA, I'm actually suing you, District, over this,
11 right?

12 A. Yes.

13 Q. Why didn't you say that?

14 A. It doesn't matter what I say. Over the years,
15 I have e-mailed the Board; I've spoke before the
16 Board; I've handed over the Attorney General's
17 opinion. Even as a board member, I've had to get
18 the Attorney General's opinion, in which your office
19 disagreed with the Attorney General. So it really
20 doesn't matter too much what I say.

21 And had I stood up and said, hey, we're doing
22 this all wrong, let's go into open session, there's
23 no guarantee they would have done that. And, at the
24 time, like, I was voting to enter executive session
25 based on the motions put before me. It wasn't say

1 aye if you agree that we're legally in executive
2 session.

3 And I'm one vote of seven; usually the lone no
4 vote. So even if I said no, I'm not entering
5 executive session, we still would have entered
6 executive session.

7 Q. Would you agree that it's your duty as a board
8 member to take whatever position you have and stick
9 to it?

10 A. Yes. And that's why I e-mailed the board chair
11 afterwards.

12 Q. But, again, you didn't say anything right then?

13 A. Correct.

14 Q. By the way, do you know if it's against the
15 board policy to tape-record an executive session?

16 A. I don't know if it's against board policy.

17 Q. So, essentially, you're asking, I think, for an
18 injunction regarding -- let me go back. This was
19 January 15, 2019; is that right? January 15?

20 A. Yes, sir.

21 Q. As I understand it, the Board has changed
22 its -- has actually changed how it goes into
23 executive session in that it no longer does so from
24 the executive boardroom. Is that true?

25 A. When I first came on the board, we began

1 entering executive session out in the auditorium.
2 And they made it clear that that was not the way
3 that they usually did business. I mean, the board
4 chair even said once, you know, this is ridiculous
5 that they had to get up from their seats and walk
6 out and come back. And then in January, we entered
7 executive session in the boardroom. Since that
8 time, we have not entered executive session in the
9 boardroom.

10 So to say it's a new way of doing things, I
11 don't know. They may decide in a few months we're
12 just going to sit here again and enter executive
13 session because we don't want to get up from our
14 meal.

15 Q. So was it the very next that you actually
16 opened in the auditorium, the main room of the
17 auditorium?

18 A. Yes.

19 Q. Okay. And since then, have you opened any
20 executive session meeting in the executive
21 boardroom?

22 A. No.

23 Q. Okay. So that's nine months they've been doing
24 it the way you told them is the correct way to do
25 it?

1 A. Correct.

2 Q. So I understand, at least, to the meetings
3 you're asking this Court for injunctive relief, what
4 do you understand that to mean here?

5 A. That a judge would say if you do this again or
6 some kind of shortcut, whereas we don't have to wait
7 years for it to come before the Court again.

8 Q. All right. So why do you need that if the
9 Board is doing it the way you say is the right way
10 to do that?

11 A. Just because they're currently doing something
12 the right way doesn't mean they will continue to do
13 things the right way. And that's only one FOIA
14 violation. I mean, I -- there's seldom ever many I
15 go to that there aren't FOIA violations.

16 Q. I understand, according to you, that you
17 believe they are ongoing FOIA violations. But for
18 the purposes of this lawsuit, we're dealing with
19 agenda postings and meetings. So if the Judge is
20 going to enter an injunction here, he would do so as
21 to those two things only, I believe. I don't want
22 to speak for Your Honor, but that would be my
23 position.

24 So, essentially, you want a judge to tell the
25 District to keep doing what they're doing and never

1 do it the old way again? Is that a fair way to say
2 that?

3 A. I don't know exactly how would you word that.
4 Keep doing what you're doing? No. I would not want
5 him to tell them that because, like I said, there
6 are -- I want him to be specific about the way you
7 entered executive session from February of 2019 to
8 October of 2019. This is the way it's supposed to
9 be done; this is the way I want you to continue
10 doing it, that way.

11 Q. After hearing the tape, I want to go back here
12 and start where I -- where we initially began -- in
13 fact, Mr. Smith initially began, which was the
14 original complaint filed in December of 2017.

15 We agree that was there. And we had a
16 discussion about what was part of that original
17 complaint and what's now part of the amended
18 complaint. And I think -- did you say you were
19 initially looking for recordings and some documents?
20 Right?

21 A. Yes, sir.

22 Q. Okay. And the District has since provided a
23 recording; is that correct?

24 A. Yes, sir.

25 Q. Okay. And -- so if it was essentially a suit

1 for a recording and documents, we now have these
2 other categories of alleged violations related to
3 meetings and related to agendas. How did that make
4 it into the lawsuit?

5 A. Well, like I said, as I came across things
6 after I met with Mr. Smith -- and I believe that
7 would have been early 2017 -- then I would just --
8 as I noticed FOIA violations, I would e-mail those
9 to him.

10 So my original complaint, going to see
11 Mr. Smith, was I really want a copy of this audio;
12 I've got the Attorney General's opinion, and it
13 seems like I should have the audio. And I came in,
14 you know, with a box of things. And I remember
15 Mr. Smith looking at me, saying, well, is that all
16 you want --

17 MR. SMITH: Your Honor, objection, because at
18 this time, I need to advise my client that some of
19 this is probably covered under attorney-client
20 privilege. We would assert it would be. However,
21 she's welcome to waive it. We just want to be sure
22 she knows.

23 THE COURT: Okay.

24 BY MR. LYON:

25 Q. So do you recall that, at some point along the

1 way, there was an agreement to amend the complaint?

2 A. Right.

3 Q. What's your understanding of that again?

4 A. We agreed to amend the complaint if documents
5 were provided -- I guess I should go back a little
6 further and explain that on December the 7th of 2017
7 is when this lawsuit was filed. December -- no,
8 December 6th, 2017 is when this lawsuit was filed.

9 On December 7th, 2017, I received a letter by
10 e-mail from the District. Across the top of the
11 letterhead, it was dated December 6th, 2017, and it
12 included a lot of things in my original complaint.
13 So that took care of a lot of those.

14 We still didn't have the recording and we still
15 didn't have the architectural selection documents.
16 And then we agreed to amend the complaint at some
17 point in time. I don't remember if there was a
18 formal agreement or verbal, to say, okay, if we give
19 y'all the audio and we tell you we've lost two
20 years' worth of documents from architectural
21 selection committee meetings, do you agree to amend
22 your complaint? And that's what we're here on
23 today.

24 So as I came across things along the way, I
25 just sent those to Mr. Smith. This wasn't -- what

1 my original complaint was about was not about agenda
2 violations or open meeting violations. Had I known
3 that it would be included as part of my lawsuit,
4 like I said, instead of sending my daughter in, I
5 would have had video; I would have took pictures;
6 you know, there would have been more substantial
7 evidence than what we already have.

8 Q. Well, if you got what you initially came for,
9 why not drop the entire suit?

10 A. Because I'd really like to have my attorneys'
11 fees paid. I don't believe any member of the public
12 should have to sue a public body to receive
13 documents that they're entitled to.

14 Q. So you left these in to sort of go get your
15 attorneys' fees?

16 A. Well, no. I want to change the way the
17 District operates, number one. But we tried -- I
18 don't know what I can say in court. We tried
19 settling as well as saying, okay, we have everything
20 we need now, we can settle this. And we've actually
21 tried this over the last couple of months: You just
22 pay the attorneys' fees, but the District was --
23 they refused to admit their wrong and that was
24 hanging up the settlement agreement.

25 MR. LYON: I'd like to introduce something in

1 evidence that's currently not in evidence and allow
2 them to object or not.

3 THE COURT: Okay.

4 MR. SMITH: I think I want to know the purpose.

5 MR. LYON: To memorialize the agreement that we
6 had regarding to amending the complaint, which I
7 think you brought up and she has testified to.

8 MR. RADEKER: With the proviso that it's made
9 clear that this order was never signed by Judge Lee
10 or filed or --

11 MR. LYON: Sure. Okay.

12 BY MR. LYON:

13 Q. Ms. Garris, I want to ask you if you recognize
14 this document. Had you ever seen this document?

15 A. No. This does not look familiar to me.

16 Q. Okay. It's got the signature of both myself
17 and your attorney; is that correct?

18 A. Correct.

19 Q. Okay. If you would, read this document
20 beginning on -- this is the one, two, three, four,
21 fifth line down starting right here with "in."

22 MR. LYON: Your Honor, I apologize, I don't
23 have another copy right at hand.

24 A. In exchange for Plaintiffs amending its
25 complaint to dismiss several causes of action,

1 Defendant has consented to the filing of the amended
2 complaint, has agreed to provide a certain audio
3 recording relevant to a cause of action being
4 dismissed, and has agreed to provide a written
5 statement regarding the availability of some
6 information relevant to a separate cause of action
7 being dismissed.

8 Accordingly, it is therefore ordered -- hereby
9 ordered as follows: One --

10 Q. That's sufficient. Yeah. I just wanted to get
11 that on the record. So, according to this, our
12 agreement was the audio recording and a statement
13 from my office, essentially, that the records you
14 requested were not --

15 MR. SMITH: Objection. Is that a question?

16 MR. RADEKER: And, in any event, it's
17 characterization. The words speak for themselves.

18 THE COURT: I'll sustain the objection,
19 Counsel.

20 Counsel, y'all need to choose one or the other
21 to make objections.

22 MR. RADEKER: Yes, sir. Sorry about that.

23 BY MR. LYON:

24 Q. Let's get back to the board meetings. Let's
25 talk about these. I think you told me -- well, the

1 December 6th meeting, you did not attend. That was
2 Ms. Gilly --

3 A. Correct.

4 Q. -- that attended that meeting, correct?

5 Okay. And then I thought I heard you say in
6 your deposition that you did not attend the March
7 21st meeting. Do you recall?

8 A. I read my deposition. After I was able to see
9 the exhibits and the sign-in sheet, I see my name on
10 there. So I went back and read my deposition
11 because I couldn't remember what I told you. And I
12 never answered your question. I made a couple
13 statements about sometimes I came to board meetings
14 and I may not have signed it.

15 Q. I think you referred to your father-in-law's
16 birthday or some such. That's fine. I won't hold
17 you to it. Essentially, you're saying that you now
18 know you did come to that March 21 meeting?

19 A. Right. Not only do I remember, after going
20 through the minutes, but my name is also on the
21 sign-in sheet for that meeting.

22 Q. Okay. And the -- the June 15th meeting, you
23 said you didn't attend that one. That was the
24 morning, 7:30 a.m.?

25 A. Correct.

1 Q. And the July 18th meeting, which was the
2 subject of another agenda, I think you told me you
3 couldn't recall in your deposition. I think I heard
4 you say today that you do remember going to that?

5 A. Yes, I do. Actually, afterwards, I found some
6 video of that meeting.

7 Q. Okay.

8 A. Yes.

9 Q. And then I think you told me, also in your
10 deposition, at the November 14, 2017 meeting -- this
11 is the one where Billie went in, your daughter. You
12 didn't recall coming back for that one. But now it
13 sounds like you do recall that.

14 A. Correct. We remember exactly where we went to
15 eat and then when we came back afterwards.

16 Q. Okay. So tell me -- let's talk about that
17 November 2017 meeting. Why -- why did you send
18 your -- what was the purpose for going to that
19 meeting?

20 A. Well, over that summer, the football stadium at
21 my old elementary school, my old high school, now,
22 it's the elementary school, had been demolished.
23 And I talked with Mr. Grady Harmon during this time.
24 And I said, how is it that we didn't know that the
25 football stadium was going to be demolished? And he

1 said, well, we talked about that as a board and we
2 just decided we're tearing down the football
3 stadium.

4 And I said, well, you can't do that. You know,
5 somewhere along the way, this has to be announced
6 publicly. You had to hire a contractor. You got
7 letters from the Town of Gilbert. So I said, can
8 you explain to me how executive session works?
9 Maybe I need to start showing up at 6:00 and hearing
10 something I'm missing during the rest of the
11 meeting. And he said, well, you wouldn't hear
12 anything anyways because once we sit down at 5:30
13 and eat supper, we don't come out again until 7:30.

14 So I spoke with -- at the time, the chair was
15 Chair Knight. So a couple months after that, I
16 spoke to her about the demolition of the football
17 stadium. And I said, how is it that the public was
18 not made aware until a wrecking crew showed up and
19 started tearing the thing down? And she said, well,
20 we were in a hurry and we can take action as a board
21 without consulting the public or without announcing
22 it to the public.

23 That's why I sent my daughter in, in November,
24 because I wanted to see exactly how they entered
25 executive session; if they came out and announced,

1 because I don't just like taking somebody's word for
2 it. So we got there really early. I sent her in.
3 She came out and confirmed what the board member had
4 already told me, was that they don't come out for
5 executive session.

6 Q. Why did you send her in if you don't like
7 taking people's words for it?

8 A. Well, she's going to tell me the truth. And we
9 were texting back and forth. You know, the whole
10 time, I was working and she would send a text and
11 say, they're not here yet. A few minutes later, you
12 know, they're not here yet. And she really enjoys
13 board meetings.

14 Like I said, if I had known this was going to
15 be included in my complaint, I most definitely would
16 have went in. But I just assume her going in and
17 coming out and telling me no, Mom, they never walked
18 out there, that confirmed what I needed to know, you
19 know, when I sent that on to Mr. Smith saying, hey,
20 look, they really don't come out of that room to
21 announce why they're going into executive session.

22 Q. And this allegation was actually in your
23 initial complaint?

24 A. See, I went to see him in early 2017. And
25 then, like I said, I came with a couple things I

1 wanted to give him, the audio and some FOIA requests
2 that had been ignored. So I didn't realize that
3 nothing had been filed, I guess, like -- I assumed
4 over that year, 2017, the stuff I was sending him,
5 he was just tucking away in his mind for, you know,
6 okay, we can bring this up later and show them that
7 this is continuing, so something needs to be done to
8 fix it. I did not realize that this was going to be
9 part of my original complaint.

10 Q. Did you read your original complaint?

11 A. Yes. But I didn't know until -- when I got
12 this in December, I was under the impression that
13 this had been filed months earlier.

14 Q. Okay. I'm ready to move on and talk about
15 agendas. Do you know anything about the District's
16 website? Who creates it?

17 A. I learned, during the depositions, a lot of
18 that information.

19 Q. Okay. And it's actually contracted by a local
20 company. Is that what you learned?

21 A. Well, that part, I already knew.

22 Q. Okay. So we're dealing with -- there are two
23 that are, you say, posted within the 24-hour time
24 frame, the March 21 and July 18; is that correct?

25 A. Correct.

1 THE COURT: Let me interrupt you. Let me make
2 sure I clarify. With regard to the executive
3 session issue, is your complaint that they were not
4 properly in an open session when they announced they
5 were going into executive session or that they were
6 in the open session but the open session was not
7 where it was previously announced it was going to
8 be?

9 THE WITNESS: My complaint with it is that if
10 you wanted to hear why they were entering executive
11 session, you could not, because when you came into
12 the auditorium, there was no way to hear the vote
13 being taken. So you would have no way of knowing
14 why they were entering executive session.

15 THE COURT: Okay. Were the doors closed to
16 the --

17 THE WITNESS: My daughter says they were.

18 BY MR. LYON:

19 Q. All right. You -- let's talk about the March
20 meeting. And you pointed us to Plaintiff's 10. Do
21 you have that?

22 A. Yes, sir.

23 Q. Now, this shows what again?

24 A. This shows a copy of the agenda for the March
25 21st, 2017 board meeting and the document

1 properties.

2 Q. But not anything related to the posting of this
3 document, correct?

4 A. Correct.

5 Q. Okay. If this document was posted late, what
6 harm -- three hours late, what harm to you? Was it
7 harmful to you?

8 MR. SMITH: Objection, Your Honor; relevance.
9 FOIA stands as the ability of the public to be
10 aware.

11 Ms. Garris, as you can see from the Plaintiff's
12 pleading, Jada Garris, on behalf of others similarly
13 situated, is standing here on behalf of the public.
14 The harm, the irreparable injury that comes from
15 FOIA at 30-4-80, the last sentence of A says that:
16 The violations of this chapter are an irreparable
17 injury. Harm, for Your Honor, is presumed under the
18 law when a violation is established.

19 To go into why Ms. Garris thinks she was harmed
20 or was not harmed is irrelevant for this Court's
21 consideration.

22 THE COURT: The statute does say it's
23 irreparable harm. What's the relevance?

24 MR. LYON: Well, we pointed to some law that
25 discusses whether the plaintiff can produce any

1 evidence about whether there was harm.

2 THE COURT: I'll allow the question.

3 So go ahead.

4 THE WITNESS: So, to me, was there any physical
5 or emotional harm? No. I can't speak for others.

6 And -- so, no. That answers the question, I guess.

7 BY MR. LYON:

8 Q. And you actually made it to that meeting,
9 correct?

10 A. I did because -- well, I would have. The board
11 meetings are announced a year in advance, so you
12 know when they are.

13 Q. You knew what was going to be on that meeting,
14 correct?

15 A. Yeah. I'm trying to think --

16 Q. This is the one where Ms. Hill --

17 A. Oh. That's where we e-mailed each other. So,
18 yes, I knew what was going to be --

19 Q. When she sent you the e-mail, did it point you
20 to that agenda?

21 A. Yes, sir.

22 Q. Okay. With regard to -- let's move on to the
23 June 15 meeting. This is the special-call meeting.

24 Do you recall whether you looked at -- for the --

25 you said the agenda wasn't posted. Do you recall

1 whether you looked for the public notice in that
2 meeting?

3 A. I don't recall. I know the law speaks to the
4 agenda being posted. And that's what -- I knew
5 that's what I was looking for to turn over to
6 Mr. Smith to say here's repeated violations. If it
7 was, I wasn't even looking.

8 Q. You weren't looking for the public notice?

9 A. The public notice, correct.

10 Q. I think you earlier testified that the concern
11 here was that you said the public might not know
12 about this meeting because the agenda wasn't there,
13 according to you. It would show the public meeting.
14 Do you dispute that the public meeting -- that the
15 special-call notice for that meeting was posted
16 timely or do you know?

17 A. Right now, I do not remember.

18 Q. All right.

19 A. Oh, I think that was the e-mail that I sent to
20 Mary Beth saying I see the public notice, but not
21 the agenda. So I'm not real sure which one there
22 was a public notice for and which one there wasn't.

23 Q. In fact, I've only got one e-mail from you to
24 Mary Beth, and that was the March meeting. Is there
25 another e-mail that I'm missing?

1 A. I was just looking to see what it said. Oh,
2 that's exactly what it says on March 21st. It says:
3 I see the public notice, but not the agenda.

4 Q. Do you recall sending an e-mail to Mary Beth
5 about an agenda not being posted in June?

6 A. I did not.

7 Q. Okay.

8 A. I did e-mail Mr. Smith after the fact.

9 Q. All right. I wanted to ask you about your --
10 this is Plaintiff's Exhibit 13. Do you have that in
11 front of you?

12 A. Yes, I do.

13 Q. This is regarding the July 17, July 18 board
14 meeting?

15 A. Yes, sir.

16 Q. And you looked under the news release page for
17 2016, 2017. Is that what it says there?

18 A. Yes, sir.

19 Q. Okay.

20 A. Well, I don't -- yeah. Yeah, that's what it
21 says. Okay.

22 Q. Okay. Are you asking the Court to make any
23 sort of injunction -- injunctive relief about
24 posting agendas? Are you asking the Court to tell
25 the District --

1 A. I don't know. I don't know what exactly they
2 are asking. Like, I know even yesterday, maybe he
3 was saying we're not asking for this anymore, but we
4 are asking for this. So, at this point in time, I
5 don't remember.

6 Q. Okay. Give me just a second to --

7 A. Okay.

8 MR. LYON: Okay. Ms. Garris, I think I'm done
9 with you. I'll turn it back over to your counsel.

10 THE COURT: Redirect, Mr. Smith?

11 MR. SMITH: Briefly, Your Honor.

12 THE COURT: All right.

13 REDIRECT EXAMINATION

14 BY MR. SMITH:

15 Q. Regarding that January executive session, were
16 you concerned by the vote for executive session or
17 where that vote occurred?

18 A. Kind of both; where the vote occurred, because
19 it occurred in the boardroom, and the vote as a
20 whole because, on the agenda, you don't have to be
21 specific about your reasons for entering execution
22 session. But when you announce to the public your
23 reasons, you do have to be specific. So there were
24 two concerns there.

25 Q. Thank you. Do you still have a copy of the

1 consent order he was discussing earlier in front of
2 you?

3 A. He may have taken it back.

4 MR. SMITH: Do you have that?

5 MR. LYON: I do.

6 MR. SMITH: You mind if I put that back in
7 front of her?

8 MR. LYON: Sure.

9 MR. SMITH: Your Honor, may I approach?

10 THE COURT: Yes, sir.

11 BY MR. SMITH:

12 Q. Ms. Garris, feel free to take your time looking
13 at this document. My question is, does that consent
14 order say anything about who would be the prevailing
15 party in this case or who would be responsible for
16 paying attorneys' fees?

17 A. No.

18 Q. Thank you. And, Ms. Garris, again regarding
19 the January recording that was played earlier, why
20 do you think the Defendant is so concerned about you
21 recording violations of the law?

22 MR. LYON: Objection; he doesn't know what the
23 Defendant thinks.

24 THE COURT: I'm going to allow the question.

25 BY MR. SMITH:

1 Q. Do you need me to ask that again or can you
2 answer it?

3 A. You can ask it again.

4 Q. Okay. Why do you think the Defendant is so
5 concerned with you recording violations of the law?

6 A. Because I'll be able to prove there's still a
7 pattern of FOIA violations and this is ongoing and
8 the pending lawsuit hasn't changed the way they
9 operate in any way.

10 MR. SMITH: Thank you, Ms. Garris. That's all
11 we have.

12 THE COURT: Any recross?

13 MR. LYON: Yes; real quick.

14 RECROSS-EXAMINATION

15 BY MR. LYON:

16 Q. Ms. Garris, the board meetings are now
17 recorded, is that correct, on video?

18 A. Correct.

19 Q. And as part of that, the opening of the meeting
20 occurs out on the dais; is that correct?

21 A. That has been the practice since February of
22 2019.

23 Q. And, actually, since then, they've been
24 recording those meetings; is that correct?

25 A. When I was looking the other day for one of

1 these, there was -- the executive session was not
2 recorded. But --

3 Q. No. The executive session wouldn't --

4 A. Well, I mean, the motion to enter executive
5 session. Like they come out, that part had not been
6 recorded. But the 7:30 part of the meeting had been
7 recorded.

8 Q. The recordings are actually now posted online,
9 is that correct, of the meetings --

10 MR. SMITH: Your Honor, I think we're getting
11 outside of the bounds of what recross would be in
12 this content. I don't recall video recordings being
13 subject of cross and wasn't part of my redirect or
14 my direct.

15 MR. LYON: It's about --

16 THE COURT: I'm going to allow it because your
17 question was about the motivation for recording.
18 I'm going to allow the question.

19 BY MR. LYON:

20 Q. So are the video recordings of the board
21 meetings now online?

22 A. Part of the meetings, I can confirm, are
23 online. Like I said, I looked for some meeting the
24 other day and I could find the general session that
25 began at 7:30, but not the vote to enter executive

1 session that took place at 6:00.

2 Q. You couldn't find it, is what you --

3 A. Well, it was not there, let's put it that way.

4 Q. You did not see it?

5 A. It was not there, so I did not see it.

6 MR. LYON: Thank you.

7 THE COURT: Any redirect?

8 MR. SMITH: No, Your Honor.

9 THE COURT: You may step down. Thank you.

10 MR. SMITH: Your Honor, at this time, we rest
11 our case.

12 THE COURT: All right. It seems like this
13 would be a good time for a short -- Counsel, my
14 preference would be we have a pretty short break. I
15 think this is looking like we can wind this matter
16 up today rather than going into tomorrow. Does
17 anyone object to a fairly short break?

18 MR. SMITH: Not over here.

19 THE COURT: It's now -- why don't we say 1:45?
20 Will that give everyone enough time?

21 MR. DUFF: That's fine. Thank you, Your Honor.

22 THE COURT: We'll be in recess until 1:45.

23 (Luncheon recess 12:39 PM -1:49 PM.)

24 MR. LYON: Your Honor, our witness just went to
25 the restroom.

1 THE COURT: We'll be at ease until she returns.

2 MR. RADEKER: While we're ease, Your Honor, let
3 me introduce Sara Laraby. This is our law clerk.
4 She was in class earlier this morning.

5 THE COURT: Nice to have you here today.

6 MR. LYON: Our law clerk may also show up.

7 Your Honor, the court reporter let me know that
8 at the end of my presentation of my cross of
9 Ms. Garris, I should have introduced into evidence
10 the document regarding the draft consent order. So
11 I just would like to go ahead and move that into
12 evidence right now.

13 THE COURT: Any objection?

14 MR. RADEKER: No objection. We talked about
15 this before.

16 MR. SMITH: And, Your Honor, further, as a
17 matter of clean up, the audio that was played and
18 was already entered by the parties, that did,
19 obviously, come in today. But I don't think I -- I
20 failed to identify that on the record as to which
21 exhibit number that was.

22 THE COURT: Plaintiff's 16, right?

23 MR. SMITH: It was, Your Honor. I just wanted
24 to make sure that was clear.

25 THE COURT: All right. It will be Defendant's

1 7?

2 MR. LYON: That's correct, Your Honor.

3 (Defendant's Exhibit No. 7 marked for
4 identification and admitted into evidence.)

5 THE COURT: All right. Call your next witness.

6 MR. LYON: If it pleased the Court, we'd like
7 to call Mary Beth Hill.

8 MARY BETH HILL

9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Please be seated. Once you're
12 seated, state your name, spelling your last name for
13 the record.

14 THE WITNESS: Mary Beth Hill; not a mountain,
15 but a Hill, H-I-L-L. And it's Mary Beth, two words.

16 DIRECT EXAMINATION

17 BY MR. LYON:

18 Q. Mary Beth Hill, thank you for being here today.
19 Can you start off by telling us your title, please.

20 A. Chief communications officer for Lexington
21 County School District One.

22 Q. How long have you worked in that position for
23 the District?

24 A. About 22 years.

25 Q. And I understand you're past president South

1 Carolina National School Public Relations
2 Association?

3 A. That's true.

4 Q. Is that a group of --

5 A. It's a group of school public relations
6 individuals. The national association is across the
7 United States and Canada and the state is South
8 Carolina.

9 Q. And you've won an award from that organization;
10 is that correct?

11 A. Yes. I was honored as the South Carolina
12 communicator of the year.

13 Q. When was that?

14 A. Several years ago, maybe.

15 Q. Can you tell the Court, please, what some of
16 your duties are?

17 A. So I have a very varied responsibility. So
18 it's all the communications from both schools and
19 the district office. I'm on a crisis response team
20 for student deaths, teacher deaths, or other
21 employee deaths.

22 And I am -- I deal with three law enforcement
23 agencies when we're dealing with incidents that
24 involve a crime or supposed crime in one of our
25 schools. And I do day-to-day preparation and -- for

1 parts of the board meeting.

2 My office is responsible for the setup of the
3 meeting, making sure that everything is outside
4 correctly. And then I also am responsible for the
5 honors achievements portion of the board meeting
6 where we honor students and staff who have done
7 really high-level work or won awards.

8 Let's see. Government relations committee, we
9 work with PR correspondents from each school we work
10 with. We're now taking on responsibility for all
11 the school webmasters in the 31 schools across the
12 district and much, much more. But...

13 Q. Okay. Thank you. How many folks are in your
14 department with you?

15 A. So, currently, there is a secretary, Shelly
16 Cochcroft; graphic designer, Lori Hill; social media
17 and web person, Lindsey Mitchell; and a videographer
18 and other responsibilities, Rob Starky.

19 Q. So that's five. Is that correct?

20 A. Yeah.

21 Q. Okay. You mentioned -- so a lot of what you do
22 is push out communication to the public; is that
23 correct?

24 A. Yes, all kinds of publics. But, yes.

25 Q. All kinds of publics and all kinds of

1 information, correct?

2 A. Yes.

3 Q. So it could be good news, an award, for
4 example, or bad news; is that right?

5 A. Yeah; or explanation of bad news.

6 Q. As you know, we're here today with regard to
7 this lawsuit which alleges facts related to the
8 posting of board meeting agendas on the district
9 website. Is that -- are you responsible for that?

10 A. Yes.

11 Q. Okay. And do you have some help with that as
12 well?

13 A. Yes.

14 Q. Who is your helper with that?

15 A. So Lindsey Mitchell in my office is our social
16 media and webmaster. So if it's during working
17 hours, I'll generally give her the individual
18 documents to post. If it's after working hours,
19 I'll do it because she has two little kids and I
20 don't have that anymore.

21 Q. But that's, ultimately, your responsibility; is
22 that right?

23 A. Right.

24 Q. So you push communications to what you call
25 your news release page; is that correct?

1 A. If you're speaking specifically of agenda and
2 public notice, we do it multiple places; it's not
3 just the news release page. So we'll upload it to
4 the news release page via the public notice and the
5 agenda, but we also link to that on the board
6 meeting page. So prior to the meeting, the agenda
7 is linked in the agenda section as a straight-up
8 agenda.

9 After the board meeting, when we load the video
10 of the board meeting, we also make that agenda an
11 interactive agenda. So if somebody was interested
12 in only a presentation on vaping, they would just
13 click that link on the agenda and only see that
14 portion of the tape.

15 Q. So, just to be clear, at the time of these
16 allegations, we're looking from, with regards to
17 agendas, March 27th to July 27th, you were not doing
18 video at that time; is that correct?

19 A. No. We started videotaping in '18.

20 Q. But you were then -- tell me again the places
21 you post, just very briefly.

22 A. Okay. So on our website, there is a -- we have
23 a media center link right off the front page. And
24 part of that is the news releases. So it's posted
25 in the news releases, both the agenda and the public

1 notice. It's posted on the board meeting page.
2 That's not changed. That was always in the agenda
3 section on the board meeting page. And it's also
4 posted to our crawl-across the page that there's a
5 board meeting on such-and-such a date. And that's a
6 link, too, to the agenda. And it is also -- you
7 want only the website?

8 Q. No, ma'am. Tell me --

9 A. Okay. So we also post on social media. We
10 have a whole message recording. So if you call any
11 of the offices anywhere in the district or a school,
12 you get a hold message that comes from our office
13 and it tells of any upcoming board meeting dates and
14 times.

15 You can also call our information line in the
16 district. And it's a 1, 2, 3 -- push 1, 2, 3, and
17 you can get a list of the next board meetings for
18 the next six months to a year out.

19 Q. Did we talk about physical places where agendas
20 are posted?

21 A. No, we did not say. So you'll notice, over the
22 life of the agenda or the public notice, that we've
23 had to start calling our building Building 1 because
24 we're now in three buildings in that area on Tara
25 Springs Road.

1 So, anyway, in our building, for instance,
2 there are three entrances or exits. One is the
3 auditorium, one is the front door to the lobby, and
4 one is an exit out to the parking lot to the other
5 end of the building. And we post the agenda on all
6 those doors.

7 Q. And I'll stop you real quick. This video that
8 we looked at earlier, we're going to look at it
9 again, actually. But just since you brought it up,
10 this is the front door of the auditorium?

11 A. Yes. So our building is sort of two sections.
12 In fact, there's a dividing door between this part
13 of the building and the other part of the building
14 that can be closed. And that's primarily because
15 sometimes we had in the past, until we've gotten so
16 big, it's hard to do that, to find an empty day.
17 But we had in the past rented, for instance, the
18 auditorium to South Carolina Department of Ed for a
19 day of training. So that enables it to be cut off
20 from the rest of the building in times like that.

21 But, anyway, if you're facing the building,
22 this is the left arm of the building, the section
23 that has only the auditorium, boardroom and
24 kitchenette.

25 Q. And to the right is going to be what?

1 A. To the right, once you pass the kitchenette, is
2 the superintendent's area. And then there's --
3 then, past the superintendent's area, is the lobby
4 to your right and then further offices down the
5 hall. HR, for instance, is primarily the other end
6 of the building on the first floor.

7 Q. We generally call that the district office?

8 A. Yes.

9 Q. Just for the record --

10 A. Although, Dr. Little doesn't want us to call it
11 that anymore. It's now central services.

12 Q. Fair. And, just for the record, we're looking
13 at a still of the video which, I think, is
14 Defendant's 4. And we'll get back to this video.
15 But we were talking about all the places that you
16 post. So --

17 A. If you look at that video, there's an agenda
18 posted right now.

19 Q. Where would that be on that door?

20 A. If you see the two page stacked on the left,
21 that's an agenda.

22 Q. Okay.

23 A. Because my staff is totally frustrated by the
24 fact they've been two pages lately and they have to
25 tape up two pages. So at every doorway, they tape

1 up both pages like that so that somebody coming or
2 going can see it.

3 Q. One more location I think would be the schools
4 around the district. They actually --

5 A. So the schools around the district actually
6 have to post on their front door. And in the past,
7 we sent an agenda to post. Lately, we send them a
8 public notice telling them that they can post the
9 public notice because it tells -- the public notice
10 always specifies what's in executive session, as
11 well as a date and time, and it tells them where the
12 agenda can be found.

13 Q. And you said the public notice states what's
14 going to be on --

15 A. Executive session, yes.

16 Q. What's in the executive session. Okay.

17 A. It does.

18 Q. Just briefly, as you can -- as I understand,
19 there are a couple types of meetings, maybe three; a
20 regular, a special-called, and maybe some
21 workshops --

22 A. Workshops and work sessions.

23 Q. Can you just distinguish those briefly?

24 A. So a regular board meeting is the third Tuesday
25 of the month. It's always the third Tuesday of the

1 month. And that's defined in board policy. And
2 then we have added a second meeting, often at the
3 beginning of the month, for other work-session-type
4 items.

5 The Board felt that they weren't getting enough
6 in-depth knowledge about certain kinds of programs;
7 for instance, maybe what we're doing with Project
8 Hope or some of those things. So they added another
9 meeting, which is primarily just presentations and
10 questions about programs.

11 Q. Okay. Thank you for that. Did you talk about
12 regularly scheduled meetings?

13 A. The regular scheduled every third Tuesday;
14 workshops and work sessions are meetings that are
15 called for a specific purpose. So during budget
16 season, for instance, there's always a workshop
17 board meeting to go through the first reading of the
18 budget. It's the longest presentation of the budget
19 throughout the budget process.

20 Q. Okay.

21 A. Which does three or four readings, usually.

22 Q. And the regularly scheduled meetings are
23 announced well in advance, right?

24 A. A year.

25 Q. A year's worth, right?

1 A. A year's worth. It's always the third Tuesday.
2 Unless Thanksgiving falls weird or something that
3 would not make us be in school, it's usually the --
4 it's the third Tuesday. That's the definition in
5 the board policy.

6 Q. And that's posted on the website as well?

7 A. Yes.

8 Q. As soon as you know that?

9 A. Actually, as soon as we get dates for the next
10 year, they're already posted online. They're just
11 not active until it's time for that meeting. But
12 you can see the date.

13 Q. You can see that they're not current?

14 A. Yes.

15 Q. Okay. Can you tell me about your office's
16 involvement in creating media agendas.

17 A. So the very first part of the agenda-creation
18 process is Cheryl Layton gathers input from SLT
19 about things they may need to present.

20 Q. SLT?

21 A. Senior Leadership Team. That's all the chiefs,
22 chief communications officer, chief HR, operations,
23 student services -- anyway, all of us.

24 Q. You?

25 A. Yeah, me.

1 Q. Okay. So continue. I'm sorry to interrupt.
2 SLT?

3 A. So we submit -- for instance, if there's a
4 policy that needs to be updated that the law has
5 changed or something affects a policy, then we let
6 her know that we have to bring a policy for first
7 reading.

8 We give her that information and she starts a
9 rough draft of the contents, what the items are.
10 And then once she has a pretty good feel for that,
11 she sends it to me and I create -- we have a
12 template for board agenda so that it's always the
13 same and always looks the same so everybody knows
14 what they're looking at. And so we file the
15 template to set it up.

16 Q. Okay.

17 A. We, being I.

18 Q. What's that?

19 A. We, being I.

20 Q. Oh, we, being I.

21 Okay. And the template actually sort of puts
22 it into format, actually puts the brand on it; is
23 that correct?

24 A. Right. So it's a branded page. And it has --
25 for instance, it has, if it's a section item, it has

1 accepted automatically be bold-faced. If it's -- so
2 we apply the styles to the different parts of the
3 agenda.

4 Q. So Cheryl gives you the rough and you make it
5 look nice?

6 A. So once I have my agenda set up, I send it out
7 to SLT two or three more times to make sure they
8 don't have anything else to add or that I have not
9 misspelled somebody's name who's presenting or that
10 they -- there's not something at the last minute
11 they decide they're going to hold to the next
12 meeting.

13 Q. So let me just, real quick, go back. This
14 process starts when?

15 A. Weeks ahead of time.

16 Q. Okay.

17 A. So, usually, it's -- like, for November, we're
18 already talking about agenda items for the November
19 meeting.

20 Q. When is the November meeting?

21 A. So it wouldn't be until the third Tuesday of
22 November.

23 Q. Okay.

24 A. But we already do those things a couple weeks
25 out, at least.

1 Q. When do you try to have that agenda finalized
2 in terms of the items on the agenda?

3 A. The week before the board meeting, I start
4 sending it out to people to say -- to confirm, as
5 early as Tuesday or Wednesday, because our go date,
6 the way we want to -- when we aim to send it out,
7 our first go date is Thursday.

8 Q. And the go date is when and what?

9 A. So on the go date, we upload the agenda on the
10 public notice --

11 Q. To your website?

12 A. To our website. And then we -- and we do that
13 now first because media -- somebody in media can't
14 accept documents anymore because of the threat of
15 malware and everything. So they won't accept an
16 attachment. So now we send them a link in the
17 agenda in the public notice rather than sending them
18 the agenda.

19 And then we post it there; we link to it on the
20 board page; we link to it on the crawl. We have
21 already recorded ahead for the whole messages and
22 all, so those aren't done now. And then we post --
23 Lindsey will also push it out on social media at
24 some point closer, a reminder of the board meeting
25 and see if I left off any place s or parts. But

1 many, many pieces and parts.

2 Q. Okay.

3 A. Oh, I send it to the principals; the public
4 notice is put on their door that same day.

5 Q. And you send it to the media as well?

6 A. Yes, to the media. I have a media group, a
7 large media group.

8 Q. An e-mail group?

9 A. Uh-huh.

10 Q. I want to talk before we get into some of the
11 more specific allegations of this complaint. Can
12 you tell me how -- sort of detail how you post --
13 how you take a document and put it into the website
14 best you can for the layman?

15 A. So I'm trying to create a visual image without
16 the visual image. So we sign into the system that
17 runs behind -- the website is housed on Adobe server
18 by the company that we contract with. There's a
19 redundancy, so it's saved in several locations. So
20 if there's an earthquake in California, we don't
21 lose all of our website. So there's redundancy.

22 And then what we do is we sign into that
23 system. And then we have to, first of all, deposit
24 the file in the appropriate file. So there's a
25 folder on the repository that says news releases.

1 And then within the repository that says news
2 releases, there's each academic fiscal year.

3 So the year we're in right now would be
4 2019/2020, for instance. So we save the original
5 agenda as a PDF and we upload it in there of both
6 the public notice and the agenda. We can look at
7 that and get the link to that document directly, and
8 that's what we link to in other places.

9 And then to get it on the news release page, we
10 have to do it differently. I can just take that
11 link and link it to the date on the board meeting
12 page. But on the news release page, I have to --
13 it's an app behind the system process, so we open it
14 up. We have a new news release. We put the file
15 name; we link to that file.

16 It says: Are you confirming today's date? We
17 say, yes, we're confirming today's date. It
18 defaults to the current date. And then it says, you
19 know, are you confirming the time? We confirm the
20 time. And then we hit go and it's up.

21 Q. And then confirming the date and time, that's
22 sort of a new feature of this website; is that
23 right?

24 A. Yeah, within the last year or so, primarily
25 because when we started this discussion back and

1 forth about this, we decided we needed an easier way
2 to say for absolutely sure you can't quarrel, this
3 is what's what. In the past, like in '17, we would
4 have put that end dash and the date in.

5 Q. We'll take a look at that in a second. To
6 confirm, your website is created by an outside
7 organization, Splash Omnimedia --

8 A. Splash Omnimedia does it for us. They do many
9 national websites.

10 Q. They created how you upload a document to a
11 website?

12 A. Right. Right. They're the programming behind
13 the page.

14 Q. And they also help you with day-to-day stuff?

15 A. They help us when there's an issue or we need a
16 programming change or we need to add a section or
17 something. But we do all the everyday day-to-day
18 stuff.

19 Q. Did we recently find an issue, as you call it,
20 when we were preparing for this case?

21 A. We were looking for something recently and
22 five -- was it five or six of the items -- that have
23 been on the page were suddenly not on the page.

24 Q. And they were on the page from 2017 or 2018?

25 A. Yes. They were on the page the day before or

1 two days before when we looked. And when we went to
2 pull it again recently, when we were preparing for
3 this, all of a sudden, it wasn't there anymore. So
4 we contacted Omnimedia.

5 They can't, at this point, tell us what
6 happened. They don't know how it happened. They do
7 updates. They said it could have been an update
8 that was a glitch and affected that page. It could
9 be that somebody set page parameters that we don't
10 know about yet, they're still looking, that could
11 have cut off the bottom of the page. But -- you
12 know, could have limited it to a certain number of
13 lines. But we don't know the answer yet.

14 Q. Tell me if I'm wrong. But I think the files,
15 your files --

16 A. What we did check, when we looked to see what
17 happened was, were the files still in the file
18 depository, and they were. They're there.

19 Q. So, at the end of the day, it sounds like you
20 have control over this website, but only to a
21 certain --

22 A. Up to a point.

23 Q. Up to a point.

24 Okay. Quickly, before we move on to the
25 specific allegations, I want you to talk about how

1 you might change a document that is posted -- that
2 you've already posted online. So let's say you
3 posted it on that go date --

4 A. Right.

5 Q. -- of three, whatever -- Thursday. How would
6 you change -- when and how would you change a
7 document?

8 A. So there would be two types of things that
9 could happen --

10 Q. Changes, you mean?

11 A. Two types of changes. So there would be did
12 the Board, before the 24-hour date, decide they
13 needed to change something in the agenda?

14 Q. An item?

15 A. Yes. Adding a change to the actual agenda to
16 what is going to happen that day.

17 Q. Right.

18 A. So if they decide that, then we upload it, not
19 over the file; we create another line item that is
20 listed as amended for an agenda. So the file name
21 stays the same, except for when you see it on the
22 news release page. It now says an amended and the
23 day of posting. So that's one type of posting that
24 would change the date on the posting.

25 Q. And that would change items for the Board's

1 consideration on --

2 A. That would be something that was actually going
3 to happen in the board meeting, either executive
4 session or open session.

5 Q. So that would be a substantive change?

6 A. Yes.

7 Q. And non-substantive change?

8 A. Okay. So it might be that it went up on
9 Thursday and Board Chair Cindy Smith points out that
10 I have a misspelled word in a line on the agenda.
11 And if she points out that I have a misspelled word
12 and being that we're in the education business and
13 that's not highly thought of, then we would take
14 that -- I would correct that word, the spelling of
15 that word, and I would just reload the file on top
16 of itself.

17 Q. You would reload -- you would re-save the file?

18 A. So I would fix it in the Word document. I
19 would re-save it as a PDF and I would upload one PDF
20 on top of the other. It has the same name, so it
21 replaces the previous file.

22 Q. It has the same file name?

23 A. Yes.

24 Q. What's the reason for that? Does it have to do
25 with the link?

1 A. Yeah. Well, because we don't want to do the 30
2 minutes of work over again. This is a five-minute
3 fix. So if you load the file over on top of itself,
4 you don't have to rebuild the link and change all
5 that. If you had changed the name of the file, you
6 would have to start all over.

7 Q. All right. Let's talk about the specific
8 allegations of this complaint, which you're familiar
9 with. But I'm going to give you an exhibit. And
10 I'll grab mine over here. Thank you.

11 So, as you're aware, I think, that the FOIA
12 requires that public bodies are supposed to post
13 their agenda on their website, if they have one, at
14 least 24 hours prior to the time of the meeting; is
15 that correct?

16 A. Right. We aim for more than 24.

17 Q. All right. And you're aware that the
18 allegations in this complaint are that on three
19 occasions, you have not timely posted?

20 A. Well, it's my understanding the allegations are
21 that the properties of the documents show a posting
22 time different than what we say happened.

23 Q. Okay. And what we say happened -- what do you
24 say happened?

25 A. Say that it was posted on time and that

1 something about that file changed and we replaced
2 the file later.

3 Q. All right. Let's look at Exhibit 1. This is
4 Defendant's Exhibit 1. Tell me what the first page
5 of this is.

6 A. So this is a printout or a screen capture of
7 what the listings are on the news release page for
8 the '17/'18 school year.

9 Q. Okay. And we have a section highlighted which
10 would not appear on the website. But, nevertheless,
11 we've highlighted --

12 A. Yeah. The yellow wouldn't be there on the
13 website.

14 Q. But look to that highlighted section and
15 explain to me what that says.

16 A. Okay. So it says that 07/18/2017 board
17 meeting, which is the name of the board meeting.

18 Q. As in the board meeting is going to occur --

19 A. On the 18th of July. And then it says it's the
20 agenda for that meeting. And then the M, dash, and
21 the date next to it are the date it went live, that
22 it was created, and posted.

23 Q. And posted and sent around, as you described
24 earlier?

25 A. Right; to the media with public notice, to the

1 schools to put on their front doors, to go through
2 the whole checklist.

3 Q. We forgot one which, I think, is sending it out
4 with the board packet. Is that correct?

5 A. Yes. I send the PDF to Cheryl and she
6 incorporates it into the board packet that -- the
7 Board gets all the copies of the first drafts and
8 everything they'll be reviewing.

9 Q. So, looking at this, you believe this agenda
10 was posted on July --

11 A. On the 11th --

12 Q. -- 11th?

13 A. Yes.

14 Q. You're talking over me.

15 A. Sorry.

16 Q. You going to get our court reporter mad.

17 A. You can scold me. Yes, 7/11.

18 Q. So 7/11 is when you say this was posted?

19 A. Yes.

20 Q. Let's go on to the next two pages, 2 of 8 and 3
21 of 8. Can you tell me what this document is?

22 A. This is a copy of the e-mail public notice to
23 the media. That's who all these people are that are
24 listed in the to section. And, also, copied my
25 staff and Cheryl Layton so that --

1 Q. And again -- sorry, go ahead.

2 A. That's all right. And it says that this case,
3 the agenda was attached.

4 Q. And then what's the date on this e-mail?

5 A. July 11th.

6 Q. And that's the date, both in the date column
7 from the e-mail that's automatically generated and
8 also the date at the top of it?

9 A. Yes. So it's date-stamped in the properties
10 that are saved from the e-mail and it's also
11 date-stamped in the body of the e-mail as part of
12 the public notice.

13 Q. And, essentially, the body of the e-mail is --
14 that's, essentially, your public notice, too, right?

15 A. Yes, it is. And in this particular meeting,
16 the only executive session item was to discuss
17 employment recommendations.

18 Q. Okay. So moving on to -- this is page 4 of 8
19 of Exhibit 1. Can you tell me what this is?

20 A. This is an agenda.

21 Q. Is this the one attached to the prior e-mail?

22 A. Yes, it would be.

23 Q. Let's go on to page 5 of Exhibit 1.

24 A. Okay.

25 Q. And I apologize for the size of this type. But

1 do you recognize this?

2 A. This is the same agenda. And this is document
3 property screen capture, evidently. And it's of the
4 PDF -- the properties of the PDF.

5 Q. That was attached to that e-mail?

6 A. Yes.

7 Q. And the create date and modify date are both
8 7/11?

9 A. 7/11/2017.

10 Q. Okay. All right. Now let's go to the next
11 page 6 of 8.

12 A. Okay.

13 Q. And, actually, 7 of 8. These go together.

14 A. Okay. All right. 6 is the agenda again; 7 is
15 the back of the agenda. So before we give them out
16 at board meetings or anything, if it's a one-page
17 agenda, we try to help the Board promote itself, so
18 we copy this on the back of an agenda.

19 So it gives all their contact information and
20 it keeps their name in front of them so when they
21 come up for reelection, they'll recognize their
22 names.

23 Q. And then the final page of this exhibit, page
24 8.

25 A. Page 8 is the agenda again and the properties

1 showing -- the properties of the document showing
2 that it was updated on the 17th. And that -- as you
3 saw before, it was a two-page document. So it
4 was -- what we actually uploaded on that date was
5 the one that had the back on it.

6 Q. And you can actually see here on the -- on the
7 properties page, it says number of pages, two; is
8 that correct?

9 A. Right.

10 Q. So let me go back. So it's -- the Monday --
11 the meeting is supposed to take place on July 18th?

12 A. Right.

13 Q. That's going to be a Tuesday, right?

14 A. Right.

15 Q. Right. Regular-call meetings?

16 A. Right.

17 Q. So the properties page on page 8 suggests a
18 create date of 7/17, the day before the meeting?

19 A. Right.

20 Q. So tell me what your normal Mondays are before
21 a board meeting.

22 A. So we start making the 300 copies of the
23 agenda, which would be the front and back, like you
24 saw that's a one-page. And then we create another
25 30-something of the agenda in color for the Board

1 for their -- for both on the dais and in the
2 boardroom so they have a copy with whatever location
3 they are.

4 And we create copies for SLT and anybody else
5 who wants them ahead of time of whoever comes by and
6 picks one up, if they don't want to just look on the
7 doors or online.

8 Q. Okay. So it looks like that on the 17th, this
9 PDF, you added a second page; is that right?

10 A. Right. For the meeting itself, we would have
11 added the back and, it looks like, I pushed it up in
12 an effort to have the Board have their name out
13 there.

14 Q. So just looking at the document properties of a
15 document that you download, you download the PDF?

16 A. Right.

17 Q. Does that tell you anything about when a
18 document was originally posted?

19 A. No. It just tells you when it was modified.
20 It doesn't tell you at all when the original
21 creation date was.

22 Q. And we actually don't have a way to determine
23 the original posting date; is that correct?

24 A. On our website?

25 Q. On your website.

1 A. No, not then; we do not.

2 Q. And y'all did not have a way to even determine
3 anything about a date that it was posted. You had
4 to go to Omnimedia; is that what you understand?

5 A. Right.

6 Q. And they could tell you what?

7 A. They could tell us a good bit more than we
8 could. They could tell us what their last
9 information was. But it's my understanding they
10 can't tell original creation date either; that their
11 system records the last modified date.

12 Q. Okay. Let's move to -- let me just sum up. We
13 can show we have an agenda created on 7/11, correct?

14 A. Correct.

15 Q. And you're adamant that it was posted 7/11?

16 A. I am.

17 Q. And you said to me -- well, let me ask you
18 this: Is that the first thing you do is to post it
19 and the whole process?

20 A. Yeah. Because that makes all the rest of it
21 easier so we can just -- once we have it posted, we
22 just lift that link for many pieces and parts.

23 Q. Okay. And on 7/17, we have an edit to that
24 page?

25 A. Yes. It looks as if -- in pulling both of

1 them, it looks like we added the second page.

2 Q. And then you re-uploaded that document; is that
3 correct?

4 A. Right.

5 Q. Into the same slot as the previous one?

6 A. Yeah; same file name, unchanged file name.

7 Q. Again, as to not break the link?

8 A. Right; so I didn't have to do 30 more minutes
9 of work.

10 Q. You know the allegation in this complaint is
11 that this agenda was up -- was posted at some point
12 between 7:45 and 8:45 p.m. to the district's
13 website. So what do you say to that?

14 A. You're speaking of the 17th or you're speaking
15 of the 11th?

16 Q. Well, distinguish them, please.

17 A. Okay. So on the 11th, the original agenda was
18 posted.

19 Q. Okay.

20 A. On the 17th, the agenda with the second page
21 was posted.

22 Q. And you consider the second page as sort of a
23 non-substantive change to that document?

24 A. It's not at all part of the board meeting or
25 the board agenda; it's blatant self-promotion of the

1 board.

2 Q. Okay. But no changes to what's going to happen
3 at the board meeting?

4 A. Right.

5 Q. So no need to submit an amended agenda; is that
6 correct?

7 A. Right. It has nothing to do with what happens
8 in the board meeting.

9 Q. The other part of this allegation is that you
10 all deliberately backdated documents to make it
11 appear as though it had been posted seven days
12 earlier.

13 A. We don't backdate.

14 Q. Do you need any water? I do.

15 A. That would be great. How much longer are you
16 going to make me talk?

17 Q. I'll try and speed it up after we know a little
18 bit more about the process.

19 I'm going to give you Exhibit 2. Again, can
20 you identify the first page of this document?

21 A. Okay. The first page of this document is,
22 again, the capture of the news release's page.

23 Q. Okay. And the highlighted section is --

24 A. Is an agenda for the March 21st, 2017 board
25 meeting. And the post date was the 16th.

1 Q. And pages -- can you look at pages 2 and 3 of
2 this document?

3 A. Okay. Page 2 -- page 2 and 3 is an agenda that
4 we had, somehow, let the last line of run into a
5 second page.

6 Q. What's the date at the top of that?

7 A. March the 16th.

8 Q. Okay. If you look at page 4 of this exhibit,
9 what does this appear to be?

10 A. Okay. So it appears to be -- I'm not sure. Is
11 it properties of the document itself?

12 Q. Yes. I believe that's correct.

13 A. Okay. So it's a PDF, a read-only document.

14 Q. Can you read the create date there?

15 A. Let's see. Created 01/16/2017.

16 Q. 3/16/17?

17 A. I can't see -- yeah. Sorry. Yeah, 3/16/17. I
18 need a magnifying glass.

19 Q. Sorry. And, again, that's the date at the top
20 of this agenda, correct?

21 A. Yes.

22 Q. And, finally, on page 5 of this document?

23 A. Yes. Everything is where it should be on one
24 page.

25 Q. And this is the PDF that was on the website?

1 A. Yes.

2 Q. The date at the top again?

3 A. March 16th.

4 Q. And then to move next to 6 of 6.

5 A. Okay. Do you want me to tell you what it is?

6 Q. Yes, please. I'm sorry. What does that appear
7 to be?

8 A. So it's an agenda and the properties of the
9 agenda. And it says that the -- you know, has
10 things like file size, page size, all that, but also
11 has a creation date of 3/6. I can't read that.

12 Q. Sorry. 3/20?

13 A. 3/20 at 6:42 and modified at 3/20 -- what is
14 that? 9:05?

15 Q. 46, I think, is what it says.

16 A. I'm telling you, I can't see.

17 Q. In any event -- so how do you explain the
18 difference between the Word document version of this
19 and the PDF?

20 A. Obviously, we realized we had a throw-over
21 one-liner. We made it fit one page and re-uploaded
22 it.

23 Q. And, we know, we actually asked Omnimedia when
24 they could tell last when this had been uploaded.

25 A. Yes.

1 Q. And it was in that 9:40 realm?

2 A. Yes.

3 Q. Okay. Let's move quickly to the final exhibit
4 here. This is Exhibit 3. Again, if you saw the
5 metadata of that document that was posted online and
6 it said 3/20, does that mean it was posted --

7 A. Originally, that time, no. So the original
8 post date is rewritten when we upload any
9 modification.

10 Q. Okay. This is our 20 -- let's see. You tell
11 me what this is.

12 A. So it's a copy of items appearing on the
13 2016/2017 news releases page. And you have
14 highlighted June 15th, 2017 special-called board
15 meeting agenda. It was posted on the 12th.

16 Q. All right. Let's look at page 2 of this
17 document, this exhibit.

18 A. This is a board agenda. But it is not one of
19 my agendas.

20 Q. How do you know that?

21 A. Because if you compare it to any of the other
22 ones, it's not at all branded the same.

23 Q. So you didn't create this agenda?

24 A. No, I did not.

25 Q. It's missing the to/from-date-range portions at

1 the top?

2 A. Right. It's missing all that.

3 Q. How can you explain this document?

4 MR. RADEKER: Objection, Your Honor. She said
5 she didn't create it. So where's the foundation for
6 how she'd be able to tell --

7 MR. LYON: Fair. Fair.

8 BY MR. LYON:

9 Q. Do you have any thoughts on why you didn't
10 create this document?

11 A. So, that week, I was in training at River Bluff
12 High School for critical friends all day, for all
13 five days. I believe I posted the public notice
14 with the one item that the meeting was called for,
15 which was the executive session item. But I was not
16 there to have done anything with the agenda.

17 Q. Okay. Turn to page 7 of this exhibit.

18 A. Okay.

19 Q. What does this appear to be?

20 A. It appears to be an e-mail from me to Media
21 with the public notice of the meeting. It looks
22 like it was sent on the 13th, which means I made a
23 typo on the first page of your exhibit. And it was
24 listed -- it gave everything, in essence, that would
25 be on an agenda, which is that it was a

1 special-called meeting for the purpose of employment
2 recommendations.

3 In June, we're all competing for the same
4 teachers or administrators, so we would call a
5 meeting just for that purpose. It told where the
6 location was going to be and it told when it began,
7 which is 7:30 a.m. for the people who work so they
8 could do it quickly and the board members could go
9 to work.

10 Q. You mentioned a typo. What were you referring
11 to?

12 A. The date on here is the 13th. But on your
13 exhibit, on page 1, it looks like I entered the 12th
14 instead, which would be a keying error.

15 Q. Are there processes in place now to prevent
16 that kind of keying error or typo, as you say?

17 A. Yeah. So, back then, we had to manually enter
18 the date; now, the date is automatically filled.

19 Q. You're talking about on the back end of the
20 website?

21 A. Yeah. As we upload, it defaults to that date,
22 and you just hit go.

23 Q. Whereas, in the past, you had to type in --

24 A. I had to type that end dash in and the date.

25 Q. Let me ask you -- let me just refer you to

1 pages, let's see, 8, 9 and 10 of this document. Are
2 these your public notices to some of your
3 constituents that you have to send notices to?

4 A. Yeah. So there are three pages to every
5 notice. The first page of the public notice is the
6 media public notice, everything that we send Media,
7 which is hearing number nine. The second page is
8 what I send principals and other building
9 supervisors to tell them to put it on their front
10 door. And then the third page is for the official
11 record.

12 So I tell whoever is the board secretary at the
13 time exactly what we've done to promote it, where
14 it's been posted, what we've said was in the
15 meeting, et cetera.

16 Q. Okay. All right. Thank you for -- real quick,
17 this is special-called board meeting for employment
18 matters; is that correct?

19 A. Right; to do hiring. For the Board to say,
20 yes, go ahead and hire, which they have to do for
21 teachers and for administrators.

22 Q. And did you say that, essentially, everything
23 in the public notice is what would be in the agenda?

24 A. In this case, it's a one-item agenda. I mean,
25 it was the only reason the meeting was called, was

1 in order to do that, to hire, and since we gave that
2 in the public notice that it was to discuss
3 employment recommendations.

4 Q. Okay. And let me ask you, you've been to these
5 meetings before, this kind of meeting?

6 A. Yes.

7 Q. What happens at 7:30? Can you run through it
8 real quick?

9 A. So we usually provide coffee and maybe a
10 biscuit. And they come in quickly; they go into
11 executive session; they're told what we're trying to
12 hire, you know, how many positions; they're shown
13 information about those people. And then they go in
14 open session and they confirm the individual.

15 Q. Okay. Now, Ms. Garris has asserted that this
16 agenda was not posted until four days later. Do you
17 have any thoughts on --

18 A. I can't say she's not correct. That might be
19 correct. I was not there that week. I can confirm
20 that the public notice was posted and that it was
21 online already, for sure. I don't know the exact
22 date of the agenda.

23 Q. How about the date -- I'm looking at the first
24 page of Exhibit 3.

25 A. Right. I would tell you that when I built the

1 public notice line item, I would have built the
2 agenda item to be filled with the document. So I
3 probably put both of them up there with a typo and
4 the agenda might not have been loaded.

5 Q. Okay. For page 2, real quick, of this
6 document.

7 A. This same document?

8 Q. Yes, ma'am. Exhibit -- Exhibit 3. The only
9 date on this document is what?

10 A. The date of the board meeting.

11 Q. Okay. Thank you. All right. Ms. Hill, on the
12 three occasions that we've discussed here today,
13 have you ever intentionally not posted an agenda
14 online?

15 A. No.

16 Q. Have you ever backdated a document for the
17 purpose of deceiving the public?

18 A. No.

19 Q. Have you ever intended to violate FOIA in your
20 job here?

21 MR. RADEKER: Objection; relevance. Whether
22 she intended to violate FOIA really doesn't make any
23 difference.

24 THE COURT: I'm going to allow the question.

25 THE WITNESS: No, I would not. Public

1 relations correspondent or chief communications
2 officer is only as good as their word. I cease to
3 be effective if I'm not honorable. That's true in
4 my relationships with reporters, in my relationships
5 with principals, in my relationships with schools.
6 Whether we're dealing with crime, death, dying or
7 whatever, I am only as good as my word. And so I'm
8 not going to do anything that would jeopardize my
9 honorability.

10 BY MR. LYON:

11 Q. Thank you for that.

12 One more question along those lines: In a
13 typical year, how many public notices and agendas
14 are you pushing out on the website?

15 A. Well, there's a minimum of 12. In all
16 likelihood, it's closer to 24 or 25 because we have
17 extra sessions for board meetings and extra sessions
18 for the superintendant review, and extra sessions --

19 Q. And each of those goes through this process?

20 A. The same process.

21 Q. Okay. Have you heard any complaints about any
22 of those other meetings and -- any of the other 24
23 or 21?

24 A. No.

25 Q. Okay. All right. Thank you for that.

1 We're going to stop the agenda discussion for
2 now. I might have some question for you after
3 opposing counsel goes. But I want to also, now,
4 turn to the other aspects of this lawsuit, which are
5 the -- they involve alleged FOIA violations about
6 how meetings are conducted by the Board.

7 You said your office is heavily involved in
8 preparing for a board meeting. Can you explain a
9 little bit of it while I go get my computer up?
10 Just tell the Judge.

11 A. Sure. So the board meeting has physical
12 aspects. We have to provide 300 or more, depending
13 on who we think is coming, agendas for the public to
14 come in and pick up. We provide and create the
15 sign-in sheets. We have another table set up to the
16 right that has business participation cards where
17 they can fill out, if they want to participate in
18 public presentations.

19 And then to the left, we have a sign-in section
20 for students or high school students who are coming
21 for high school credit or our teachers who are
22 coming for college credit because theirs have to be
23 verified.

24 So we set up the three stations for when people
25 come in the door. And then when you're facing --

1 when you come in this door --

2 Q. Shall we run the video and you can narrate as
3 we go?

4 A. Can you stop though?

5 Q. Yes. Absolutely. You just tell me to stop.

6 A. All right.

7 (Video played.)

8 THE WITNESS: So this is the front door to the
9 auditorium, that section of the building. There's a
10 limited-parking parking lot right in front of this,
11 maybe has 20 spaces. And then there's a parking lot
12 to the right and a parking lot, further down the
13 right, and a parking lot across the street. So when
14 you come in the front door, like we're doing now --
15 BY MR. LYON:

16 Q. I'll stop there.

17 A. If you stop there, the table you see right in
18 the center, they'll set up this direction, left to
19 right. We flip so that when you come in the door,
20 it's running this way now so a person can come in on
21 either side. Because you can see really clearly on
22 the right, not as clearly on the left, there are two
23 entrances; one on either side of that section into
24 that open auditorium.

25 Q. Let me just talk to you real quick. This right

1 here that I'm referencing, you referenced it
2 earlier.

3 A. That's the agenda.

4 Q. That's the agenda. It's two pages. Drives you
5 nuts?

6 A. The other one is don't-let-anybody-in sign.

7 Q. Okay. For normal days?

8 A. For normal days when you have to key in.

9 Q. Okay. Got it. So, normally, this door is
10 locked, except for board meeting nights?

11 A. Right.

12 Q. Okay. Keep going. Those are the two
13 entrances --

14 A. Right. So there's a woman's restroom on the
15 left of that entrance and a man's restroom on the
16 right, on the other side. The section in the center
17 is our video control booth and all the electronics.
18 And then -- so we're coming in the left. All right.
19 Stop right there a minute.

20 So, ordinarily, this room is set up -- think of
21 it like church. So there is a whole series of rows
22 from the dais to us where we're coming in the door
23 with an aisle in the center so that people could
24 come up or down the center, the left or the right.
25 They run about 10 chairs wide, sometimes 12 -- 10

1 chairs wide. And we get 10 to 15 rows or something,
2 top to bottom.

3 Q. Okay. In front of us is, of course, the dais?

4 A. Yes. So the screen is evidently down in the
5 video. But that's where the Board sits, up there.

6 Q. Okay. So we'll keep going. This room is
7 obviously not set up for a board meeting at this
8 point, correct?

9 A. No, it isn't. They must have been practicing
10 something with video, because they've got those
11 screens down. But do you see the little section to
12 the right where you see those chairs stacked on top
13 of themselves?

14 Q. Over here? Shall I run it a little bit?

15 A. You see the table -- I don't know. Does it
16 come out or go in?

17 Q. It goes towards.

18 A. Okay. Stop right there.

19 Q. Okay.

20 A. So that first seat you see there is where SLT
21 sits. That's where we all are. So, from that seat,
22 which is usually Jeff Salters, to that door, which
23 is the one we talk about is open during dinner --
24 during supper, is the door to the boardroom. It's
25 three steps from that first chair.

1 Q. Let's continue our tour.

2 A. Right.

3 Q. The SLT folks just sort of stand at these
4 microphones and give their reports to the Board; is
5 that correct?

6 A. We get to sit. But yes.

7 Q. Good. So now we're going into what?

8 A. The boardroom. So this is the room where they
9 come and gather at 5:30; they eat their supper. The
10 doors are all left open, those doors that you see;
11 the one we came in and the one right there. The
12 only reason both doors that you were just pointing
13 to at the very end of the room --

14 Q. So this is the door between the auditorium main
15 room?

16 A. And this little alcove.

17 Q. Was there a sign? Earlier we were
18 discussing whether there was --

19 A. I don't know if there is one or not.

20 Q. Is there a sign right here?

21 A. Yeah, there is.

22 THE COURT: It says boardroom right there.

23 BY MR. LYON:

24 Q. So we'll continue through here.

25 A. Okay. So stop right there. So the only reason

1 both those doors aren't open is they open into each
2 other. So we leave the one to the -- that's the
3 superintendent's suite right there. We leave it
4 shut. But we leave the one to the kitchen and the
5 other one open because they can be seen from the
6 hallway.

7 Q. So the door to the left where my cursor
8 currently is goes to the superintendent's office?

9 A. Office. Yes.

10 Q. And the other HR offices and things like
11 that --

12 A. No. You can't -- it just goes into the
13 superintendent's office.

14 Q. Okay.

15 A. You have to go out in the hall to go to any
16 other office.

17 Q. So let's go out in the hall.

18 A. This is the little kitchenette. It doesn't
19 have a working stove or anything, but it has a
20 microwave. So their dinner is in here and they pick
21 it up and take it into the other room, a buffet.

22 Q. So the dinner is placed out here at 5:30; is
23 that correct?

24 A. Yes.

25 Q. And, the board members, how do they come in?

1 Through here or the other way?

2 A. They come in either way they want to, usually
3 through this door. They don't all come at the same
4 moment because many of them have jobs. The doctors,
5 for instance, tend to run in at the last minute
6 sometimes or sometimes -- for instance, a board
7 member was a dental hygienist. She would sometimes
8 have to come in her scrubs because they ran late.

9 Q. So they get their meal and they go back in the
10 boardroom and eat it, correct?

11 A. Yes.

12 Q. Doors to the auditorium --

13 A. Are open during the meal, completely open.

14 Q. Always?

15 A. Always.

16 Q. Always and forever? You can say that for
17 certainty?

18 A. When I got here 22 years ago, this is the way
19 they did it. It has always been that way. There's
20 never been a differentiation.

21 Q. Okay. We're just going to finish the video.
22 We're going to walk out here. If we take a left
23 right here, we go to --

24 A. To the lobby area and the elevator. And then
25 you're getting into the other part; you're in the

1 other part of the building.

2 Q. The other part of the building. Did you tell
3 me there's a separation? There's an actual --

4 A. Right there to the right, there are doors you
5 can shut.

6 Q. Okay. To the right.

7 A. Right there.

8 Q. That's what you consider the dividing line --

9 A. Yes.

10 Q. -- between the auditorium and the rest --

11 A. And the public's ability to just wander the
12 building. If there was a night like, say,
13 Department of Ed or somebody and we didn't want
14 people wandering into their meeting or anything like
15 that --

16 Q. Okay.

17 A. -- they may shut those doors occasionally in a
18 board meeting if we're short-staffed.

19 Q. Those doors, the glass doors?

20 A. Yeah, because we put the certificates for
21 honors achievements to pick up in the lobby. And I
22 know we open it as soon as that portion of the board
23 meeting is over for them to go pick up their
24 certificates.

25 But if we're short-staffed -- we usually have a

1 law enforcement officer there. But, perhaps, if
2 he's wasn't there, they might even shut them then
3 just to keep the rest of the building secure.

4 Q. To keep people from wandering out of the
5 auditorium --

6 A. Out of that whole part of the building.

7 Q. So I think that's -- is that all we need to see
8 with -- this is the other entrance, correct?

9 A. Right. This is the right-hand of the two
10 doors. You see all our seats.

11 Q. Right. And the tables out front are going to
12 have the sign-in sheets for people that -- and
13 there's the public.

14 A. They're going to have -- the table is going to
15 be running this way now; has an agenda, it has proof
16 positive, which is a summary of all the honors and
17 achievements with the pictures of the honorees; it
18 has sign-in sheets. So it has everything we think
19 anybody would need.

20 Q. There are two meetings referenced in this -- in
21 Ms. Garris' complaint. One is the meeting on
22 December 6th of 2016. Do you remember that meeting?

23 A. Yes, but only because it's different; when
24 we -- on even years when board members are elected.
25 Then we have to have a swearing-in of the board

1 members. And, usually, we ask a judge to come do
2 that. And the last few times, it's been Judge
3 Spence.

4 Q. Okay. So board members were sworn in. Do
5 you -- tell me quickly what that evening was like.
6 So the swearing-in occurred first, right?

7 A. Right. So they bring the new board members to
8 the front. They often invite their families to come
9 up front, too. The new board member puts his or her
10 hand on the Bible, does the swearing in ceremony,
11 and we grab pictures of it. Our office takes
12 pictures of all that.

13 Q. And what's the next thing on the agenda for
14 that night?

15 A. Do you have a copy of the agenda?

16 Q. I can get one.

17 A. Usually it's that we take a break to do some
18 kind of honoring of them.

19 Q. I'm moving to -- let's see, number -- the break
20 for the reception; is that correct?

21 A. Yes. So we would have done the swearing-in.
22 And then we would have gone to a reception, which
23 is, you know, like the little party thing. So it's,
24 like, cookies, punch, lemonade, tea, and a chance
25 for everyone to congratulate the new board members.

1 A lot of district staff come to that to do it, and
2 their families and the board members are there.

3 Q. And next thing that happens after reception is?

4 A. So the families leave; they're excused. And
5 then the Board has to go through the mandatory bylaw
6 training. So every new board member has to go
7 through training.

8 Q. Now, do you sit in that training?

9 A. Yes. In fact, I was presenting on this one.

10 Q. And was that -- where did that take place?

11 A. In the boardroom.

12 Q. Were there members of the public in that room?

13 A. Yes; there often are those. Cheryl is good
14 about going outside -- they leave the doors open.
15 If they're going to conduct business, they leave
16 both that kitchen door, the other door we saw
17 earlier, open and Cheryl goes out there from time to
18 time to check to see if anybody wants to come in.

19 This particular meeting, I don't know why
20 they'd want to. It's grueling. But, anyway, they
21 come in and sit through some of the training.
22 Sometimes, if somebody's thinking about running for
23 the board in the future, they'll come to see what
24 it's all about and sit through it.

25 Q. Has Ms. Garris ever been in one of those --

1 A. Yes. She's been in some of those meetings.

2 Q. Before she was a board member?

3 A. Yes.

4 Q. Do you recall the Chair that night making an
5 announcement after the swearing-in that the meeting
6 would reconvene in the executive boardroom?

7 A. Yes. I think she might have made the
8 announcement before anything happened.

9 Q. Oh, before. Okay.

10 A. To explain that we were going to do a
11 swearing-in; that we were going to have our
12 reception there, everybody is invited to come. And
13 then they would be reconvening in the boardroom to
14 do the training. But if somebody wanted to stay,
15 they could stay.

16 Q. Turning now to the other meeting at issue in
17 this lawsuit. It's the November 4th, 2017 meeting.
18 Do you recall that meeting?

19 A. Am I looking at it?

20 Q. I don't think you're looking at it. But let's
21 see if it's up in front of you. I haven't given it
22 to you yet, I don't think. Perhaps it's in the
23 plaintiff's production. There is the events for
24 that meeting.

25 MR. DUFF: Here's a copy. Defendant's 6.

1 BY MR. LYON:

2 Q. Defendant's 6. Do you recall being at this
3 meeting?

4 A. Oh, I'm sure I was.

5 Q. It's fine if you don't.

6 A. No. I'm sure I was because it -- the first
7 thing is, executive session was a legal briefing
8 referring bond referendum method. So I would have
9 definitely been there for that.

10 Q. Okay.

11 A. Because in a bond referendum, I do a lot of
12 work.

13 Q. You heard testimony today from Billie Garris
14 that she came to this meeting around 5:45 and that
15 the door between the executive boardroom and the
16 main room of the auditorium was closed and stayed
17 closed until she left at 6:15. So that would have
18 actually been before and after the open of executive
19 session?

20 A. Right. The doors are never closed until
21 6:00 p.m.

22 Q. Those are all the questions I have for you.
23 Thank you. Please answer any questions they may
24 have for you.

25 THE WITNESS: I'll try not to talk over you.

1 MR. RADEKER: Good. And I hope I won't talk
2 over you.

3
4 CROSS-EXAMINATION

5 BY MR. RADEKER:

6 Q. Good afternoon, Ms. Hill. I'm Drew Radeker. I
7 don't know if you were here this morning when we
8 were all --

9 A. Nice to meet you.

10 Q. -- introducing ourselves. Good to meet you,
11 too.

12 Now, when the School Board meets on its typical
13 time schedule --

14 A. Right.

15 Q. -- those are on Tuesday evenings. Am I right?

16 A. Right. Third Tuesday of the month, now at
17 7:00.

18 Q. Okay. Now, when was that change made to start
19 them at 7:00?

20 A. In the last year or so. Because they weren't
21 taking the full hour and a half for executive
22 session anymore and because we have young children
23 who come receive honors, they decided to start
24 earlier with the regular board meeting.

25 Q. What was the normal start time before that?

1 A. 7:30 p.m.

2 Q. All right. And that is consistent with -- take
3 a look at Plaintiff's Exhibit 5, if you would, for
4 me.

5 A. It's on here somewhere?

6 Q. Yes. It would have an orange sticker on it and
7 it would say Plaintiff's Exhibit 5. It's towards
8 the bottom of the page. I can help you find it, if
9 you need me to.

10 A. I'm seeing older ones, but I don't see it.

11 MR. RADEKER: Your Honor, if it's all right,
12 I'll help her locate the exhibit.

13 THE COURT: Sure.

14 BY MR. RADEKER:

15 Q. Okay. And looking at the line that's right
16 under where it says regarding November 14th, 2017
17 monthly board meeting --

18 A. Right.

19 Q. -- in that paragraph right there, it says:
20 Tuesday, November 14th, 2017, at 7:30 p.m.

21 A. Right.

22 Q. The Lexington County School District One Board
23 of Trustees will hold its regular monthly meeting in
24 the auditorium of Building 1 of Central Services and
25 gives the address. Correct?

1 A. Correct.

2 Q. Right after that, it says: At 6:00 p.m., the
3 Board of Trustees meets in executive session. Do
4 you see that, too?

5 A. Yes.

6 Q. And, typically, the practice of this school
7 board has been to have executive session before that
8 meeting starts; is that right?

9 A. To have executive session before the 7:30
10 regular board meeting. Yes.

11 Q. All right. That's correct. So if executive
12 session started around 6:00 p.m., that would mean
13 the Board was going into executive session before
14 the meeting ever started?

15 A. It means that the Board -- they did call the
16 meeting to order, but they did it at 6:00 p.m. in
17 the boardroom.

18 Q. Hold on.

19 A. They went into executive session.

20 Q. You mean they called the meeting to order at
21 6:00, the meeting that's supposed to start at 7:30?

22 A. No. They made a motion to go into executive
23 session at 6:00.

24 Q. At 6:00, an hour and a half before the meeting
25 started?

1 A. Before the regular part of the meeting.

2 Q. So before -- I mean, I look at this notice and
3 it tells me they hold their regular monthly meeting
4 at 7:30.

5 A. Right.

6 Q. Am I wrong?

7 A. No. But it also says executive session starts
8 at 6:00.

9 Q. Right. So it says executive session starts at
10 6:00.

11 A. Right.

12 Q. Well, let's assume that I am in the room of
13 this building that is shown on Plaintiff's Exhibit

14 2. Can you look at that for me?

15 A. 2?

16 Q. Yes, ma'am.

17 A. Okay.

18 Q. Is that the auditorium we're looking at there?

19 A. Yes.

20 Q. Let's assume that on November 14th, 2017, say,
21 or any regular meeting that was done in this
22 fashion, that I was present in this auditorium here
23 at 6:00.

24 A. Right.

25 Q. How would I have known for what purpose the

1 Board was going into executive session?

2 A. It would have been on your agenda that you
3 picked up on the way in the door.

4 Q. Well, would anyone have announced it to me?

5 A. Verbally to you out in the auditorium? No.

6 Q. Okay. All right. Now, we just looked at a
7 video and there's been some talk about this earlier.
8 And, if you don't mind, I'm going to take a --
9 manipulate this video a little bit. And we'll go
10 back to the beginning here. Don't look at it if you
11 get seasick.

12 A. I do; I get seasick.

13 Q. But what we're looking at right here, this is
14 outside of -- I guess, we call this Building 1 of
15 Central Services?

16 A. It's outside the left wing of Building 1.

17 Q. The left wing of Building 1 of Central
18 Services. Now, how much of this building, is it
19 your contention, is the auditorium?

20 A. So I would say that entrance, the boardroom,
21 and the kitchenette are part of that wing.

22 Q. Okay. Now I'm going to fast-forward to
23 something here. And, again, don't look. I can tell
24 you when I stop.

25 Right here, this shows where the doorway is

1 that's between the auditorium we were just talking
2 about and the boardroom, right?

3 A. Right.

4 Q. I'm going to go forward a little bit more. We
5 go through the boardroom, come out into the hallway,
6 after we've gone through the kitchenette, and we're
7 looking at this. And you testified earlier -- and
8 you correct me if I'm wrong -- that what we're
9 looking at here is this little, like, glass
10 partition that has these doors in it that shows what
11 demarcates the auditorium from the remainder of the
12 building?

13 A. No. It is a door they can close to close off
14 the auditorium. But, if you see the doorway on your
15 right, right there is the ice machines and
16 everything that they need for that meeting, as is
17 the kitchenette, which is a hair still further down.

18 Q. So you're saying that's not what you said
19 earlier, is that that's not what demarcates --

20 A. No. I'm saying we use those doors to close off
21 if we need to close off the rest of the building.

22 Q. The rest of the building being where one would
23 be if one were standing and looking at this view
24 that we see in this picture?

25 A. Right. Right. Because once you're on this

1 side, you have open access to second floor, first
2 floor, lobby, offices, anything.

3 Q. And you would agree with me, if you would --
4 I'm going to go back a little bit -- that
5 kitchenette and the boardroom, they're on the
6 opposite side of that glass partition with the doors
7 in it from where the auditorium is?

8 A. They're slightly -- if you're standing at that
9 door, they're slightly to your right, two steps,
10 maybe three.

11 Q. Do you think it's reasonable for someone who
12 reads a notice that says a board meeting will be
13 called in the auditorium of Building 1 of Central
14 Services to believe that that meeting will be
15 conducted in the boardroom?

16 A. I'm sorry. Ask that again.

17 Q. Do you believe that it's reasonable for someone
18 who reads an agenda that says a board meeting will
19 be called in the auditorium of Building 1 of Central
20 Services to believe that that meeting will be held
21 in the boardroom?

22 A. The official meeting at 7:30 is not held in the
23 boardroom.

24 Q. Ma'am, I need you to answer my question.

25 A. I guess my answer is no.

1 Q. So that would not be a reasonable thing to
2 think?

3 A. No. I think it's -- ask the question again.

4 Q. Do you believe that it is reasonable for a
5 person who reads an agenda that says that a meeting
6 is to be called in the auditorium of Building 1 of
7 Central Services to believe that that meeting will
8 be held in the boardroom of Building 1 of Central
9 Services?

10 A. I think it's clearly stated here that the open
11 session takes place in the auditorium at 7:30.

12 Q. Well, actually, the language that I'm just
13 looking at in this first paragraph up here says the
14 board meeting is going to be in the auditorium.
15 Right?

16 A. I would say your -- from a chief communications
17 officer, I would say you're semantics.

18 Q. I would say that I'm reading. And so --

19 A. Well, can I read it --

20 Q. -- I'll have to ask you about how I'm wrong
21 about what I'm reading.

22 A. Let me read it to you. On Tuesday, November
23 14th, at 7:30 p.m., the Lexington County School
24 District One Board of Trustees will hold its regular
25 monthly meeting in the auditorium of Building 1 of

1 Central Services located at 100 Tara Springs Road in
2 Lexington, South Carolina.

3 Q. That's the same thing I read.

4 A. That's clear.

5 Q. It sure is.

6 A. So, at 6:00 p.m., the Board of Trustees meets
7 in executive session does not tell you that it's in
8 the auditorium.

9 Q. So where are we to indicate that is to take
10 place? If I'm reading this, where does this tell me
11 that's going to happen?

12 A. It does not tell you.

13 Q. It doesn't tell me. It could be anywhere? It
14 could be at the Hardee's down the street?

15 A. If you'd like.

16 Q. I see. I'm just saying, I'm looking at this
17 agenda and I'm trying to figure out where it tells
18 me that this executive session is going to happen.

19 A. Some of them do say, in fact, but this
20 particular one doesn't. Many of them now say
21 executive session in the boardroom.

22 Q. That's something that y'all have changed
23 recently?

24 A. No. It just depended on when we were doing it
25 and whether we were doing it quickly or not.

1 Usually, both locations are in that statement.

2 Q. Let's say someone arrived for a meeting that
3 was noticed to be in the auditorium of Building 1 of
4 Central Services during the time that that meeting
5 was supposed to be going on and no one was in that
6 auditorium.

7 A. At 7:30.

8 Q. Let's say they got there a little late. Say
9 they got there at 7:45 or something like that --

10 A. Okay.

11 Q. -- and they're out there in the auditorium.
12 Are they to somehow intuit that the meeting is
13 happening somewhere else if there's nobody there?

14 A. That's not true of the agenda we're looking at.
15 That, obviously, happened in open session.

16 But if you're speaking of the training session
17 that was referenced earlier for the Board, it was
18 clearly told to the people who were there where that
19 was going to happen. The doors are open.

20 Cheryl Layton, the secretary for the
21 superintendent, regularly walks out there and checks
22 to see if there are people there and invites them
23 in. People do come into those meeting. They've
24 been in there for board workshops; they've been in
25 there for training of the Board; they've been in

1 there many times for many things.

2 Q. So to sum it up, close enough?

3 A. To?

4 Q. Close enough to complying with where the agenda
5 says it's going to take place.

6 A. I think it's -- I think we just have to agree
7 to disagree. I think it's clear.

8 Q. What do you think is clear?

9 A. That the open part of the meeting takes place
10 in the auditorium, on a general one like this. If
11 there's anything different, they make that
12 announcement. The doors are left open the entire
13 time and if someone should walk into an auditorium
14 and there not be anyone there, there's someone who's
15 going to check on them in a few minutes and invite
16 them in.

17 Q. But, say, this agenda dated November 7th, 2017
18 for this November 14th meeting where the agenda says
19 executive session takes place, that's anybody's
20 guess, right?

21 A. I understand.

22 Q. No. Is that correct? I need you to answer.

23 A. I would say it does not give a destination for
24 the executive session, this particular agenda.

25 Q. Okay. All right. Now, there are other rooms

1 in this building?

2 A. That's a stairwell.

3 Q. I'm not going to look at the stairwell. Go
4 back here again. I'm really not trying to make you
5 seasick.

6 A. That's okay. I don't look at the commercials
7 at the movies either.

8 Q. Looking at what we're looking at now, you see
9 this lady standing on the right? And there's a door
10 past her, between her and the auditorium; is that
11 correct?

12 A. So there's Mindy. There's a men's restroom and
13 there's the door inside.

14 Q. And if we go a little bit farther, we'll see,
15 over here on the left, a corresponding door on the
16 left side. That's the women's restroom?

17 A. Yes.

18 Q. Okay. Now, we talked earlier about -- I think
19 it was the December 6th training session meeting
20 wasn't held in the auditorium. It was actually held
21 in the boardroom, right?

22 A. Correct.

23 Q. What if the Board had decided we want to meet
24 in one of these bathrooms here? Would somebody have
25 assumed, if they entered in the building, they could

1 just go in there?

2 MR. LYON: Objection, Your Honor; that's quite
3 absurd to hold a board meeting in the bathroom.

4 THE COURT: I'll allow the question.

5 MR. RADEKER: I'll illustrate where I'm going
6 with it.

7 BY MR. RADEKER:

8 Q. Would someone just assume, well, you know, it's
9 right there by this auditorium room and it's in this
10 building and it's labeled auditorium, so, you know,
11 I should have known they could have it in any room
12 they wanted to?

13 A. There is a 50 or longer -- I've been there 22
14 years. In 22 years, the Board has only met in the
15 auditorium or the boardroom, unless, for some
16 reason, we were forced out of the building to
17 another location for a period of time while
18 renovations happened.

19 Q. So your answer is that if I've been there lots
20 of times, I ought to be able to figure out where the
21 meeting is going to be?

22 A. My answer to you is, had you asked anyone you
23 came with where they are, they'd be able to tell
24 you. If you came at all, even once, you would know,
25 and that the agenda is fairly clear about where they

1 are, as is the public notice.

2 Q. Well, who seems not to be so clear on it is the
3 Board because, correct me if I'm wrong, we've heard
4 bunches of testimony today, even yours, about where
5 meetings that are noticed that take place in the
6 auditorium are actually held in the boardroom.

7 A. They come out and say that they're going to do
8 it for convenience, comfort, because it's straining.
9 And they explain that the public is welcome to come
10 in.

11 Q. Now, you heard some testimony, I think, earlier
12 today that -- with regard to convening executive
13 session. There was an old way that the Board did it
14 and then there's a new way, right?

15 A. Correct.

16 Q. And the new way, that is that the Board comes
17 out into the auditorium, calls a meeting to order,
18 takes a vote to enter executive session and,
19 assuming that that vote carries, goes into the
20 boardroom; is that right?

21 A. Close enough. Their doors are open. They're
22 eating. 6:00 hits, they get up, they walk out to
23 the dais, they sit down; they take a vote, we record
24 the vote, and then they leave, go back in, shut the
25 doors, and conduct executive session.

1 Q. And that's at 6:00?

2 A. Yes.

3 Q. Now, the agendas that y'all are putting out
4 now, when do they say the regular monthly meeting
5 will be held?

6 A. Now? 7:00.

7 Q. It's at 7:00. Okay. So you're still putting
8 out notices that say the meeting is going to be held
9 at one time, but having executive session before
10 that?

11 A. It says executive session is at 6:00.

12 Q. Well, I know.

13 A. The notices say --

14 Q. But my question to you is, you're still putting
15 out agendas that say the meeting is going to start
16 at one time and you actually start the executive
17 session at an earlier time than when it says the
18 meeting starts.

19 A. I think we're differentiating between open
20 session and executive session. Yes.

21 Q. So the answer to my question is yes?

22 A. I think we're saying the same thing.

23 Q. I was asking.

24 Okay. Let me ask you this: You ever been to
25 the Koger Center in Columbia?

1 A. Yes.

2 Q. The Koger Center, that's an auditorium too,
3 right?

4 A. A little different. It's a performing arts
5 center.

6 Q. But there's a big auditorium in it, right?

7 A. Yeah. Performing arts center, stage. Yeah.

8 Q. There's seats where you face the stage --

9 A. Like our -- we have two performing art centers
10 in our district.

11 Q. Say I buy a ticket for a show at the Koger
12 Center. Now, I think you would agree with me that
13 I'd feel, if I bought a ticket to the show, gone
14 through the gate, that I could then go find a seat
15 in the auditorium room, right?

16 A. You may have to take a seat assigned to you by
17 your ticket. But, yes.

18 Q. That may be so. But I know I'm allowed to be
19 in this auditorium, right?

20 A. Correct.

21 Q. Now, having purchased that ticket, would you
22 think it would be reasonable for me to believe that
23 I could enter any room in the building?

24 A. I think it's reasonable for you to assume that
25 about several rooms in that building. For instance,

1 you would have access to a restroom with no
2 questions; you would have access to the lobby with
3 no questions; you would have access to many other
4 rooms.

5 Q. What if I walk past, say, a greenroom and the
6 door is open? Would it be reasonable for me to
7 think I could go in there?

8 A. I think as long as the door is open, you have a
9 right to ask if you could come in or what was going
10 on in the meeting.

11 THE COURT: Mr. Radeker, let's move on from
12 this hypothetical.

13 MR. RADEKER: Thank you.

14 BY MR. LYON:

15 Q. One thing about posting agenda on the
16 website --

17 A. Right.

18 Q. -- if an agenda document that's on the Board's
19 website has properties that show it was modified
20 less than 24 hours before the meeting the agenda was
21 for, it would have to have been posted less than 24
22 hours before the meeting that the agenda was for,
23 right?

24 A. No. The original agenda could have been posted
25 before that. When --

1 Q. I'm talking about the document. If I go on
2 y'all's website and look at the document properties
3 on a document that is of that document, the one I'm
4 looking at the properties for, and it says that it
5 was modified at some time that is less than 24 hours
6 before the meeting it's an agenda for, it would have
7 had to have been posted less than 24 hours before
8 that meeting.

9 A. If that particular copy of the agenda would
10 have been uploaded at that time. It does not
11 indicate whether it was not the original or the
12 original; it does not indicate what was changed,
13 unless you had copies of both versions, which we do
14 have for at least two of the three mentioned.

15 We can show you exactly what happened to
16 change. One line on a second page went to the same
17 first page and, the other, we added the blatant
18 propaganda and uploaded those on the time and date
19 you're referring to.

20 Q. Thank you. I don't have any more questions for
21 you.

22 THE COURT: Any redirect?

23 MR. LYON: No, Your Honor.

24 THE COURT: Thank you, ma'am. You can step
25 down.

1 Counsel, this is a good time to take a
2 ten-minute break.

3 (Short break.)

4 THE COURT: All right. Mr. Duff, call your
5 next witness.

6 MR. DUFF: Yes, sir. Judge, this is our final
7 witness, Ms. Cynthia S. Smith.

8 CYNTHIA SMITH

9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Please be seated. Once you're
12 seated, please state your name, spelling your last
13 name for the record.

14 THE WITNESS: My name is Cynthia Smith,
15 S-M-I-T-H. And I go by Cindy.

16 DIRECT EXAMINATION

17 BY MR. DUFF:

18 Q. Okay. May I call you Cindy?

19 A. You may.

20 Q. Thank you. Now, just to move this quickly,
21 Cindy, you are currently the chairperson of the
22 Board of Trustees of Lexington County School
23 District One?

24 A. Correct.

25 Q. And you've been chair since when?

1 A. Since December of 2018.

2 Q. You've been on the board how long?

3 A. I was elected in the year 2000, and this is my
4 19th year.

5 Q. Have you served as chair on other occasions
6 during your tenure?

7 A. Since 2004, I have served in some officer
8 capacity. So, yes, I have served as chair for
9 several years prior to this term.

10 Q. Now, in December of 2016, as I understand, you
11 were the vice chair?

12 A. That is correct.

13 Q. And a Ms. Debbie Knight was the chair at that
14 time?

15 A. Yes. And Ms. Knight retired at the last
16 election cycle and she chose not to run again.

17 Q. Okay. Now, when it -- there's been testimony
18 that the Board most often has a reason to begin its
19 meeting with an executive session --

20 A. Yes.

21 Q. -- that I think most -- again, in recent times,
22 has run from 6:00 to 7:00?

23 A. In the most recent times, from 6:00 to 7:00.
24 And, until about a year ago, it ran from 6:00 to
25 7:30.

1 Q. Now, when you go into executive session, a
2 motion is passed to identify the reasons for going
3 into executive session?

4 A. That is correct. And that is fairly recent.
5 The law changed on that. And prior to the law
6 changing -- after the law changed, we now announce
7 the reasons for going to executive session.

8 MR. DUFF: There's no issue about the reasons
9 for being in executive session in this case, Your
10 Honor.

11 BY MR. DUFF:

12 Q. My question is, when you go into executive
13 session through a motion, has the board meeting
14 already been called to order?

15 A. Yes, sir. We convene the meeting at 6:00 p.m.
16 We make a motion to open the meeting. We open the
17 meeting and our first order of business is to go
18 into executive session. Then we go into executive
19 session. We depart and go back into the boardroom
20 at that point in time. And then at the appointed
21 time, 7:00 p.m., we go back out and we open the rest
22 of the meeting in general session.

23 Q. The public portion of your meeting?

24 A. Correct.

25 Q. But you've been in session, officially in a

1 board meeting, since 6:00?

2 A. Correct.

3 Q. So any suggestion that you have this executive
4 session off-record before this meeting convenes is
5 mistaken?

6 A. Oh, definitely. In my 19 years -- that is
7 exactly how we've done it for 19 years.

8 Q. Now, there's been testimony that, historically,
9 you convene the board meeting and went immediately
10 into executive session in what's been referred to as
11 the boardroom.

12 A. Yes.

13 Q. And that has changed as of -- I think the last
14 time that that was your practice was January of this
15 year. Correct?

16 A. Correct.

17 Q. So, as of February of this year, 2019, you have
18 called the meeting to order back on the dais?

19 A. Correct.

20 Q. And you take a motion to go into executive
21 session while on the dais?

22 A. Correct.

23 Q. And then you walk into the boardroom, shut the
24 door, and hold your executive session, correct?

25 A. That is correct.

1 Q. And is that the way you intend to do it
2 henceforth?

3 A. Yes, sir. Due to some technological
4 restraints, we now have -- we purchased the
5 equipment to tape the meeting. And we have the
6 ability, just because of technology changes, and we
7 now tape the meeting. So the equipment is only
8 located outside the boardroom.

9 Q. All right. Now, there's been testimony that
10 between 5:30 and 6:00, there's some food that's
11 available to the Board.

12 A. Uh-huh.

13 Q. And that, again, you open your meetings when
14 you have executive session at 6:00.

15 A. That is correct.

16 Q. Now, there was testimony earlier, I think
17 Billie Garris -- I think it was the November 14,
18 2017 board meeting, that Billie arrived at, she
19 testified 5:45, and the Board was already in
20 executive session behind closed doors. Is that how
21 you remember it?

22 A. That is absolutely not correct. I will
23 unequivocally state, in my 19 years of serving on
24 the board, that we have never started an executive
25 session prior to the time posted on the agenda. And

1 there's a couple reasons for that: One, it's the
2 law, and the second is, not all our board members
3 are present. We had two board members who were
4 medical professionals who were seeing patients and
5 it was all they could do to get there at 6:00. So
6 we always made sure we had our full board when we
7 went into our executive session and our posted
8 agenda time.

9 Q. So, just so I'm clear, it's your testimony that
10 in your 19 years on the board, you have never gone
11 into executive session before it was convened at,
12 maybe at one time, I think it's always been, 6:00?

13 A. Never.

14 Q. All right. Now, in regard to the December 6th,
15 2016 meeting, there's been testimony that -- and
16 that was when Ms. Debbie knight was the chair,
17 correct, and you were the vice chair?

18 A. Correct.

19 Q. What we've heard about that meeting is that I
20 think it began at 6:30 with a swearing-in of new
21 board members and followed by a brief reception for
22 the new board members, followed by a -- I think it
23 was a training session that was held in the
24 boardroom; is that correct?

25 A. Correct.

1 Q. Now, at the beginning of the meeting, when it
2 was called to order, did Ms. Knight say anything
3 about how and where the board meeting would take
4 place?

5 A. Yes.

6 MR. SMITH: Objection, Your Honor; hearsay.

7 MR. DUFF: Your Honor, we're not offering this
8 for the proof of what's said --

9 THE COURT: I'm going to allow the question.

10 BY MR. DUFF:

11 Q. What was said about exactly how the meeting
12 would be conducted and where it would take place?

13 A. It's kind of funny, because I don't often
14 remember every single meeting. But this particular
15 one, I have a vivid memory because it was so
16 unusual. It was unusual in that the Election
17 Commission had to take their time to certify the
18 election.

19 So, normally, the election was held the first
20 part of November. It took them until December to
21 certify the election. So we thought, since we were
22 having three brand new board members --

23 Q. I don't mean to interrupt you. But my question
24 is, what do you recall Ms. Knight saying at the
25 beginning of the meeting about where it would occur?

1 A. Right. We opened in the auditorium in general
2 session. We had no executive session that night.
3 She welcomed everyone. She then outlined what we
4 were going to be doing that night.

5 She explained to the general public that we
6 would be swearing in -- Judge Spence had joined us
7 to swear in the three new board members -- and I was
8 reelected, so the four that night -- then she
9 invited everyone who was present to join us for the
10 cookies and punch reception.

11 And then she said we will be coming back into
12 general session, and anyone who would like to join
13 us was free to join us; we will be meeting in the
14 boardroom, which is just an extension of the
15 auditorium, to hold a training session for board --
16 it's a board workshop on the dos and don'ts of being
17 a good board member.

18 Q. So if someone, like Ms. Gilly, arrived at 7:30,
19 which is what she's testified to, she would have
20 missed Ms. Knight explaining to whoever was present
21 that the Board would be meeting in public, in open
22 session, for the training session in the boardroom?

23 A. Right. We left the doors open and she heard
24 the entire meeting. In fact, we had members of our
25 constituency present. We had a lady, who was around

1 40 years old, and her daughter, who was maybe about
2 15 years old -- and I'm making an assumption that
3 they were mother and daughter. But I'm pretty sure
4 they were. They sat down and they stayed with us
5 for the entire meeting. And anyone was welcome to
6 join us.

7 Q. Was the door open throughout that session?

8 A. The door stayed open the entire session.

9 Q. How long did it run, roughly?

10 A. It was a long meeting because Ms. White, who is
11 an attorney, came in and did scenarios on being a
12 good board member and she gave examples. And then
13 it followed up with members of the senior leadership
14 team giving tidbits of what the new board members
15 could expect from each position on the senior
16 leadership team.

17 Q. Ms. Gilly, had she wanted to come in, would
18 have been permitted?

19 A. Oh, yeah, she definitely would have.

20 Q. Do you recall Ms. Gilly ever being in the
21 boardroom?

22 A. I distinctly recall her and Ms. Garris and
23 Billie all joining us. I believe Ms. Garris has
24 been in that room, before she was elected, either
25 two or three times. And I know that Billie's been

1 in at least once. And I distinctly remember being
2 in once.

3 Q. And that would be when a -- for whatever
4 reason, the public portion of the meeting was being
5 conducted in the boardroom?

6 A. Correct. It was a workshop.

7 Q. So it would not have been an executive session?

8 A. Correct.

9 Q. All right. Those are all the questions I have.

10 THE WITNESS: Okay. Great. Thank you,
11 Mr. Duff.

12 THE COURT: Mr. Radeker? Mr. Smith?

13 MR. SMITH: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SMITH:

16 Q. Good afternoon, Ms. Smith.

17 A. Oh, thank you, Mr. Smith.

18 Q. All right. I think I'm going to start with,
19 you testified a moment ago about seeing Ms. Garris
20 present in the boardroom, I believe, when it had
21 been moved from the auditorium. Is that correct?

22 A. That is correct.

23 Q. Do you recall when that was?

24 A. No. I apologize. I do not. I distinctly
25 remember, though, she was taking copious notes and

1 she wrote the entire meeting.

2 Q. And that would not be during the time she's
3 been a board member?

4 A. No.

5 Q. And Ms. Gilly, do you recall when that time
6 would have been?

7 A. No, I do not. I do remember where they sat
8 though. I can visually see them in the room.

9 Q. Okay.

10 MR. SMITH: Your Honor, I have in my hand the
11 amended summons in this case. I'm going to hand it
12 to the witness, if you'll allow me to do that.

13 THE COURT: The summons?

14 MR. SMITH: Well, the summons and complaint.

15 THE COURT: I was wondering what the relevance
16 of the summons was.

17 MR. SMITH: Thank you, Your Honor.

18 BY MR. SMITH:

19 Q. Ms. Smith, if you would do me a favor and turn
20 to page 4. Do you see paragraph 19?

21 A. Yes.

22 Q. Okay. Would you mind reading that paragraph
23 aloud?

24 A. The Defendant's failure to properly notify the
25 public of the correct place for its meeting or its

1 deliberate failure to meet in accordance with a
2 location provided to the public is a violation of
3 FOIA.

4 Q. Do you believe that is true?

5 A. Yes, I do believe, because it adheres to the
6 law. Yes. Are you saying if we did that or are you
7 talking about the law?

8 MR. DUFF: I don't think this is proper
9 questioning of a witness on his complaint. He can
10 ask questions. But, you know, to get her to respond
11 to what a lawyer puts into a complaint is just not
12 proper.

13 THE COURT: I'm going to ask you to ask factual
14 questions.

15 MR. SMITH: That's correct, Your Honor. And
16 what I'm doing is a factual basis about the answer,
17 as well. We're going to go through the change of
18 that answer as this case has gone on which goes to
19 the credibility of their position concerning the
20 facts in this case --

21 MR. DUFF: Your Honor --

22 THE COURT: What are we going to do?

23 MR. SMITH: Your Honor, what's about to happen
24 is, I'm going to ask Ms. Smith here if she can see
25 the answer that's provided in this case to our

1 amended complaint.

2 THE COURT: How is that helpful to me to make a
3 decision in this case?

4 MR. SMITH: As to the credibility of the
5 position of this party as it moved along in this
6 case.

7 Remember, Your Honor, we started with
8 settlement, settlement negotiations, which fell
9 through, us attempting to settle the case. Then,
10 Your Honor, we moved into providing the documents,
11 which we talked about as prevailing party briefly.

12 Now, Your Honor, we're here on the eve of
13 trial, and what's happened is there's been an
14 amending of the complaint. As the party's position,
15 by their counsel with authority, we're providing
16 that document to them to say is this the position of
17 the party and why did it change, so the Court can be
18 aware of why the change in position has impacted us.

19 Your Honor, basically, what my counsel just
20 handed me is what I would hand you in the context of
21 this, which is a matter called Luck vs. Youngblood.
22 It's a 1976 case which says that, generally, the
23 prior pleadings in an action may be received in
24 evidence against the pleader.

25 In this case, this is what we're doing with

1 regards to --

2 THE COURT: I know they're definitely in
3 evidence. But the question is, what is the benefit
4 to asking this witness about pleadings? You can
5 refer to them; you can definitely put them in
6 evidence. I'm just not sure it's going to be
7 helpful to me to ask questions of this witness.

8 MR. SMITH: What I'm trying to elicit from this
9 witness is the underlying factual understanding of
10 what penned that answer in this particular paragraph
11 that I have talked about, and then, Your Honor, what
12 facts have changed such that it needed to be amended
13 at this date.

14 THE COURT: I'm not going to allow that
15 question. You can ask about the -- if she knows
16 about the factual basis for an assertion.

17 MR. SMITH: That's what I was trying to get to,
18 Your Honor.

19 THE COURT: The choice to amend the answer is
20 the attorney's choice. You can't ask her that
21 question.

22 MR. SMITH: Correct, Your Honor. And I
23 apologize if it was appearing that way. What I'm
24 trying to understand is what she gave her attorney
25 to instruct him to do that.

1 THE COURT: You can ask that question.

2 MR. SMITH: Thank you, Your Honor.

3

4 BY MR. SMITH:

5 Q. Ms. Smith, I'm handing you --

6 MR. SMITH: Your Honor, may I approach one more
7 time with the answer?

8 THE COURT: You may.

9 BY MR. SMITH:

10 Q. Ms. Smith, if you don't mind, could you read
11 that caption at the top of that document. What does
12 it say, the thing to the right of the lines?

13 A. Defendant Lexington County School District
14 One's Answer and Affirmative Defense to Plaintiff's
15 Amended Complaint.

16 Q. Okay. If you don't mind, could you please turn
17 to page 3.

18 MR. DUFF: Your Honor, he's doing what you just
19 instructed him not to do. He's using the answer --
20 he can make these arguments in closing.

21 THE COURT: If you have factual questions for
22 the witness, you can ask them. You can put the
23 complaint in and you can use it in closing, but I'm
24 not sure --

25 MR. SMITH: What I'm about to lay the

1 foundation for, Your Honor, is that it did change
2 that answer and, in doing so, the factual question
3 about why did that change is what would be relevant
4 to Your Honor on the facts that did change --

5 THE COURT: I'm not sure you can ask her that
6 question, why the answer was amended. You can ask
7 her about what the answer says and does she know the
8 factual basis for that. But the reason the answer
9 was amended, I don't think you can ask her that.
10 Can you?

11 MR. SMITH: You're right about that. Again,
12 I'm just trying to get to the point to where she
13 says what the answer is so then she can say what
14 that answer is.

15 THE COURT: Why don't you tell her what it says
16 so we can move along?

17 MR. SMITH: Okay.

18 THE COURT: And then ask her if she has -- I
19 mean, if you want to ask the factual basis.

20 MR. SMITH: Right.

21 BY MR. SMITH:

22 Q. Would you please turn to page 3.

23 MR. DUFF: Your Honor, there he goes again --

24 THE COURT: Let him ask the question.

25 MR. DUFF: He's asking her to turn to page 3 of

1 the answer.

2 MR. SMITH: I'm just making sure she's along
3 with what I'm reading. I apologize. I'm just
4 making sure she sees the same thing.

5 BY MR. SMITH:

6 Q. Paragraph 19 reads: The allegations in
7 paragraph 19 are admitted.

8 Do you understand the factual understanding you
9 have about why that was admitted?

10 A. I have no idea.

11 THE COURT: Counsel, that's a legal question of
12 why the admission was made in a pleading. That's
13 not a proper question.

14 MR. SMITH: Okay.

15 THE COURT: If you want to tell her what the
16 admission was, then you can ask her if she has
17 any -- you can ask her fact questions about the
18 admission. But the reason it was admitted is a
19 question for counsel, which is not -- that's not a
20 proper question.

21 MR. SMITH: Okay. May I briefly confer with
22 counsel?

23 THE COURT: Certainly.

24 MR. SMITH: Okay. No further questions for
25 this witness.

1 MR. DUFF: We have no redirect, Your Honor.

2 THE COURT: All right.

3 Y'all ready for closing?

4 MR. DUFF: We are, Your Honor.

5 MR. SMITH: If I can have maybe five minutes to
6 gather my thoughts?

7 THE COURT: Absolutely.

8 (Brief pause in the proceedings.)

9 THE COURT: Counsel, I'm reading Luck vs.
10 Youngblood right now. I mean, it does appear to say
11 that you can cross-examine on inconsistent
12 pleadings. But then it also says the pleadings
13 prepared by counsel, the cross-examination is of no
14 value and is harmless error.

15 I don't want to cut you -- what is it exactly
16 that you wanted to do?

17 MR. SMITH: Your Honor, I believe you were
18 correct earlier. If these are properly considered
19 as issues of law on the initial question, then I
20 think that would be appropriate to address in
21 closing.

22 THE COURT: Okay.

23 MR. SMITH: Essentially, Your Honor, part of it
24 was my own ability to properly plead a factual
25 statement, I think, in the complaint. It was

1 forcing the witness to go to something legal.

2 THE COURT: Well, thank you. I appreciate
3 that, Counsel.

4 (Brief pause in the proceedings.)

5 MR. SMITH: Your Honor, we're ready, if they're
6 ready.

7 THE COURT: All right. Mr. Duff? Mr. Lyon?

8 MR. DUFF: We're ready, Your Honor.

9 THE COURT: Mr. Smith.

10 MR. SMITH: Thank you, Your Honor. So here
11 today, Your Honor, we've heard --

12 THE COURT: Actually, let me stop you one
13 second.

14 Counsel, in a jury trial, I would not dream of
15 interrupting an attorney during a closing. Given
16 this is a bench trial, if I have questions, do you
17 want me to stop you and ask my questions or do you
18 want me to just let you roll like it was a jury
19 trial?

20 MR. SMITH: Your Honor, you're welcome to ask
21 me questions, if you'd like. But if you'd also give
22 me a moment to collect my thoughts after the
23 question to come back to wherever I was --

24 THE COURT: Sure.

25 MR. DUFF: We agree, Your Honor; ask any

1 question you --

2 THE COURT: I think it helps me. Like I said,
3 in a jury trial, I would not dream of interrupting a
4 closing argument. Thank you.

5 MR. SMITH: Thank you, Your Honor.

6 Your Honor, as we pointed out today, this has
7 obviously been an issue concerning the culture of
8 the defendant as it relates to transparency on
9 potential Freedom of Information Act violations.

10 Now, Your Honor, one thing there may be a
11 disagreement about between us is -- frankly, is how
12 many causes of action and violations are at play
13 here. It's true there are five causes of action
14 before Your Honor. But I do want to point out that
15 the very last one, cause of action 5, has two
16 violations in that. That would be the notice
17 violation concerning the location of that particular
18 meeting.

19 They didn't meet in the place they notified the
20 public of to start the meeting and take the vote for
21 executive session. And, two, a failure of
22 announcing a specific purpose for that executive
23 session. I'll go through, when we get to that
24 point, our theory on both of those. But I just want
25 to point out, as a beginning matter --

1 THE COURT: Let me make sure. The thing I have
2 in my notes, the five issues for me to look at, are
3 the late notice, allegedly, of the March 21st, 2017
4 meeting; the alleged late notice of the July 28th,
5 2018 meeting; the alleged lack of an agenda for the
6 June 15th, 2017 special meeting; and then the
7 location issue for December 6th, 2016 and November
8 14th, 2017. Is that correct?

9 MR. SMITH: That's correct. In addition to the
10 specific purpose failure for the November 14th,
11 2017. Your Honor, when I get to that point, I'll
12 explain that so we're all clear about that and our
13 theory. But let me just begin with what's occurred
14 today.

15 Your Honor, in evidence today, you have
16 witnesses, with regard to that December 6 meeting,
17 provided by the plaintiff to indicate that when she
18 arrived, she arrived at the location, as provided to
19 the public on the agenda that you have in evidence,
20 indicating that the meeting was to begin in a
21 special-called meeting for the election of board
22 members; the general business section would begin at
23 7:30.

24 She shows up after 7:30 at the location where
25 it was told to her on the agenda, as provided to her

1 and everyone else, that the general business would
2 occur in the auditorium. In the auditorium, she
3 sits there for approximately two and a half hours,
4 as you heard in testimony, and there is not a
5 person, as was told by custom of the defendant in
6 their case, that would come up there and invite them
7 in.

8 Your Honor will be tasked with determining,
9 strictly under the wording of the statute, is that a
10 violation of FOIA to move the location of that
11 meeting from one place to another. Obviously, Your
12 Honor has heard arguments about whether or not that
13 building, as being having auditorium on the outside,
14 is inclusive of all the rooms within it to be the
15 auditorium. Now --

16 THE COURT: Can I interrupt?

17 MR. SMITH: Sure.

18 THE COURT: Let's say I agree with you, under
19 these facts, that it had been moved to a different
20 building. There is a clear FOIA violation. The
21 issue I have in this case: We're talking 30 feet,
22 20 feet. I mean, is that enough for a FOIA -- I
23 mean, you've got an open door of 20 feet. I mean,
24 is that enough?

25 MR. SMITH: Yes, Your Honor. I believe it is.

1 And the reason is, is that there's an opportunity by
2 a public body, knowing the building that they have
3 to provide advance notice down to the specific room,
4 they would like. Your Honor does that with regards
5 to the courtroom that we're appearing at today.
6 This is a public body also, and they have to notify
7 us and give us, the public, the ability to know
8 specifically where they are meeting.

9 And, Your Honor, we have codified, in FOIA, a
10 purpose which says that you must provide -- in
11 30-4-15, you must provide the opportunity for people
12 to learn the activities of their public officials at
13 minimum cost or delay. To that end, Your Honor, I
14 would contend -- it is our contention that by moving
15 that to another room and not doing what they said
16 they always do, which is come out and ask people if
17 you'd like to come in this other room because we
18 happen to be meeting there, during a
19 two-and-a-half-hour period, that is a failure of
20 notice. That is the testimony as to that Your Honor
21 heard.

22 Otherwise, we're assessing custom of what they
23 typically do in other circumstances. The
24 uncontroverted evidence, Your Honor, about that
25 particular evening at that particular time in the

1 auditorium, was that there was no one else in there
2 during that period of time and was like that for a
3 substantially long time, and that she did not feel
4 it appropriate to enter into that room because, in
5 her experience, that is where the Board meets.

6 That is the boardroom, not the room for public.
7 That's where the executive session is. So, Your
8 Honor, as to the first cause of action, the notice
9 of violation, I believe the evidence is before you.

10 You also have, Your Honor -- moving along with
11 the cause of action from Ms. Garris -- Ms. Jada
12 Garris, you have her testifying that, on particular
13 times, as to the internet, there was an obligation
14 established under South Carolina law, which I
15 identified in my memorandum, of the statutes at play
16 here concerning when an agenda has to be posted.
17 That, Your Honor, is extremely clear.

18 It does provide when there's an agenda, an
19 agenda for a regularly scheduled or special meeting
20 must be placed on a bulletin board in a publicly
21 accessible place at the office or meeting place of
22 the public body. That is not at issue in this case.
23 We're not contending that it wasn't placed at a
24 physical location.

25 However, it continues. And on a public website

1 maintained by the body, if any, at least 24 hours
2 prior to such meetings. There is no evidence that
3 this body did not have a website. They've been open
4 about that, such that now that they have admitted
5 they have a website, and my client had used them,
6 like much of the public, to figure out what's going
7 to happen at the next meeting. They had an
8 obligation to post 24 hours ahead of the meeting.

9 Another problem with the culture of this
10 organization, which you heard from the stand in
11 their case, is that there appears, even amongst
12 their communication chief officer, to not know
13 exactly when the meeting starts. Even if they
14 contend, as a matter of law, which they would be
15 incorrect, that it starts in the general business
16 session part, Your Honor knows, by strictly
17 construing FOIA towards its purpose and by looking
18 at the memo we provided concerning those provisions,
19 that you have to have a meeting convened to then
20 have a forum present to then take a vote to enter
21 executive session.

22 THE COURT: I agree with you that the meeting
23 starts at 6:00.

24 MR. SMITH: Consequently, whether or not we're
25 talking about the properties of what they put in

1 evidence to say it was an earlier date and time, it
2 doesn't matter, I believe, for Your Honor's
3 purposes, because the only evidence that Your Honor
4 considered today is that the agenda that my client,
5 Ms. Garris, noticed was not present up until a
6 certain time on the website.

7 And when it was available on the website, she
8 would decide to inform Your Honor of what time she
9 roughly noticed it and would go online, download the
10 document, and look at the properties of that
11 document; that document, which, by the statute, that
12 was placed on the website.

13 There may be versions that the defendant
14 provided, Your Honor, that could be actual agendas.
15 And we're not contending that they didn't have other
16 versions of the agenda or they didn't send them out
17 to the media, perhaps, or that they didn't send them
18 internally amongst the staff or to board members.
19 We're concerned, in this case, with what was put on
20 the website.

21 THE COURT: Right. But the testimony was that
22 for, at least, March 21st and July 28th, they had
23 posted agendas that met the 24-hour deadline and
24 they posted a second document that did not alter the
25 agenda but, in one case, reduced it from a two-page

1 document to a one-page document and, in the other
2 case, added some bios of the board members.

3 That's not an alteration of the agenda. Isn't
4 that -- because you said the only testimony I heard
5 was that it was untimely. I don't think that's
6 true.

7 MR. SMITH: Well, as to those two meetings,
8 Your Honor.

9 I believe the testimony from Ms. Jada Garris is
10 that she would look on the website, not seeing an
11 agenda at all up until and past 24 hours before the
12 meeting. She did eventually notice one on the
13 website.

14 THE COURT: Yes, sir. But you told me the only
15 evidence in front of me. I mean, there's
16 conflicting testimony on that issue, is there not?

17 MR. SMITH: I don't think Your Honor has
18 testimony from any of their witnesses about them
19 seeing what was up when -- on those days I'm talking
20 about. You have them indicating that when they went
21 and did an investigation pursuant to this case, they
22 were able to find agenda that have dates modified
23 and dates created that are even days prior.

24 Again, Your Honor, we're not contesting that.
25 That might be entirely true, except the thing that

1 matters under the law is the one being posted to the
2 website, because the law requires that it happen 24
3 hours in advance.

4 THE COURT: My understanding of the testimony
5 was that she testified that she posted the July 18th
6 board meeting agenda on July 11th and she posted the
7 March 21st meeting on March 16th. That was her
8 testimony.

9 MR. SMITH: You're right, Your Honor. And
10 that's where -- in that sense, if she's saying that
11 that happened, she's got a record, right, that would
12 indicate, I assume, did that. Because she wasn't
13 saying that I was sitting in front of my computer
14 and I did it on that date; she's saying that the
15 records I have, the records I have conferred, is
16 that's when it was posted. So, Your Honor, if
17 that's what the records say, that's what they say.

18 I'm saying that the only testimony you received
19 today of someone who was actually on the website on
20 that day and time refreshing to see what was there
21 is it was not there. That's what's conflicting,
22 Your Honor, to the extent you believe, you're right,
23 the records that she may have and her understanding
24 from those records, that that's when it happened.

25 But my client was there and testified today for

1 you that when she was on the website, it was not
2 there and, when it was there, she chose to look.
3 And that's where, Your Honor, even their properties,
4 on some of their metadata, if you were to look at
5 that, match ours; not necessarily the screenshots of
6 those placements in time, but the properties windows
7 that Your Honor looked at in our case.

8 THE COURT: I want to make sure. Are you
9 telling me that the difference is the defense
10 witness says she posted the document but she didn't
11 double-check on the website to see if it was
12 visible? Is that the difference?

13 MR. SMITH: Correct, Your Honor. The way in
14 which I interpret this statute is to determine, if
15 you have a website, it has to be posted. And,
16 constant with the purpose of FOIA, to learn the
17 activities of public officials, I would think Your
18 Honor is bound by as to what was actually on the
19 website, what could be viewed by the public.

20 The testimony before Your Honor was that -- the
21 only testimony concerning on that particular day and
22 time of what someone was looking at on the website
23 is that it was not there until less than 24 hours
24 before the meeting the next day.

25 THE COURT: All right.

1 MR. SMITH: So, Your Honor, she went through
2 that, like you pointed out, as to three different
3 causes of action we have for agendas. Obviously,
4 there's one which doesn't appear to be as
5 contentious regarding June. The June 15th meeting
6 had an agenda that was posted late, even after the
7 meeting. So I think, Your Honor, that is one of the
8 clearest suggestions concerning an agenda posting
9 that's before you as to which one was certainly
10 late.

11 Now, Your Honor, that gets us to the actual
12 understanding of what our other problem has been in
13 this case, which is before Your Honor. You have
14 several pages of our exhibits concerning the news
15 releases page. It has been our contention since the
16 beginning, Your Honor, that when there was
17 documents, even in the case of the June 15th meeting
18 which was posted four days later, that when it went
19 up, as you can see in the news release, it's dated
20 several days prior.

21 Now, Your Honor, arguably, that is an
22 interpretation issue as to how we look at that.
23 But, again, going back to the purpose of FOIA, I
24 believe that that shows that they could have changed
25 the formatting to not suggest that it was posted