

# EXHIBIT A

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SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Adele J. Pope, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Alan Wilson, in his capacity as )  
 Attorney General of South Carolina, )  
 )  
 Defendants. )

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IN THE COURT OF COMMON PLEAS

Case No. 2012CP4000350

**ORDER GRANTING MOTION TO AMEND, MOTION TO DISMISS, AND MOTION FOR JUDGMENT ON THE PLEADINGS**

This case has come before the Court pursuant to pending motions of the Attorney General to amend motion to Dismiss, for judgment on the pleadings, and to strike numerous affidavits filed by Plaintiff. After carefully considering these motions, Pope's responses to them and counsel's argument about them at a hearing on November 19, 2020, this Court grants the motion to amend and for judgment on the pleadings. Because of this ruling, the Court need not reach the motions to strike in this order.

**BRIEF HISTORY OF PROCEEDINGS**

Plaintiff brought this action by a Complaint filed in Newberry County on August 3, 2011. The Complaint requested, in part, that the Court declare public documents that she sought by a June 30, 2011, Freedom of Information Act request and that they be made available for inspection and copying.

Following the denial of his earlier motion to dismiss and the transfer of venue to Richland County, Defendant Attorney General filed an Answer to the Complaint that included the defenses asserted in the Motion to Dismiss and Motion to Amend Motion to Dismiss, and added the defense of lack of subject matter jurisdiction arguing that Plaintiff failed to accomplish mailing or delivery

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of her FOIA request as required by §30-4-30(c) and because the items requested were exempt from disclosure under FOIA contenting e they are subject to the rules regarding discovery in the Rules of Civil Procedure. The Answer also included the defense that the Office of the Attorney General had no documents that could be considered responsive to the FOIA request except for a draft of the Legacy Trust attached thereto and included in the Record on Appeal in *Wilson v. Dallas*, 403 S.C. 411743 S.E.2d 746 (2013). The Respondent AG also filed a Motion for Judgment on the Pleadings on March 7, 2013.

Judge Early heard pending motions in this case on May 17, 2016. He issued an Order dated June 14 dismissing this case. He found that the documents at issues were potentially discoverable in pending litigation in Richland / Aiken counties and would be governed by the Rules of Civil Procedure. He found that the documents were exempt from disclosure under FOIA for this reason and that FOIA could not be used to bypass civil discovery: The Court denied Plaintiff's Motion to Alter or Amend by Form 4 Order dated August 11, 2011. Plaintiff appealed the above 2016 Orders.

The Court of Appeals reversed the circuit court's order dismissing the Complaint and remanded the case for further proceedings on the basis of its conclusion in *Pope v. Wilson*, 427 S.C. 377, 389, 831 S.E.2d 442, 448, (Ct. App., 2019) which included the statement that “[i]f the government invokes the exemption in section 30-4-40(a)(4), ‘[m]atters *specifically* exempted from disclosure by statute or law,’ [footnote omitted; emphasis as added by Court of Appeals] to seek protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record.” The Court of Appeals found that the case was not moot since Plaintiff challenged the claim that the Attorney General had given her all the documents responsive to her request. The Court did not address the Attorney General's

additional sustaining ground that the Court lacks subject matter jurisdiction due to the failing of the Plaintiff to accomplish mailing or delivery of her FOIA request as required by §30-4-30(c) and also the ground that the Court should strike Pope's 14 affidavits as being irrelevant and because many of them are not based upon personal knowledge, contain hearsay, or are speculative.

**PLAINTIFF HAS NO CLAIM UNDER FOIA  
BECAUSE HER REQUEST WAS NOT RECEIVED BY MAIL OR DELIVERY**

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The Office of the Attorney General never received this letter and Plaintiff has failed to show otherwise.

Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, indicating that the Office had not received a FOIA request that Plaintiff had referenced in a motion in another case, and that if she would forward the request, a response would be expedited. According to the affidavit of Ms. Meyers dated October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.

While FOIA serves a vitally important function in assuring that public business is performed in an open manner, Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal

public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor.” (emphasis added). The Office of the Attorney General never received the FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

The authority to sue under FOIA is limited to actions “to enforce the provisions of this chapter in appropriate cases . . . .” §30-4-100. Therefore, no basis exists for enforcement when no “receipt” of “written request” has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).

### CONCLUSION

The Court grants the Motion to Amend the Motion to Dismiss, grants the Amended Motion to Dismiss, and grants the Motion for Judgment on the pleadings because the Attorney General never received the written FOIA request by mail or delivery. Attaching the FOIA request to this lawsuit, another lawsuit, or mailing it to retain counsel is not compliant with the statute. This action is therefore dismissed for lack of subject matter jurisdiction and failure to state a cause of action. As a result, the Court does not rule on the other grounds of the Attorney General’s Amended Motion to Dismiss and Motion for Judgment on the Pleadings.

### AND IT IS SO ORDERED

[Electronic signature of Clifton Newman, Circuit Court Judge, follows]



Richland Common Pleas

**Case Caption:** Adele J Pope vs Alan Wilson , defendant, et al  
**Case Number:** 2012CP4000350  
**Type:** Order/Other

So Ordered

s/ Clifton B. Newman, 2127