

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No.: 2021-CP-40-03103

Mary Poole,

Plaintiff,

v.

South Carolina Department of Disabilities and Special Needs, South Carolina Commission on Disabilities and Special Needs, and Stephanie Rawlinson, David Thomas, Barry Malphrus, Robin Blackwood, and Kevin Yacobi in their official and individual capacities,

Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF UNDER
THE SOUTH CAROLINA FREEDOM
OF INFORMATION ACT**

This matter came before the Court for consideration of Plaintiff’s Motion for Preliminary Injunction and Relief Pursuant to the South Carolina Freedom of Information Act (“FOIA”) and Rule 65, S.C.R.C.P. Plaintiff filed this motion, along with a Summons, Complaint, and Exhibits, on June 25, 2021. Plaintiff’s Complaint alleges violations of FOIA, as well as defamation and civil conspiracy.

A hearing was originally scheduled on this motion for July 13, 2021. Defendant South Carolina Department of Disabilities and Special Needs (“DDSN”)¹ and the individual Board Defendants (Rawlinson, Thomas, Malphrus and Blackwood) sought a continuance to allow them to answer the Complaint, and Judge L. Casey Manning enjoined DDSN from taking any action with regard to the Plaintiff’s former position of State Director of the Department to include but not

¹ The South Carolina Commission on Disabilities and Special Needs (“Commission”) is the policy-making and governing body of the Department and is not a separate entity for purposes of this litigation. *See* S.C. Code § 44-20-30(3).

limited to interviewing, hiring, or filling that position on other than an interim basis until further ordered by the Court. A subsequent hearing was set for August 12, 2021.² All parties have been served, and the parties named in the FOIA cause of action have filed Answers. A hearing on Plaintiff's motion was conducted on August 12, 2021. Plaintiff was represented by Jack E. Cohoon, Esquire; Defendants Department and Commission were represented by Christopher W. Johnson, Esquire; Defendants Stephanie Rawlinson, David Thomas, Barry Malphrus, and Robin Blackwood, all Commissioners, were represented in their official and individual capacities by Richard J. Morgan, Esquire; and Defendant Kevin Yacobi was represented by Joseph D. Dickey, Jr., Esquire.

Having carefully considered the pleadings and arguments, for the reasons set forth below, Plaintiff's motion is GRANTED in part and DENIED in part.

FINDINGS OF FACT

Plaintiff Mary Poole ("Poole") assumed the role of State Director of SCDSN in July 2018. The Commission is governed by seven Commissioners. On January 22, 2021, Defendant Rawlinson shared information from the executive director of Horry County Disabilities and Special Needs, Susan John ("John"), with Defendants Blackwood, Thomas, and Malphrus via email. This communication was conducted using personal email addresses. Chairman Gary Lemel and Commissioner Eddie Miller were not included in the email exchange.

On February 16, 2021, Defendant Rawlinson sent Defendants Blackwood, Thomas, and Malphrus another email, the subject line of the email noting, "I made some edits, added some detail

² Defendant Yacobi was served on August 9, 2021. He has not yet responded to the Complaint, but the FOIA allegations set forth in the Motion do not involve him and though his counsel appeared at the August 12, 2021 hearing, he is not a necessary party for purposes of this Motion and Order.

and tried to divide up the work a little.” Chairman Lemel and Commissioner Eddie Miller were omitted in the email exchange. Included in the email was a fourteen-part plan detailing the exact actions that each of the four Defendant Commissioners would take during the Commission meeting on February 18, 2021, when they would execute the Plan to vote to terminate Plaintiff from her role as State Director. The Plan included specific details for what each Defendant Commissioner would do at the February 18 meeting, including which Commissioner would make each of the motions, who would second the motions, and the plan to vote to terminate Plaintiff if she would not resign. The Plan also accounted for a range of events that could occur at the meeting, including the possibility of Defendant Malphrus assuming the chairmanship if Chairman Lemel refused to seek Plaintiff’s resignation.

On February 18, 2021, the Commission met in a properly noticed regularly scheduled meeting. The notice and agenda included an executive session to discuss contractual and personnel matters. Chairman Lemel left the executive session and discussed with the Plaintiff the possibility of resigning. She declined to resign. Upon return to public session, Defendant Thomas made a motion to remove Plaintiff from the Department and end her employment immediately. Defendant Malphrus seconded Defendant Thomas’s motion to remove Plaintiff. Individual votes were taken; Defendants Rawlinson, Thomas, Malphrus, and Blackwood voted “aye” along with Commissioner Eddie Miller. Chairman Lemel voted “nay.” Consistent with the Plan, Defendant Rawlinson made motions to name an interim director and to issue a press release.

CONCLUSIONS OF LAW

Plaintiff brought this action in part pursuant to FOIA seeking injunctive relief to address violations by the Commission in convening a meeting without notice to the public, committing to a course of action through polling in “chance” meetings, entering into improperly noticed

executive sessions, and taking unnoticed actions not announced on the public agenda.

DDSN is a “public body” as defined in the FOIA. *See* S.C. Code Ann. § 30-4-20(a) (2007). FOIA governs access to records and meetings of “public bodies.” *See* S.C. Code Ann. §§ 30-4-30, 40, 60, and 70 (2007 and Supp. 2020). This action is the designated procedure by which a citizen can seek redress for a violation of the FOIA. *See* S.C. Code Ann. § 30-4-100(A) (Supp. 2020). This Court is empowered to award a declaratory judgment, injunctive relief, or both, to enforce the provisions of FOIA, and may order equitable relief as it considers appropriate. *Id.* The circuit court must schedule an initial hearing within ten days of the service on all parties, at which the hearing court may make a final ruling, or alternatively, establish a scheduling order to conclude actions brought pursuant to FOIA within six months of initial filing. *Id.*

FOIA defines a “meeting” 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) (2007). Under FOIA, a quorum is a “simple majority” of the constituent membership of the public body. § 30-4-20(e) (2007). FOIA prohibits any “chance” meeting, stating, “No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” S.C. Code Ann. § 30-4-70(c) (2007).

Based on the facts in this case and the law, I find that the attachment to the February 16, 2021, email from Rawlinson to the three other commissioners, was a chance meeting under the language of the statute as it constituted a quorum of the Commission over which the DDSN had supervision, control, etc., thereby requiring notice under the FOIA statute. *See*, S.C. Code Ann. §§

30-4-70(c) and 30-4-80 (A). I further find that Defendant Commissioners' email communications on January 22, 2021, and February 16, 2021, constitute illegal, unnoticed "chance" meetings in which Commission business was discussed and a course of action determined. I find that the vote taken to terminate taken on February 18, 2021 was invalid as a result of the unnoticed chance meetings and I find that DDSN violated S.C. Code Ann. §§ 30-4-70(c) and 30-4-80(A) in the conduct of these private meetings. Contrary to Plaintiff's contentions, I do not find that the description of the stated reason for going into executive session on February 18, 2021 was deficient.

Because the Court finds that Defendants DDSN and Commissioners violated FOIA, Plaintiff is entitled to equitable relief. *See* S.C. Code Ann. 30-4-100 (2007). The vote taken at the legally noticed Commission meeting on February 18, 2021 was taken pursuant to the emails constituting a quorum of the Commission in secret "chance" meetings conducted by email and is therefore invalid. As that vote is invalid, Plaintiff remains in the position of State Director as if the vote had not taken place.

Plaintiff is entitled to the emoluments and benefits of the office of State Director as if the vote had not taken place and until such time as the Commission may take action under S.C. Code § 44-20-220 pursuant to a properly noticed meeting. I further direct that the Commission take any action under S.C. Code § 44-20-220 within 60 days of the date of this Order.

Defendant DDSN argues, and the Court agrees, that allowing Plaintiff to resume the duties of the office of State Director would be disruptive and would not serve the public interest. Accordingly, Plaintiff shall not be entitled to resume the duties of the office of State Director.

In addition to the declaratory and injunctive relief authorized under FOIA, I find that Plaintiff is entitled to a preliminary injunction pursuant to Rule 65, S.C.R.C.P. Plaintiff has

established a likelihood of success on the merits regarding her FOIA claims and has indeed prevailed on those claims. It is evident that Plaintiff would suffer irreparable harm should Defendant Commission's illegal vote be left to stand. Moreover, as the Legislature has stated in its preamble to FOIA, in relevant part, "it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." S.C. Code Ann. § 30-4-15 (1987). Leaving the Commission's February 18 vote in place would undermine the values of openness and transparency for which the Legislature enacted this law.

Lastly, Plaintiff has no adequate remedy at law for her claim. South Carolina's Freedom of Information Act ("FOIA") states that "a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists." S.C. Code Ann. § 30-4-100 (Supp. 2020). Plaintiff has established violations of the Freedom of Information Act, and therefore, by statutory mandate, there is no adequate remedy at law for her claim. Thus, the third element for injunctive relief is satisfied.

CONCLUSION

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Preliminary Injunction and Relief Pursuant to FOIA, filed on June 25, 2021, is GRANTED in part and DENIED in part as follows:

IT IS FURTHER ORDERED that the Court declares the Commission violated provisions of the South Carolina Freedom of Information Act by participating in illegal, unnoticed "chance" meetings in which Commission business was discussed on January 22, 2021 and February 16, 2021.

IT IS FURTHER ORDERED that the vote taken by the Commission on February 18, 2021 to remove Plaintiff from her position is therefore declared invalid.

IT IS FURTHER ORDERED that while the “chance” meetings of January 22, 2021 and February 16, 2021 constitute violations of FOIA, the notice and agenda of the February 18, 2021 meeting were proper and complied in all particulars with FOIA.

IT IS FURTHER ORDERED that, as the vote removing Plaintiff is invalid, she remains in the position of State Director as if the vote had not taken place, though this Court finds that she will not assume an active role in that position.

IT IS FURTHER ORDERED that, as the vote removing Plaintiff is invalid, she is entitled to all the benefits and emoluments of the position of State Director as if the vote had not occurred.

IT IS FURTHER ORDERED that Plaintiff remains entitled to the emoluments and benefits of the office of State Director unless and until the Commission takes action to remove her in a manner that conforms with FOIA; such action to be taken within sixty (60) days of the date of this Order.

IT IS FURTHER ORDERED that the prior injunction restraining Defendants DDSN and Commission from taking any action with regard to the position of State Director is dissolved.

IT IS FURTHER ORDERED that the Defendant Commissioners shall, within thirty days of this Order, provide this Court and Plaintiff’s counsel sworn affidavits, under penalty of perjury, that all public records responsive to Plaintiff’s counsel’s March 2, 2021, FOIA request have been provided; if they have not yet provided all responsive public records, those public records must be produced in conjunction with the required affidavits.

IT IS FURTHER ORDERED that the Plaintiff is entitled to attorney’s fees and costs; Plaintiff is directed to circulate an attorney’s fee affidavit to counsel of record, and to file the

affidavit after review by counsel of record. If counsel for Defendants object to the Plaintiff's attorney's fee affidavit, they may request a hearing within ten (10) days of the filing of Plaintiff's affidavit.

IT IS FURTHER ORDERED that the Court waives bond for the injunctive relief ordered.

AND IT IS SO ORDERED



Richland Common Pleas

Case Caption: Mary Poole vs South Carolina Department Of Disabilities And Special Needs , defendant, et al

Case Number: 2021CP4003103

Type: Order/Other

S/R. LAWTON McINTOSH

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