

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
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 )  
 GRAY MEDIA GROUP, INC., )  
 Plaintiff, )  
 )  
 v. )  
 )  
 KRISTIN GRAZIANO, IN HER )  
 OFFICIAL CAPACITY AS SHERIFF )  
 OF CHARLESTON COUNTY, )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2023-CP-10-03027

**ORDER**

This matter is before the Court on Gray Media Group, Inc.’s (“Plaintiff”) Complaint pursuant to the South Carolina Freedom of Information Act (FOIA) for Declaratory Judgment and Injunctive Relief filed on June 22, 2023. Defendant, Kristin Graziano, in her official capacity as Sheriff of Charleston County (“CCSO”), filed an Answer and Request for Hearing on June 28, 2023, and on July 6, 2023, Jamie Komoroski (“Inmate”) filed a Notice of Motion and Motion to Intervene. Pursuant to S.C. Code Ann. § 30-4-100, a hearing was held on July 10, 2023, with appearances by counsel of record for all parties. With the consent of Plaintiff and Defendant, the Court granted Inmate’s Motion to Intervene. After careful consideration of the pleadings, submissions by the parties, applicable legal authority, and oral argument of counsel at the hearing, the Court finds for the Plaintiff, as set forth herein.

**HISTORY OF THE CASE**

On the evening of April 26, 2023, at 10:20 pm, Jamie Komoroski crashed her Toyota into a golf cart on a public road in Folly Beach, South Carolina. The golf cart was transporting a just-married bride and groom and two others from a wedding reception on Folly Beach Island. The bride was killed, her new husband, another passenger and the golf cart driver suffered severe

injuries. Komoroski was arrested at the scene. Komoroski was treated at MUSC, and then detained at the Charleston County Detention Center. She was charged with three counts of felony DUI resulting in great bodily injury and one count of reckless homicide. Since her arrest, she has been held at the Charleston County Detention Center, having been denied bond.

On May 4, 2023, *The Post & Courier* sent a FOIA request to the CCSO requesting “copies of inmate Jamie Komoroski’s communications and correspondence with people outside of the Sheriff Al Cannon Detention Center between April 28 and the date this request is processed.” On May 17, 2023, CCSO informed *The Post & Courier* that the information requested in the May 4, 2023 FOIA request was ready to be picked up at the CCSO. CCSO further informed *The Post & Courier* that “a couple of the calls were not included because no connection was ever made. There was one that included some legal info that was omitted. Finally, two were omitted as they contained personal info (passwords, etc.).” On May 19, 2023, *The Post & Courier* published an article related to the statements made by Inmate in her recorded jail calls and recorded visits. The article cited and relied upon the public records provided by CCSO in response to its May 4, 2023 FOIA request.

On May 22, 2023, Plaintiff sent a FOIA request to CCSO for “inmate intake form for Jamie Komoroski on April 28<sup>th</sup>, 2023...copies of calls made by Jamie Komoroski between April 28<sup>th</sup>, 2023 and present from the Charleston County Jail...all video conference calls made by Jamie Komoroski between April 28<sup>th</sup>, 2023 and present from the Charleston County Jail.” By letter dated May 22, 2022, Inmate’s counsel raised privacy objections to the release of any of the material sought by Plaintiff. On May 24, 2023, *The Post & Courier* sent a second FOIA request to CCSO for “copies of inmate Jamie Komoroski’s communications and correspondence with people outside of the Sheriff Al Cannon Detention Center between May 15, 2023 and the date this request is processed.” By letter dated May 6, 2023, the Ninth Circuit Public Defender, which does not

represent Ms. Komoroski, also raised privacy objections to the release of communications sought by *The Post & Courier* and by Plaintiff.

On June 6, 2023, CCSO sent the following response to Plaintiff, *The Post & Courier*, and multiple other news outlets:

“Subsequent to a prior FOIA production, counsel and other interested parties have raised concern that similar record releases would materially interfere with the administration of justice. For this reason, we are acting in good faith and denying release of communication records within FOIA exemptions stated in S.C. Code of Law Sec. 30-4-40 (B) and (C) for privacy and the administration of justice.”

On June 8, 2023, Plaintiff objected in writing to the denial of its request and made specific reference to CCSO’s prior disclosure of these public records to *The Post & Courier*. In response, CCSO informed Plaintiff that the prior release of records to *The Post & Courier* was “erroneous” and that CCSO had issued a “clawback request.” CCSO further cited an additional exemption in that “the release ‘(F) would endanger the life or physical safety of any individual.’” At no time did CCSO inform Plaintiff which exemptions applied to specific recordings. On June 9, 2023, Plaintiff submitted a FOIA request to CCSO for “all communications between CCSO and The Post & Courier regarding the erroneous production, to include a copy of the clawback request.” On June 23, 2023, CCSO provided responsive documents pursuant to this request to Plaintiff.

Plaintiff filed the present action on June 22, 2023, and on June 28, 2023, CCSO filed an Answer and Request for Hearing. On July 6, 2023, attorneys for Komoroski filed a Notice of Motion and Motion to Intervene, which was consented to by the parties and granted by this Court at the hearing on this matter. At the Court’s request, the parties submitted memoranda to the Court for consideration on July 7, 2023. The matter came before the Court for a hearing on July 10, 2023.

## ANALYSIS & FINDINGS

### A. Freedom of Information Act (FOIA)

- 1. The recordings requested by the Plaintiff on May 22, 2023 are subject to FOIA disclosure and have not been shown to fall under any exemptions.**

The South Carolina Freedom of Information Act provides that “a person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access.” S.C. Code Ann. § 30-4-30(A)(1). A “public record 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.” S.C. Code Ann. § 30-4-20(c). It is undisputed that CCSO is a “public body.” It is undisputed that CCSO records all telephone calls and video visits of its inmates, and that those recordings are in the possession of and retained by CCSO. Thus, these recordings are “public records” pursuant to FOIA.

- 2. Exemptions Cited by CCSO**

FOIA is remedial in nature and should be liberally construed to carry out its purpose. Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d (2001). S.C. Code Ann. § 30-4-40(a) provides specific exemptions that “a public body may but is not required to exempt from disclosure. Further, “if any public record contains material which is not exempt under subsection (a)..., the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.” S.C. Code Ann. § 30-4-40(b). Whether a record is exempt

depends on the particular facts of the case. City of Columbia v. ACLU, 323 S.C. 384, 387, 475 S.E.2d 747 (1996). The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis. Id. Additionally, it is well settled that the exemptions in section 30-4-40 “are to be narrowly construed so as to fulfill the purpose of FOIA...to guarantee the public reasonable access to certain activities of the government.” Fowler v. Beasley, 322 S.C. 463, 468, 472 S.E.2d 630 (1996). The government has the burden of proving an exemption applies. Evening Post Publ'g Co. v. City of North Charleston, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005). Exemptions should be narrowly construed to not provide blanket prohibition of disclosure. Id.

S.C. Code Ann. § 30-4-40(a)(3)(C) provides that a public body may exempt from disclosure “records, video or audio recordings, other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: would constitute an unreasonable invasion of personal privacy.” The FOIA statute does not define “unreasonable invasion of personal privacy.” In U.S. v. Van Poyck, 77 F.3d 285 (9th Cir. 1996), the Court held that “any expectation of privacy in outbound calls from prison is not objectively reasonable and that the Fourth Amendment is therefore not triggered by the routine taping of such calls.” In the present case, Komoroski and whomever she is calling or speaking to hears a recording explicitly stating that the call is recorded and that the call is not private. However, if a Court finds that Inmate does have a right to privacy during outbound calls to non-attorneys or other non-privileged persons, our courts have held that we resort to the general privacy principles, which involves a “balancing of conflicting interests of the individual in privacy on the one hand against the interest of the public's need to know on the other.”

Burton v. York County Sheriff's Dep't, 358 S.C. 339, 594 S.E.2d 888 (2004). However, a limitation on the right to privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest. Soc'y of Prof'l Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984). Our courts have held that, as a matter of law, if a person, whether willingly or not, becomes an actor in an event of public or general interest, then the publication of his connection with such an occurrence is not an invasion of his right to privacy. Doe v. Berkeley Publishers, 329 S.C. 412, 496 S.E.2d 636 (1998). Prior to the release of the recordings, the tragedy that Inmate was involved in on Folly Beach on April 28, 2023, to include the extent of her involvement, was already of great public and general interest. CCSO and Inmate cannot meet the burden of showing that the release of any of the recordings is an unreasonable invasion of privacy.

Additionally, CCSO cites to S.C. Code Ann. § 30-4-40(a)(3)(F), stating that the release of the records “would endanger the life or physical safety of any individual.” S.C. Code Ann. § 30-4-40(a)(3)(F) provides that a public body may exempt from disclosure “records, video or audio recordings, other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: would endanger the life or physical safety of any individual.” CCSO does not state whose life or physical safety would be endangered by the release of the recordings, nor do they state which recordings fall under this exemption, and that is because this is not a valid exemption that any of the recordings falls under. As previously stated, Inmate’s involvement in the April 28, 2023, tragedy was well-known prior to the release of the recordings, and nothing in any of the recordings has been shown to fall

under this exemption. CCSO cannot meet its burden of showing that a person's life or physical safety would be endangered by the release of the recordings.

**3. CCSO has waived its ability to deny the Plaintiff's FOIA request because of its previous production to *The Post & Courier*.**

As it relates to the overlapping request from Plaintiff and the documents previously produced to *The Post & Courier*, "the cat is out of the bag." In re Charlotte Observer, 921 F.2d 47, 50 (4th Cir. 1990), the Court held that "[o]nce announced to the world, the information lost its secret characteristic, an aspect that could not be restored by the issuance of an injunction to two reports." On May 17, 2023, when *The Post & Courier* obtained its requested information pursuant to FOIA from CCSO, or, at the least, on May 19, 2023 when *The Post & Courier* published their story in the newspaper and online, the information was "announced to the world." None of the exemptions cited by CCSO in its initial response to Plaintiff's FOIA request, in its additional exemption listed by CCSO, or in its Answer to the present action apply as the information is already published.

In fact, Inmate's attorneys cite to other media outlets (other than *The Post & Courier*) who have published their own reports related to the recordings reported on by *The Post & Courier*. See Exhibit L. In the Motion to Intervene, Inmate attempts to argue that the release of the recordings will result in Inmate suffering "irreparable injury," that the recordings "contain deeply private, privileged and/or HIPAA-protected conversations," and releasing the recordings will "result in constitutional deprivation of Ms. Komoroski's rights to a fair and impartial proceeding." Id.

However, because the recordings have already been released, those arguments are moot and do not apply to, at least, the previously released recordings. CCSO has not shown that an exemption enumerated under FOIA, or otherwise, applies to previously released records and documents. Similarly, Inmate has not identified an exemption under FOIA that applies to the previously released records and documents. Plaintiff is entitled to the documents and records it requested and those that were previously provided to *The Post & Courier*.

### **B. South Carolina Constitutional Right to Privacy**

The Defendant and the Intervenor contend that the granting of Plaintiff's FOIA request will violate the Intervenor's right to privacy.

The S.C. Const. art. I § 10 provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized, and the information to be obtained.

To date, our Supreme Court has not had the opportunity to address the application of this Article to the privacy issue currently before this court, thus this Court must make a Constitutional interpretation and make a ruling based on the facts presented to it. Our court has recently construed this Article in a much broader context in Planned Parenthood S. Atl. v. State, 438 S.C. 188, 882 S.E.2d 770 (2023). The privacy claim here is a much narrower issue involving right to privacy in the use of electronic devices. In interpreting our Constitution, our Supreme Court has historically relied on the *Final Report of the Committee to Make a Study of the South Carolina Constitution of*



1895 (1969) (“West Committee”). In its analysis of this provision, the West Committee stated that the right to privacy provision “is designed to protect the citizen from improper use of electronic devices, computer data banks, etc.” *Id.* at 14. At minimum, the Constitution protects against “unreasonable invasions of privacy” by the use of electronic devices. Here, Komoroski’s privacy has not been invaded in that she consented to the electronic recording and video recording of her phone calls.

**C. The requested recordings do not fall under the Homeland Security Act.**

S.C. Code Ann. § 17-30-10 et. seq., also known as the “Homeland Security Act”, governs the interception of wire, electronic, or oral communications. S.C. Code Ann. § 17-30-70 provides the framework and procedure for obtaining an order authorizing interception, which can only be initiated by the Chief of SLED and may only be granted by the Circuit Court in connection with the investigation of specific criminal offenses. The present matter does not involve electronic interception of communications, but rather involves a consensual recording by CCSO of Inmate’s calls and visits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the forgoing, the pleadings, the memoranda and exhibits submitted by the parties, and the arguments presented, this Court makes the following findings of fact and conclusions of law:

1. I find that CCSO records and maintains all calls and visits of inmates in their custody at the Sheriff Al Cannon Detention Center, including Inmate’s calls and visits.

2. I find that Inmate was provided notice of same on multiple occasions, to include each time she initiated a call or visit, thus to the extent she retained a right to privacy while in custody, she clearly waived that right and consented to the recording.
3. Further, I find that the right to privacy in this context is found in the S.C. Const. art. I § 10 and that at most, the right to privacy addresses electronic surveillance and electronic surveillance alone.
4. I find that no court-ordered electronic surveillance occurred in the making of the recordings at issue here.
5. As to Defendant's argument that these records are not public records pursuant to the South Carolina Homeland Security Act, I find that the Act is confined to the regulation of court-ordered electronic surveillance, and therefore does not fit the facts of the instant case.
6. I find that the recorded calls and visits requested by Plaintiff to be public records pursuant to S.C. Code Ann. § 30-4-20(c).
7. Having found the recordings to be public records, I find that this Court must determine whether the requested public records are exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40, with the burden of proof resting solely with the Defendant and/or the Intervenor Inmate.
8. I find that exemptions claimed, if any, must be related to specific records and recordings. The number of records does not excuse a government entity from complying with the provisions of FOIA.
9. In connection with the prior release of public records by CCSO to *The Post & Courier*, I find the release to have been made in a purposeful manner, wherein the records custodian for CCSO determined that three (3) specific recordings were exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40, and properly disclosed the remaining records.

10. I find that Defendant's initial response to Plaintiff's FOIA request, however, failed to identify the exempt and non-exempt records, and instead, authored a blanket exemption contrary to the law.
11. As a result, I find that CCSO failed to determine which exemptions applied to the specific recordings, as required by S.C. Code Ann. § 30-4-40 and relevant case law.
12. Further, I find that the Defendant had ample opportunity to make a specific determination as to what, if any, exemptions applied to each recording requested by Plaintiff, yet made no attempt to do so in its initial response to Plaintiff, its Answer to Plaintiff's Summons and Complaint, nor at the hearing on this matter.
13. I find that Defendant cannot treat public records as not requiring specific examination simply because they are voluminous.
14. I find that Defendant failed to submit a complete list of claimed exemptions, nor request additional time to make the exemption determinations prior to the hearing.
15. Further, I find that it is not the province of the authority of this Court, on its own, to go through the public records and make its own exemption determinations with no claim by the Defendant as to what exemption applies to each record.
16. Based on what FOIA requires to trigger a review by this Court to evaluate and determine the correctness of the asserted exemptions, I find there has been no request by Defendant in the course of these proceedings that would comply with the FOIA provisions, thus Defendant's submission fails.
17. I find that pursuant to S.C. Code Ann. § 30-4-100, the Plaintiff as the prevailing party may be awarded attorneys' fees and costs in this matter. A separate Order will be filed detailing this award.

**ORDER**

Having applied the facts of this case to the law, it is hereby ORDERED that:

1. The relief sought by Plaintiff is hereby granted.
2. Within three (3) business days of the filing of this Order, Defendant shall provide Plaintiff with a copy of the public records requested on May 22, 2023 that is the subject of this matter.
3. A separate Order will be issued awarding Plaintiff's attorneys' fees.

**AND IT IS SO ORDERED.**

***[JUDGE'S SIGNATURE PAGE FOLLOWS]***



Charleston Common Pleas

**Case Caption:** Gray Media Group Inc VS Kristin Graziano , defendant, et al

**Case Number:** 2023CP1003027

**Type:** Order/Other

So Ordered

Jean H. Toal