

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE CIRCUIT COURT

Case No. 08-CP-10-3308

STEPHEN GEORGE BROCK,  
Plaintiff,

SUMMONS

(Jury Trial Request)

vs.

TOWN OF MOUNT PLEASANT,  
Defendant.

FILED  
2008 JUN 10 PM 1:45  
JUDGE J. ARMSTRONG  
CLERK OF COURT

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their offices located at 205 King Street, Suite 400, Charleston, South Carolina 29401, within thirty (30) days after the date of such service, exclusive of the day of service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

*Thomas S. Tisdale*

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Attorneys for the Plaintiff

June 10, 2008  
Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

STEPHEN GEORGE BROCK,

Case No. 08-C-10-3308

Plaintiff,

COMPLAINT

vs.

(DECLARATORY JUDGMENT (FOIA)  
AND INJUNCTIVE RELIEF)

TOWN OF MOUNT PLEASANT,

Defendant.

FILED  
2008 JUN 10 PM 4:45  
JULIE HARRISTON  
CLERK OF COURT

Plaintiff, complaining of Defendant, alleges:

**JURISDICTION**

1. Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina.
2. Defendant is a municipal corporation organized and existing under the laws of South Carolina and is located in Charleston County.
3. This action for declaratory judgment and for injunctive relief is brought pursuant to and under the authority of § 30-4-10, et seq., Code of Laws of South Carolina, as amended, which is known as the "Freedom of Information Act," ("FOIA"), and the matters alleged herein are justiciable controversies, and also satisfy the requirement of irreparable harm as provided by the FOIA.
4. All of the matters and things alleged herein occurred in Charleston County where Defendant is located and conducts its business.

5. The relief sought by this Complaint is specifically authorized by § 30-4-100, South Carolina Code of Laws, as amended.

6. This Court has jurisdiction of and over all matters alleged herein upon which relief is sought.

### **FACTUAL BACKGROUND**

7. Defendant, a municipal corporation, is governed by a mayor and town council; and the town council comprises nine (9) members, and five (5) members thereof constitute a quorum for doing business at any meeting, and the members of Town Council with the mayor conduct the business and affairs of the Town of Mount Pleasant, South Carolina in accordance with the laws and statutes of South Carolina, and Defendant is a public body as defined by the FOIA.

### **ILLEGAL FAILURE TO GIVE NOTICE OF PROPOSED ACTION**

8. Town Council scheduled a regular meeting for December 5, 2007 for which notice was given and the agenda for such meeting was posted in accordance with the requirements of FOIA (§ 30-4-80(a)).

9. The agenda of the December 5, 2007 meeting of Town Council was altered and revised to add an item to the agenda allowing for the consideration of a proposal for Defendant to purchase real estate in the town for \$6,000,000. Such amendment occurred after an Executive Session of Town Council.

10. Following the revision of the agenda during the December 5, 2007 meeting, the Town Council proceeded to consider the newly added agenda item to consider the purchase of real estate for \$6,000,000 and, after debate on the issue, approved the proposal without discussion or debate or notice to the public.

11. The public was given no notice of the newly added agenda item as required by § 30-4-80(a), FOIA (notice of items to be considered is always required except in cases of emergency which this was not); and the absence of such notice was a violation of law.

12. The Town Council later scheduled a “special” meeting to attempt to correct its unlawful conduct with respect to the FOIA and as it stated, “to eliminate any possible misconception or an appearance of impropriety” to attempt to legalize their former illegal action.

### **ILLEGAL MEETINGS OF TOWN COUNCIL**

13. The Planning and Development Committee (“the Committee”), a duly constituted committee of Town Council set up under the authority of Defendant in accordance with state and local law, charged with planning and development activities of the Town of Mount Pleasant, met at least 14 times between June 2007 and June 31, 2008.

14. The Committee comprises of four appointed members of Town Council.

15. At 12 of the 14 meetings described in the foregoing paragraph, at least five and sometimes seven members of the Town Council met with the Committee; and at the 12 such meetings, the five or more members of Town Council who attended constituted a quorum of Town Council and such meetings became, by law, de facto meetings of Town Council.

16. Notice as required by the FOIA was given on each such occasion for the meetings of the Committee; but no notice, as required by law, was given for any meeting of Town Council on such occasions as was required by the FOIA.

17. The 12 of the 14 meetings of the Committee that were attended by at least five of the nine members of Town Council, the number five constituting a quorum of Town Council, were in fact, meetings of Town Council for which no public notice required by the FOIA, § 30-

4-80(a), S.C. Code, as amended, was given; and that such meetings violated the FOIA, and should not have been permitted to occur without proper and lawful notice.

### **ILLEGAL EXECUTIVE SESSIONS**

18. Defendant conducted an illegal Executive Session on November 16, 2007, and, at the same meeting of Town Council, unlawfully amended the meeting agenda without public notice of such amendment.

19. The November 16, 2007 Executive Session was illegal because the Town Council failed to comply with § 30-4-70, SC Code as amended, that requires an announcement of the specific purpose of the Executive Session.

20. At the November 16, 2007 Town Council meeting, it was announced that there would be an Executive Session to discuss “personnel matters related to boards and commissions” when, in fact, the purpose of the Executive Session was for another purpose altogether, to wit: to consider punitive action concerning the request for an opinion from the state attorney general by the chair of Mount Pleasant Planning Commission who is the Plaintiff herein.

21. At the November 16, 2007 Town Council meeting, it was also announced that there would be an Executive Session to discuss “personnel matters pertaining to Clerk of Council.”

22. Such and Executive Session violated § 30-4-70, S.C. Code, as amended because the real purpose of the Executive Session was not announced.

23. The November 16, 2007 action of Town Council to consider what it described a “personnel matters pertaining to the Clerk of Council” and “personnel matters related to boards and commissions” were illegal because these matters, discussed in executive session, added as a last minute addition of such items to the meeting agenda, violated § 30-4-80(a), S.C. Code, as

amended, because notice to the public of such proposed action and agenda items, one of which included the expenditure of public money were not given as required by law.

24. Defendant conducted an illegal Executive Session on November 13, 2007 and, at the same meeting of Town Council, unlawfully amended the meeting agenda without public notice of such amendment to provide that members of Mount Pleasant Town Council could retain private counsel for all current and future lawsuits with statements to be reviewed by the Town Attorney.

25. The November 13, 2007 Executive Session was illegal because the Town Council failed to comply with § 30-40-70, S.C. Code as amended, that requires the specific purpose of all items to be discussed in Executive Session and this item was not announced at all as part of the Executive Session agenda.

26. Upon returning to open session, a matter discussed in Executive Session, but not announced for that Executive Session was added as a last-minute addition of such an item to the meeting agenda violated §30-4-80 (a), S.C. Code, as amended, because public notice of the proposed action an agenda item was not given as required by law.

**ILLEGAL COMMUNICATIONS**  
**CONCERNING PENDING LEGISLATION**

27. On February 5, 2007, Town Council, through its Planning and Development Committee initiated a process to enact an ordinance to change the power, authority, and responsibility of the Mount Pleasant Commercial Design and Review Board (“DRB”).

28. During the time that the DRB ordinance was being considered, numerous communications by e-mail were exchanged by and between members of Town Council and with the Town Council staff concerning various aspects of the proposed ordinance, including inaccurate and misleading statements about the Mount Pleasant Planning Commission’s actions

and, further, initiating discussion that lead to an ordinance restricting public hearings before the Planning Commission.

29. The use of electronic communications as a means of discussion and debate concerning a pending ordinance that has been proposed for enactment violates the FOIA, and is a specific violation of §30-4-70(c), and such behavior is illegal.

30. The illegal communications concerning the pending DRB ordinance is a violation of the FOIA.

**CAUSES OF ACTION**

**COUNT I**

**(DECLARATORY JUDGMENT)**

31. Plaintiff realleges all the foregoing allegations of the Complaint as if set forth here verbatim.

32. Paragraphs 8-12 describe conduct of Defendant that constitutes a violation of the FOIA because Defendant altered a meeting agenda that was not posted as public notices required by law was violation of the FOIA.

33. Plaintiff is entitled to a declaration of this Court that the conduct described herein is unlawful; and that Plaintiff is entitled to an award of costs and attorneys' fees from such misconduct.

**COUNT II**

**(DECLARATORY JUDGMENT)**

34. Plaintiff realleges all the foregoing allegations of the Complaint as if set forth here verbatim.

35. The factual allegations set forth in paragraphs 13-17 describe actions of Defendant that constitute illegal meetings of Town Council because notice of such meetings was not given to the public as required by the FOIA.

36. Plaintiff is entitled to a declaration by this Court, under the provisions of the FOIA, that such practice is unlawful and illegal; and Plaintiff is entitled to an award of costs and attorneys fees as allowed and prescribed by the FOIA.

### **COUNT III**

#### **(DECLARATORY JUDGMENT)**

37. Plaintiff realleges all the foregoing allegations of the Complaint as if set forth here verbatim.

38. The factual allegations set forth in paragraphs 18-26 describe acts of Defendant that constitute illegal and unlawful Executive Sessions of Town Council that are prescribed by the FOIA because Town Council failed to announce the reason for the Executive Session as required by the FOIA, and considered matters in the Executive Session that were not announced.

39. Plaintiff is entitled to a declaration by this Court, under the provisions of the FOIA that such conduct is unlawful and illegal; and Plaintiff is entitled to an award of costs and attorneys' fees as allowed by the FOIA.

### **COUNT IV**

#### **(DECLARATORY JUDGMENT)**

40. Plaintiff realleges all of the foregoing allegations of the Complaint as is set forth here verbatim.

41. Paragraphs 27-30 of the Complaint describe unlawful and illegal conduct of Defendant that constitutes illegal communication by and between members of Town Council and

Defendant that constitutes illegal communication by and between members of Town Council and its staff about a pending proposed ordinance, by means of electronic communications (e-mails) and such conduct violates the provisions of the FOIA.

42. Plaintiff is entitled to a declaration of this Court that the conduct of Defendant described herein is unlawful and illegal and that Plaintiff is entitled to an award of costs and attorneys' fees.

### COUNT V

#### (INJUNCTIVE RELIEF)

43. Plaintiff realleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

44. Should this Court declare that Defendant has violated the FOIA in any respect as requested in Counts I through IV of this Complaint, Plaintiff is then entitled to injunctive relief and any other equitable relief that this Court deems appropriate under the provisions of § 30-4-100, S.C. Code, as amended.

45. Plaintiff, therefore, seeks an injunction against Defendant to enjoin and prevent any future violation of the FOIA by Defendant with particular respect to the violations specified in this Complaint.

46. Plaintiff also seeks an award of costs and attorneys' fees as allowed by law.

WHEREFORE, Plaintiff prays for relief as follows:

- (1) For a declaratory judgment by this Court declaring that Defendant's conduct described in Counts I through IV of this Complaint is unlawful and violates the FOIA § 30-4-10, et seq., S.C. Code of Laws, as amended;
- (2) For an injunction against future unlawful conduct that violates the FOIA, § 30-4-10, et seq., S.C. Code of Laws, as amended;

- (3) For reasonable costs and attorneys fees incurred as provided by § 30-4-100, S.C. Code of Laws, as amended;
- (4) For such other equitable relief as may be just and proper.

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June 10, 2008  
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