
From: Staton, Jennifer A
Sent: Thursday, January 31, 2019 4:02 PM
To: Doug Newton
Cc: Foster, James H
Subject: RE: Newton FOIA request

Dear Mr. Newton-

This will confirm receipt of your request pursuant to the South Carolina Freedom of Information Act (FOIA) dated January 23, 2019.

In that FOIA request, you specifically referenced litigation captioned *Newton v. Beaufort County School District*, Civil Action Number 2016-CP-07-0991, which I understand to be ongoing litigation. Your FOIA request seeks "documents, records, files and materials requested during the depositions of Alice Walton, Jeffrey Moss, and Christine Brown." Your FOIA request does not identify the requested documents with sufficient specificity.

Nonetheless, I understand those depositions to have been taken in the aforementioned litigation and that you (or your legal counsel) are seeking these documents as part of that litigation. I am further advised that Circuit Court Judge Carmen T. Mullen has previously issued a Second Amended Scheduling Order filed April 2, 2018, which includes a discovery deadline of May 29, 2018 for the litigation and further states that "all discovery requests shall be served in time for the responses thereto to be served by this date." Your FOIA request obviously was submitted long after that May 29, 2018 deadline for discovery to be completed.

As a result, please be advised that the Beaufort County School District objects to your FOIA request because it appears to be an attempt to circumvent the scheduling order established by the Court in Civil Action Number 2016-CP-07-0991 as well as to circumvent the inherent authority of the Court to manage the litigation consistent with Rule 16, SCRPC. In *State v. Robinson*, 305 S.C. 469, 409 S.E.2d 404 (1991), the South Carolina Supreme Court has recognized that "the FOIA does not supplement or displace the applicable rules of discovery." 409 S.E.2d at 409. The School District submits that the reference to "rules of discovery" necessarily includes discovery deadlines established by court order. The School District certainly is unwilling to take any action that is contrary to any existing court orders in the litigation.

Please note that the School District's position is further supported by federal case law. For instance, in *National Labor Relations Board v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978), the United States Supreme Court explained that "FOIA was not intended to function as a private discovery tool." 437 U.S. at 242. (Emphasis in original). Moreover, in *Environmental Crimes Project v. Environmental Protection Agency*, 928 F.Supp. 1 (D.D.C. 1995), the district court ordered a stay of a FOIA case "pending the resolution of the discovery disputes" in the parties' related lawsuit in order to foreclose the requester's attempt to "end run" or interfere with discovery 928 F.Supp. at 2. See also, *Vento v. Internal Revenue Service*, 2010 WL 1375279, *8 (D. Virgin Islands 2010) ("FOIA is not intended a tool to circumvent the normal rules of discovery to gain an advantage in litigation"); *United States v. U.S. District Court, Central District of California*, 717 F.2d 478, 480 (9th Cir. 1983) (holding that "the FOIA was not intended as a device to delay ongoing litigation or to enlarge the scope of discovery beyond that already provided by the Federal Rules of Criminal Procedure"); *Martinez v. EEOC*, 2004 WL 2359895, *6 (W.D. Tex. 2004) (concluding that the requester "may not use the FOIA to circumvent the discovery process").

To the extent that you are entitled to receive the documents requested, I suggest that that decision should be made by the Court within the scope of the pending litigation.

Jennifer Staton, MS, CSP

Risk Manager
Beaufort County School District
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-----Original Message-----

From: Doug Newton <[REDACTED]>
Sent: Wednesday, January 23, 2019 1:35 PM
To: Staton, Jennifer A <Jennifer.Staton@beaufort.k12.sc.us>
Subject: Newton FOIA request

Thank you!