

August 13, 2013

VIA E-MAIL AND HAND DELIVERY

David E. Dukes, Esquire
Nelson Mullins Riley & Scarborough
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201

**Re: Freedom of Information Act Request dated July 25, 2013 to the Office of
the Governor of South Carolina**

Dear David:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

The Office of the Governor of South Carolina (“Governor’s Office”) has asked our firm to provide it with legal counsel in responding to the Freedom of Information Act request that you submitted to the Governor’s Office on July 25, 2013 (“FOIA Request”). We note that in your letter of July 30, 2013, to Chief Engineer John St. C. White, you made it clear that the FOIA Request was made for the purpose of discovery in DSS et al. v. Hewlett Packard Company, et al., Case No. 2012-204 A&B that is pending before the Chief Procurement Officer for Construction (“Procurement Case”). Although the Governor’s Office objects to your client’s apparent efforts to circumvent the prohibition on discovery in the Procurement Case, the Governor’s Office does intend to comply fully with the Freedom of Information Act. Please accept this letter as the Governor’s Office’s response to the FOIA Request.

The threshold issue for the Governor’s Office is the breadth and vagueness of many of your requests. Specifically, in most of the requests, you use the phrase “relating in any way to”. As you can imagine, such a phrase, creates so much ambiguity that it makes it almost impossible for the Governor’s Office to draw a line as to what information falls within the request. For example, in your request number 2, the phrase “relating in any way to” means the request can be fairly interpreted to encompass everything associated with the CFS project from the RFP that led to Contract 07-S7279 through today. As one U.S. District Court judge commented, “A request for all documents ‘relating to’ a subject is usually subject to criticism as

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overbroad since life, like law, is a 'seamless web', and all documents 'relate' to others in some remote fashion." Massachusetts v. U.S. Dept. of Health & Human Services, 727 F. Supp. 35, 36 n.2 (D. Mass. 1989). I am asking that you clarify your request by more specifically identifying the information you want produced. We believe that this will make the process more efficient and less costly, and will prevent unnecessary misunderstandings that could lead to information either being produced that you do not want or leaving out information in the production that you do want.

The Governor's Office will use electronic searching methods to retrieve emails from potential custodians in order to comply with your request. To facilitate email searches that the Governor's Office will undertake, please provide specific search terms that you would like the Governor's Office to run for purposes of capturing email records. These terms may also include Boolean operators if necessary. After the e-mails are identified with the search terms, they will be searched and reviewed for responsiveness to your request. Retrieval, review and production will be a time-consuming and costly process. It will be to everyone's benefit for you to furnish carefully-considered search terms.

Many of your requests involve production of records that reside in databases which your client Hewlett Packard has access to, SharePoint, for example. We request that you waive production of records that can be found in common databases Hewlett Packard and the State have access to or possession of, including but not limited to SharePoint. The purpose of FOIA is to protect the public from the evils of secret government activity, not to require the State to review and sort documents to which the requestor under the FOIA already has equal access. Obviously, agreeing to this limitation will reduce costs for your client.

Once you provide us with amended requests and search parameters, the Governor's Office will estimate the amount of actual fees to search and copy the records requested. The Governor's Office will require payment of a reasonable deposit before searching for or making copies of the records. Further, please be advised that the Governor's Office does not intend to produce any information that is exempt from disclosure under the FOIA Act, S.C. Code Ann. 30-4-40 including, but not limited to, information covered under the Attorney/Client Privilege and/or Work/Product Privilege.

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We look forward to your response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MAM', written in a cursive style.

Marcus A. Manos

MAM/hjr

cc: Swati Patel, Esquire, General Counsel, Office of the Governor of South
Carolina