

## MEMORANDUM

**TO:** Town of Melbourne Beach Commissioners  
**FROM:** Ryan G. Knight  
**RE:** Update on Pending Litigation  
*Funoe, LLC v. Town of Melbourne Beach; Case No. 2025-CA-23102*  
**DATE:** March 3, 2026

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Mayor, Vice-Mayor, and Commissioners,

The following provides a summary of the pending litigation in *Funoe, LLC v. Town of Melbourne Beach; Case No. 2025-CA-23102*, for discussion at the special meeting on March 4, 2026. The purpose of this memorandum is to provide you with an update on the litigation, relevant case law, and the Commission's options moving forward. This memorandum is not meant to provide litigation strategy in the pending case.

### Timeline of Events

In March 2025, the Town received various public records requests from Funoe, LLC and Nathan Meloon, the attorney of record for Funoe, LLC ("Funoe"), in the pending litigation. The requests in their entirety were as follows, along with a timeline of each request:

PRR-2025-33 – Any and all correspondence or documents since August 1, 2024, regarding or referencing FUNOE, LLC Specifically, any emails sent February 19, 2025 any notes from any phone calls held on February 10 or 24, 2025 I would prefer that these records be produced in their electronic format by email or share file link.

- Thursday, March 6, 2025, at 3:53 pm, public records request number 2025-33 was received, and a confirmation email was sent to the requester at 3:54 pm.
- March 6, 2025, the request was sent to Town Attorney Ryan Knight.
- Monday, March 10, 2025, the request was sent to the then Town Manager, Elizabeth Mascaro, and an Attorney for the Town, Elizabeth Harris.
- March 15, 2025, a reminder notice was sent to the then Town Manager, Elizabeth Mascaro.
- March 28, 2025, documents were uploaded to the system, and the review process began.
- April 9, 2025, the request was sent to Town Attorney Ryan Knight.
- April 15, 2025, a fee was issued to the requester.
- April 29, 2025, the fee was paid, and the records were released to the requester.

PRR-2025-34 – Any record, including any document, memo, letter, email, billing entry or other record, of the "Zoning official" (aka the Planner, aka Corey O'gorman) discussing or "interpreting" 7A-57 made on after January 11, 2024.

- Friday, March 7, 2025, at 8:06 am, public records request number 2025-34 was received, and a confirmation email was sent to the requester at 8:07 am.
- Monday, March 10, 2025, the request was sent to the Town Planner Corey O’Gorman.
- March 13, 2025, documents were uploaded to the system, and the review process began.
- March 13, 2025, the records were released to the requester.

PRR-2025-35 – Any transcript of any meeting involving litigation with or against Alison Dennington or Funoe, LLC. Any and all agreements with Alison Dennington or Funoe, LLC. If you claim these records are exempt, please state so and provide the statutory justification.

- Monday, March 10, 2025, at 3:01 pm, public records request number 2025-35 was received, and a confirmation email was sent to the requester at 3:02 pm.
- March 10, 2025, the request was sent to the Town Attorney, Ryan Knight, and then Town Manager Elizabeth Mascaro.
- March 11, 2025, the request was sent to Finance Manager Jennifer Kerr.
- March 16, 2025, a reminder notice was sent to the Finance Manager, Jennifer Kerr.
- March 27, 2025, documents were uploaded to the system.
- April 7, 2025, documents were uploaded to the system, and the review process began.
- April 9, 2025, the records were released to the requester.

PRR-2025-36 – A) All written town policies related specifically to “key fob(s)” and to “access” to the building for Commissioners and the Mayor, and employees and staff of the Town. (B) all records related to the issuance and return of any key fob to former 1) mayor James (Jim) Simmons, 2) former Mayor Wyatt Hoover, 3) former Vice Mayor Joyce Barton, 4) Former Commissioners Sherrie Quarrie, 5) Corey Runte, and 6) Marivi’s Walker C) Any record of any kind evidencing any official or unofficial change to that written policy suggested, discussed or made by anyone including Cliff Repperger, Melanie Griswold, and/or Elizabeth Mascara or anyone else D) – Specifically any request by Mayor Dennington for Key Fob access and key fob usage records E) all records of any kind that record in any way usage of any and key fobs to access town property from November 2022 to today.

- Wednesday, March 12, 2025, at 7:54 pm, public records request number 2025-36 was received, and a confirmation email was sent to the requester at 7:54 pm.
- March 13, 2025, the request was sent to Town Attorney Ryan Knight and then Town Manager Elizabeth Mascaro.
- March 24, 2025, the request was sent to the Finance Department, the Town Manager, the Fire Department, and the Police Department.
- March 28, 2025, documents were uploaded to the system, and the review process began.
- March 29, 2025, reminder notifications were sent to the Finance Department and Fire Department.

- April 9, 2025, the request was sent to Town Attorney Ryan Knight.
- April 15, 2025, and April 17, 2025, additional documents were uploaded for review.
- April 25, 2025, added staff time spent and issued a fee.
- April 29, 2025, payment was received, and the documents were released.

PD-2025-2 – all records of any kind that record in any way usage of any and key fobs to access town property from November 2022 to today.

- Wednesday, March 12, 2025, public records request was received.
- March 17, 2025, documents released to requestor.

Thus, the date of the requests and the release dates are summarized below:

PRR	Request Date	Date Completed	Total Days
PRR-2025-33	March 6, 2025	April 15, 2025	40 days
PRR-2025-34	March 7, 2025	March 13, 2025	6 days
PRR-2025-35	March 10, 2025	April 9, 2025	30 days
PRR-2025-36	March 12, 2025	April 29, 2025	48 days
PD-2025-2	March 12, 2025	March 17, 2025	5 days

On March 13, 2025, Nathan Meloon sent correspondence to the Town advising his firm represents Funoe, and advising the correspondence shall serve as Funoe’s five (5) day notice as provided in section 119.12, Fla. Stat. On March 19, 2025, in an email correspondence from Ryan Knight to Nathan Meloon, the Town confirmed receipt of the correspondence, advised the Town was currently compiling the documents responsive to each request, and the Town *anticipates* the responses will be completed with seven (7) days. On March 28, 2025, Funoe filed a Petition for Writ of Mandamus, alleging the Town only produced an excel spreadsheet from PD-2025-2, and otherwise failed to provide the requested documents pursuant to requests 33-36.

In a subsequent filing, Funoe has alleged the Town failed to produce otherwise responsive documents, the documents (key fob spreadsheet) may have been altered, and the Town should have had documents that it did not produce. Namely, Funoe alleges the Town did not produce emails of Mayor Dennington requesting key fob access and key fob usage records, an Employee Handbook and prior versions of the Employee Handbook, SOP-33 and 34 (Standard Operating Procedures), and a redacted document pertaining to key fobs.

Trial in this matter is currently scheduled for a one (1) day trial commencing on April 8, 2026. It is expected there will be numerous depositions in the coming month in preparation for trial. To date, the Town has incurred approximately \$5,500.00 in attorneys’ fees in defending the public records lawsuit.

### Case Law

Florida’s Constitution provides “[e]very person has the right to inspect or copy any public

record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf...” See Art. I, § 24 (a). Fla. Const. In addition to this Constitutional right, Florida’s Public Records Act, memorialized in Chapter 119 of the Florida Statutes, also guarantees a statutory right of access to public records. See § 119.01 (1), Fla. Stat., *et seq.* “Providing public records is a duty of each agency.” See § 119.01 (1), Fla. Stat.

“The determination of what constitutes a public record is a question of law...” State v. City of Clearwater, 863 So. 2d 149, 151 (Fla. 2003). “Whether a governmental entity acted in ‘good faith’ in the manner in which it responded to a request for disclosure of public records in necessarily a question for the court to decide based on the circumstances of the case.” Jackson v. City of South Bay, 358 So. 3d 18, 21 (Fla. 4th DCA 2023). Where delay is at issue, the court must determine whether the delay was justified under the facts of the particular case.” Id. at 21-22.

Violations of the Florida Public Records Act encompass not only affirmative refusal to produce records, but also unjustified delay in producing them. Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018). But a delay does not in and of itself create liability under the Act. Id. “Reasonable” delay is allowed. Once a request to inspect public records is made, records custodians must respond promptly and in good faith, determining for instance, if they possess the records, retrieving the records, assessing whether exemptions apply, deleting those portions of the record believed to be exempt, notifying the requestor, and making the non-exempt records available. Id. The Public Records Act contemplates the reasonable custodial delay necessary to retrieve a record and review and excise exempt material. Where the delays aren’t justified, however, the Public Records Act holds officials accountable. Id.

Finally, if a civil action is filed against an agency to enforce the Public Records Act, **the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the agency...** Fla. Stat. § 119.12. If a court determines the complainant requested to inspect or copy a public record or participated in the civil action for an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. Id.

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Should this matter proceed to trial, the court will have to determine whether the Town produced the requested documents in a reasonable time, whether there was an unjustifiable delay in producing the documents, and whether attorney fees and cost should be awarded. If this matter proceeds to trial and there is an adverse ruling against the Town, the court would very likely award reasonable attorney fees and costs to Funoe. **With depositions upcoming and trial preparation necessary, this amount could range greatly from \$50,000 to \$100,000.** As Funoe has alleged and noted above, the court will have to make a determination whether the Town failed to produce various responsive documents. Specifically, with respect to PRR-2025-36, the redacted key fob sign in/out sheet and emails from Mayor Dennington requesting key fob access and key fob records, may present the most issues at trial depending on the progression of discovery through trial. It should be noted that Funoe attached these documents in its responsive filing with the court.

As for an unjustifiable delay, the court would analyze the circumstances of the specific public records request to determine if any delay in producing the documents were unreasonable. This will likely entail analyzing the scope and specific requests, the Town's actions in compiling the responsive documents, the amount of documents, and the time to review the documents for any redactions. Other courts have determined that a 63-day delay<sup>1</sup> and more than 90-day delay<sup>2</sup> constituted an unjustifiable delay. The difficulty in predicting how a court would rule on whether a delay is unjustifiable is there is no bright-line test to determine what qualifies as an unjustifiable delay and this determination will be made by the court based on the record evidence. While other case can offer guidance, it will be up to the court based on the specific facts of each request in determining whether there was an unjustifiable delay. **To reiterate the above, if the court determines the Town's delay in producing the requested documents was unjustifiable, Funoe will be entitled to reasonable attorney fees and costs, which may be substantial.**

Finally, Fla. Stat. § 119.12(3) provides if the court finds the public records requests were made for an improper purpose, the Town shall be awarded reasonable attorney fees and costs. "Improper purpose" means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose. Generally, this is a very high threshold and not likely to be supported in most public record litigation. In effect, the court would likely look to any other purpose for which the public record request(s) were made, and if found, would likely not find in favor of the Town. If there is any other purpose found for requesting the public records, the Town would likely not be awarded any attorney fees and costs in defending this action.

### **Commission Considerations**

With trial a little over a month away, the Commission will need to weigh its options, which are as follows:

- (1) Continue defending the litigation through trial on April 8, 2026. It is expected there will be numerous depositions up to trial and significant attorney fees in preparing for trial. The Town can expect to incur at least an additional \$20,000 to \$40,000 in defending this action. As pointed out above, should there be an adverse ruling against the Town, the Town could be responsible for \$50,000 to \$100,000, and potentially more, for Funoe's reasonable attorney fees and costs.
- (2) Consider a stipulation that the court determine the reasonable attorney fees and costs in bringing the action. This would require the Town to stipulate that the requested records were not produced in a reasonable amount of time and/or all of the responsive documents were not produced in a reasonable time. This would attempt to limit the Town's exposure to a potential adverse award of Funoe's reasonable attorney fees and costs.

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<sup>1</sup> Promenade D'Iberville, LLC v. Sundy, 145 So. 3d 980, 983 (Fla. 1st DCA 2014).

<sup>2</sup> Office of State Att'y for Thirteenth Jud. Cir. of Fla. v. Gonzalez, 953 So. 2d 759, 765 (Fla. 2d DCA 2007)

Each of the above options will be discussed in further detail at the meeting on March 4, 2026.

*/s/ Ryan G. Knight*