

## EDC, Ellis wrap public-records suit, await ruling

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Brevard County Clerk of Courts Scott Ellis argues that Brevard County's main economic-development agency is a public entity, and its records should be public.

The agency, the Economic Development Commission of Florida's Space Coast, counters that it is not bound by public records rules.

The written closing arguments with those views, filed late Monday, are likely the final step before Circuit Judge John Moxley Jr. issues a decision in the case, which stemmed from Ellis' requests for documents related to the Economic Development Commission's dealings during 2012 with BlueWare Inc. and related companies. The decision could set a precedent for public access to EDC files related to its work.

"If the court finds the EDC subject to the public records act for every lead or project — over 800 in three years — the EDC employee" who must deal with such records "could have a full-time job responding to public records requests," the EDC said in its written closing arguments.

The EDC helped BlueWare qualify for about \$1.8 million in government incentives for locating in Melbourne, if it added 190 jobs. BlueWare did not receive those incentives because it did not meet its job-creation and capital-investment goals.

Subsequently, BlueWare became enmeshed in a political scandal involving Ellis's predecessor as Brevard clerk of courts, Mitch Needelman. Needelman, BlueWare Chief Executive Officer Rose Harr and Needelman associate/BlueWare official Matt Dupree all face multiple felony charges in a case involving allegations that Needelman steered a \$8.52 million document-scanning contract to BlueWare in return for illegal contributions to his 2012 re-election campaign. The EDC is not under investigation, but FDLE did subpoena EDC's records of its dealings with BlueWare.

As part of the separate civil case involving the EDC documents, two days of hearings were held last month, and Moxley asked for written closing arguments.

Ellis said he made six public records requests to the EDC from January through August 2013 for information related to the EDC's dealings with BlueWare.

"Each of the clerk's requests were met with blanket refusals by the EDC, so that the clerk was forced to file this lawsuit, seeking production of the public record," Ellis said in his 15-page closing arguments.

Although the EDC in October did provide thousands of pages of records to Ellis in advance of an initial hearing on the case in November, Ellis wants additional records that were not provided, as well as a ruling on whether the EDC is subject to public records rules.

He argues that Brevard County has delegated a public function to the EDC and that the county has a significant level of involvement in the EDC. For example, Ellis said in his written filing that:

- About \$1.4 million a year of the EDC's budget comes from the county budget.

- The EDC, from its inception, “has been designated as the county’s primary marketing and recruiting agency for economic development, and the county has always provided a significant portion of its funding.”
- “The primary beneficiary of the EDC’s activities is the public.”

In its 36-page closing arguments, the EDC said: “The evidence clearly revealed that the EDC is truly a private organization, merely providing services to the county, with extremely limited involvement by the county. The evidence failed to show that the EDC undertook ‘actions of the government’ in relation to the activities of the EDC performance on behalf of BlueWare. Furthermore, the EDC does not resemble a government agency.”

The EDC said:

- As a private organization, run by a private board of directors, the EDC “can do what it wants with its files.”
- It “does not have ‘sole stewardship’ over economic development activities” in the county.
- It is “impossible” for Brevard County government to control the EDC, with its six representatives on the EDC’s 123-member board of directors and one on its 34-member executive board.
- The EDC is “not set up like a government,” and “has no protocol for maintaining or providing public records.”