

No public business on private devices

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Should public officials be able to avoid open records law by using their private messaging devices to conduct business?

That's the issue at the core of a lawsuit against Pierce County Prosecutor Mark Lindquist, who is fighting a disclosure request by sheriff's deputy Glenda Nissen. Nissen thinks texts the prosecutor sent on his personal phone could support her claim that he falsely accused her of sending an anonymous death threat to a former employee of his office. No charges were ever filed against anyone for the threat.

Nissen is appealing decisions by two Superior Court judges who ruled that Lindquist's private phone messages don't qualify as public records that must be disclosed. But the odds don't look good for her appeal: In February, the state Supreme Court ruled twice that people should have an expectation of privacy for their text messages under the Washington Constitution.

The difference with the two Supreme Court cases was that they involved text messages from drug suspects, not a public official. But given that ruling, it's not unlikely the Court of Appeals will rule in Lindquist's favor. One issue that could prove important: Would requiring personal messages to be disclosed encourage a raft of "fishing expeditions" for access to public employees' private accounts?

However the Lindquist lawsuit turns out, it reflects the need for local and state government to have clear rules on how public officials conduct public business. They should be required to use public resources — their work computer and phone — for official business. And they should not avoid public disclosure laws by conducting official business on their private devices.

If something work-related comes up at home or on the weekend and they have to use their personal phone or computer, they should disclose those communications in a timely fashion. Policies should also spell out consequences for public employees who routinely conduct official business on their personal devices. Public disclosure requirements should be made clear.

Lindquist acknowledges that he used his personal phone to conduct official business but argues that there is no county policy or state law against it. There should be — and soon. With few exceptions, public business should be subject to disclosure, and officials shouldn't be able to skirt that by using their private devices.

Although Lindquist may have no legal requirement to turn over 16 text messages in question, Nissen's request that a judge read them and decide if they are relevant seems reasonable. If Nissen's claims against the prosecutor lack substance, volunteering access to the texts shouldn't be a problem.