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## Ruling gives governor's office 'Nixon-style' executive shield



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If Gov. [Jay Inslee](#) wants to withhold documents from the public about how he came to policy decisions — on anything from water quality regulations, to religious hospital mergers, to union negotiations — he now has the right to do that, as do all future Washington state governors.

The Washington state Supreme Court [ruled today in an 8-1 decision](#) that the governor can claim “executive privilege” and refuse to make documents public indefinitely.

“What the court did today was create a Nixon-style privilege,” said [Jason Mercier](#), the director of the Center for Government Reform at the fiscally conservative think tank, the **Washington Policy Center**.

The presumption now is that communications between the governor and his advisers are privileged, and that they could be sealed permanently from public view, Mercier said. Before this ruling, the presumption was that any communications could eventually be released to the public.

“The (Public Records Act) already has hundreds of exemptions,” Mercier said. “If you can’t find one of those exemptions to keep a document from the public, you have to ask yourself, ‘why shouldn’t the public have this?’”

For example, the governor could claim that certain documents weren’t yet complete and that they would be released when they were, or that an issue was ongoing and needed to be secret until an official decision was reached.

The assumption, though, was that eventually those documents and communications could be released. This decision gives the governor's office the right to seal documents permanently.

"The governor's office will be strongly tempted to apply this very broadly, and it will become much more difficult for people to understand the decisions the governor makes or hold the governor accountable," said [Toby Nixon](#), president of the nonprofit **Washington Coalition for Open Government**.

Thursday's decision, which was the result of a lawsuit brought by the libertarian-leaning Freedom Foundation against former Gov. Chris Gregoire, applies to the governor's office, not the person sitting in that office.

"The executive communications privilege plays a critical part in preserving the integrity of the executive branch," the court majority said in its opinion. "Courts have widely recognized that the chief executive must have access to candid advice in order to explore policy alternatives and reach appropriate decisions."

The documents in the Freedom Foundation's lawsuit pertained to the state's medical marijuana legislation, tribal gaming rules, the Seattle Supersonics sale and other politically charged issues.

Inslee indicated while he was running that he would not use executive privilege to withhold documents from the public, and even has [gone so far as to release some of the documents Gregoire withheld](#).

But Inslee, elected last November, does not yet have much of a track record, the open government coalition's Nixon said, and just saying you'll be transparent does not a transparent administration make.

The first executive order President [Barack Obama](#) issued when he took office was on transparency, and he said his administration would be the most transparent in history, Nixon said. Now, statistics and [subjective observations by media and watchdog organizations](#) are concluding that the [Obama administration is one of the most secretive in history](#).

"The transparency in Gov. Inslee's statements parallels President Obama's statements and should be treated as such," the coalition's Nixon said.

Nixon suggested that if Inslee wanted to show that his administration would be transparent, it should release all the documents cited in this lawsuit that were sealed by the Gregoire administration.

An Inslee spokesman said the governor has not changed his position expressed in the campaign that he does not intend to exercise executive privilege unless it is delineated by the Legislature or a vote of the people.

Justice James Johnson was the only dissenter to the ruling, saying, "the majority ignores our state's constitution, statutes, and populist tradition and does great damage to over 120 years of open government in Washington."

Mercier said he believes the implications of this ruling will be far-reaching, as other members of the state's executive branch, such as the Office of the Lieutenant Governor or the Attorney General, look to apply the ruling to themselves as well.

The only recourse the people have, he said, is to seek a constitutional amendment, which would have to start with the state Legislature and eventually be approved by a majority of voters.

"If it made it to the ballot," Mercier said, "I think it would pass overwhelmingly."

*NOTE: This story has been updated to include a response from Inslee's office.*

Emily Parkhurst covers the technology industry for the Puget Sound Business Journal/TechFlash.