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Seattle Times Editorial

Editorial: Governor granted needless gift of public-record exemption

The Seattle Times argues that the state Supreme Court decided wrongly in granting the governor an executive privilege for confidentiality.

IN a ruling last week, the state Supreme Court granted the governor the same privilege of confidentiality as was granted to President Richard Nixon in the famous case of his tapes. The court's decision was a needless gift.

A governor is not the president. As Justice Jim Johnson noted in his lone dissent, the president can take the country to war. The documents at issue in this case were about the Highway 99 tunnel, medical marijuana and Columbia River salmon.

In the *Freedom Foundation v. Gregoire* ruling, the Court considered whether former Gov. Chris Gregoire was required to disclose those documents under the Public Records Act. The act allows the governor confidentiality in some cases. Nonetheless, Justices Mary Fairhurst, Charles Wiggins, Susan Owens, Steven González and Justice Pro Tem Tom Chambers ruled that such a privilege is inherent.

Citing *U.S. v. Nixon* (1974), the justices said that to defeat the governor's claim of privilege, a member of the public would have to go to court and describe "particular need." The judge would hear from the state's attorney about the governor's need for confidentiality, and would decide whose need was more important.

That is not the system under the Public Records Act. If you want a public document, you ask. It is a system of sunshine.

"As a result of the majority's opinion, the governor is much freer to operate in the dark," wrote Jim Johnson.

Three justices — Charles Johnson, Debra Stephens and Chief Justice Barbara Madsen — said an executive privilege would be all right if the court had strictly limited it. They would not require the citizen to show "particularized need."

The best ruling would have been to support no additional privilege.

Gov. Jay Inslee has not used an executive privilege to be exempt from the Public Records Act. He should not assert it, even though the court now says he can.