

Governor's office records should be open — but don't stop there

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Washington state's voters made their intent very clear in 1972 when they approved what is now known as the Public Records Act with a 72 percent yes vote. The intent is stated in the act's preamble which reads in part: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know."

Alas, only Justice Jim Johnson sided with the people in a state Supreme Court decision that was issued earlier this month. On an 8-1 vote, the court ruled the state constitution's separation of powers provision allows the governor to claim executive privilege to withhold documents from the public. This privilege applies even though it is not among the 300 or so exemptions that have been tacked onto the Public Records Act in the past four decades.

The court did put some limits on its ruling, saying the privilege applies only to communications made to inform policy choices. The court left it up to the governor's office to interpret which documents should be exempted.

The case involves former Gov. Chris Gregoire and records related to the Alaskan Way Viaduct replacement in Seattle, medical marijuana and Columbia River salmon. Gregoire's office cited executive privilege in withholding documents on hundreds of occasions; attorneys for the Freedom Foundation, an Olympia-based Libertarian think tank, brought the suit and argued executive privilege didn't apply. The court decided in the governor's favor; justices said a person requesting public records can argue that the need for the files outweighs the public interests served by keeping a lid on the documents.

In other words, the burden of proof is on the public to prove why public records concerning public policy are in the public interest. It should be just the opposite: The burden of proof should rest with the governor's office to explain why the files should remain secret.

Current Gov. Jay Inslee has taken the appropriate steps, saying he would not invoke executive privilege unless it is explicitly provided by the Legislature or public vote. So far, he has kept to that promise.

But the court ruling leaves a giant hole — and opens a giant opportunity. Already there's legislative talk of a constitutional amendment; Republican state Sen. Pam Roach of Auburn says she will introduce a constitutional amendment “to ensure this loophole in our state's constitution is removed.”

Roach is a member of the Public Records Exemptions Accountability Committee, colloquially known as the “Sunshine Committee.” The 13-member committee, chaired by former Yakima County Superior Court Judge Michael Schwab, was created in 2007 as a public platform to hear proposals for repealing or amending exemptions to the Public Records Act. It consists of a mix of legislative, judicial and media representatives.

State constitutional amendments originate in the Legislature and then are subject to a vote of the people; such an amendment affecting the governor's office would be an easy political vote for a legislator. And while attention is focused on the matter, we would urge the Legislature to take it a step further and look at eliminating at least some of the approximately 300 exemptions that its members have added to the original 10 in the Public Records Act over the years. Such a housecleaning would open our state executive and legislative branches, as well as local governments, to a much-needed breath of fresh air.

- Members of the Yakima Herald-Republic editorial board are Sharon J. Prill, Bob Crider, Frank Purdy and Karen Troianello.

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How interesting. The words and meaning in that preamble would NEVER pass our liberal legislature today. That must have been passed by Republicans, who still value the individual's choices in our society. It is completely opposite the legislative goals and actions nowadays where the Nanny-State wants to take those individual responsibilities out of our hands and make our decisions FOR us. And Shhhh. Don't clue in our State Supreme Court to this ideal or they will find a way to nullify the election, as they have done several for votes by the people lately.

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