

Pierce County prosecutor's public records case important to all citizens

By Rob McKenna
Contributing writer
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The state Supreme Court heard a critical case last week that could set an important precedent regarding the ability of public officials to conceal public records by using private devices.

Pierce County's prosecutor, Mark Lindquist, received a records request for text messages sent and received on his personal cell phone regarding a county investigation. He provided some of the texts but redacted others, saying they're personal.

If you want to read the background that led to this dispute, it's a lengthy one. The News Tribune's summation: "(The deputy) is seeking (Lindquist's) phone records because she ...believes the records will show he retaliated against the deputy for political reasons."

This is a fascinating case not just for its Public Records Act implications but also because, whatever is contained in the disputed text messages, clearly Lindquist considers it of utmost importance they not be revealed. One could say he's willing to defend that at any cost, but most of the costs have been borne by Pierce County taxpayers – \$282,490 so far.

Most interestingly, Lindquist fully agrees that if the text messages in question had been made on his government-issued phone rather than his personal phone, they would be public records and have to be turned over. The only reason he believes the record in question does not have to be revealed is that he used his personal phone to create it, even though it was regarding government business.

Lindquist's argument boils down to this: The Public Records Act doesn't cover personal phones, the Legislature can fix that if it wants to, but that change won't ever apply to his case.

Chief Justice Barbara Madsen queried Lindquist's attorney in the hearing: "What happens to the right of the public to know what their officials are up to if we in our modern technology age do everything on our private devices? It's driving a truck through the PRA (Public Records Act.)"

“That’s what the Legislature’s for,” Phil Talmadge said.

It’s a loophole, Lindquist is driving through it, and he’s not looking back. Another telling exchange from the hearing:

“If government officials wish to avoid exposure to the Public Records Act, they may simply use their private devices for all of their communications? And the communications would be unavailable to the public?”

Talmadge gave a long answer.

“Is that a yes?” Justice Steven Gonzales asked.

“That’s a yes,” Talmadge said.

Lindquist’s interpretation of the Public Records Act is clearly against the public interest, and the Supreme Court may decide to reject it. Taxpayers will not be well served if the only thing public officials need to do to avoid scrutiny is use a personal cell phone instead of a government cell phone.

Of course, Lindquist is aware that if he prevails, the Legislature is likely to fix the situation and clarify that all government work product, regardless of the type of device used, is public information and should be subject to disclosure.

But it wouldn’t apply after-the-fact to him. He’d get to keep his secrets. Hopefully justices reject his argument, but if they don’t, I’m confident the Legislature will tighten up the Public Records Act. The correcting legislation could be named the Lindquist Loophole Act.

Rob McKenna was Washington’s attorney general from 2005 to 2013.

Read more here: http://www.thenewstribune.com/2015/06/16/3843144_pierce-county-prosecutors-public.html?rh=1#storylink=cpy