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State Supreme Court rules against Mark Lindquist in phone records case



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In a unanimous decision, the Washington State Supreme Court ruled Thursday that text messages created on Pierce County Prosecutor Mark Lindquist's private phone are public records if they pertain to public business.

The 9-0 ruling from the high court, written by Justice Mary Yu, comes in a case closely watched by open-government advocates. It orders Lindquist to produce transcripts of his text messages, and "obtain, segregate and produce those public records to the County." The decision dismisses arguments from Lindquist and county attorneys that privacy rights trump the public's right of access to public records.

"We therefore reject the County's argument that records related to an employee's private cell phone can never be public records as a matter of law," the ruling states.

The decision is a loss for Lindquist, who has resisted disclosure of the text messages since they were first requested in 2011. The county has paid \$304,000 to outside attorneys in defense of the nondisclosure argument.

The underlying case, *Nissen v. Pierce County*, pits a sheriff's deputy against county government and the prosecutor. Four years ago, Glenda Nissen filed a records request seeking phone records and text messages from Lindquist's private phone. He provided partial records voluntarily, but redacted some portions, claiming privacy. Records of some text messages were provided, but not their content.

Nissen believes the records will show that Lindquist retaliated against her in the course of a long-running dispute. She contends that the records are public because they relate to public business, noting that Lindquist has acknowledged using his private phone for work purposes.

Nissen and her attorneys asked a judge to conduct a private, in-camera — that is, alone, in chambers — review of Lindquist's records to determine whether any of the redacted material qualifies as a public record.

Reacting to the court's decision Thursday, Lindquist called it a win for the county.

"We won on the principles we stood for. This case has always been about the constitutional privacy and speech rights that all citizens have in our personal phones. I'm pleased our State Supreme Court agreed with us that requesters should not be able to fish through the private phones of public employees and that billing logs are not public records. Further, the Supreme Court expressly recognized that

we have acted in good faith. The Court acknowledged the constitutional rights of Washington citizens in general, and public employees in particular, and we are confident we will again prevail in superior court.”

This story will be updated with additional details later today.

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