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Court: Texts on public employee cellphones are public records

Associated Press and Herald staff

SEATTLE — The Washington Supreme Court on Thursday unanimously ruled that a public employee's work-related text messages sent and received on a private cellphone are public records.

The ruling came in a case filed by Pierce County sheriff's detective Glenda Nissen, who had asked for Prosecutor Mark Lindquist's call and text records. Nissen had sued the county claiming Lindquist banned her from his office after she criticized the prosecutor and backed his opponent. The requests included texts that he made and received on his private cellphone.

In response, Lindquist gave the county a "call log" and "text message log" — itemized statements that contained the dates and times of calls and messages, and the telephone numbers involved. The text logs did not include the contents of the messages. Lindquist acknowledged that some of the calls and texts were work-related.

The county gave partially redacted copies to the detective, but she sued the county, arguing that the records that related to his work should be made public. The trial judge sided with the county, saying private cellphone records are not public records. The Supreme Court disagreed and ordered Lindquist to produce those records to the county.

In a statement, Lindquist said the case was about constitutional privacy protections for personal phones.

"I'm pleased our State Supreme Court agreed with us that requestors should not be able to fish through the private phones of public employees and that billing logs are not public records," Lindquist said.

In its order, the higher court said five years ago it ruled that the Washington Public Records Act applied to data stored on a personal computer. They argued that a government worker who tries to circumvent the act by using a home computer would drastically undermine the law.

The justices clarified a list of situations that this case does not include: The ruling doesn't impact a public employer wanting to seize a worker's private cellphone to search for public records, or a citizen wanting to sue a public employee for private messages.

They reasoned that it would be an affront "to the core policy underpinning the (Public Records Act) — the public's right to a transparent government" if it didn't include all records that public employees prepare, own, use or retain in the course of their jobs.

The ruling should prove helpful to governments around Washington when developing policies for public employees to follow, said Ramsey Ramerman, an assistant city attorney in Everett who specializes in open-government laws.

“I think that this opinion gives agencies a lot of useful guidance going forward on how to deal with this issue of personal devices and personal cellphones,” he said.

The ruling recognizes that government employees have jobs and personal lives and directs that access to materials on their personal phones and computers be governed by whether the communication is work-related, Ramerman said.

Nissen argued that Lindquist sent and received text messages in his official capacity “to take actions retaliating against her and other official misconduct.” The court said that since the county and Lindquist acknowledged that some of his texts were work-related, transcripts of those messages are potentially public records.

Therefore, the court ordered Lindquist to get a transcript of his text messages and give to the county any that are public records so they can be sent to Nissen.

“As to text messages that Lindquist in good faith determines are not public records, he must submit an affidavit to the county attesting to the personal character of those messages,” the court said. “The county must produce that affidavit to Nissen.”

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