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Editorial: Court is right: Official can't hide work on private phone

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In a common-sense case that could have public officials squirming, the Washington Supreme Court ruled unanimously on Thursday that public information conveyed on private phones is covered by the state's Public Records Act.

We would have thought the matter was settled five years ago, when the same court ruled that storing public information on a personal computer doesn't make it private.

As the court said back then, "If government employees could circumvent the PRA by using their home computers for government business, the PRA could be drastically undermined."

Sure could. Want to keep something a secret? Just work from home.

It would seem logical to extend that same principle to private cellphones, but Pierce County still thought it wise to spend more than \$300,000 on outside counsel to make the argument against disclosure of public information on Prosecutor Mark Lindquist's personal phone.

The case goes back to 2011, when Pierce County Deputy Sheriff Glenda Nissen requested texts from Lindquist's phone, saying they would prove retaliation against her. Lindquist refused to provide the full content of the texts, claiming his right to privacy would be infringed. The prosecutor did say some of the texts might be work-related.

Lindquist's attorneys told the court he deleted the texts, but the court ordered him to get copies from his cellphone provider for the dates in question and disclose those that related to work. After the ruling, he spun this as a victory because it prevents unlimited requests that seek to sift through truly private information.

However, that's not all he wanted. His attorneys tried to make the more sweeping argument that by using his own phone he had erected a barrier that put his right to privacy

over the public's right to know. They said the Legislature would have to pass a new law if it intended such access.

The court dismissed that argument, saying the Public Records Act is not limited to work product created on public devices, and for obvious reasons. Government officials would just move to private devices when they wanted to keep the public in the dark.

Though the ruling is welcomed, there is one possible trouble spot the Legislature may want to look at. Under the ruling, public officials determine which texts on their phones are public. If a text is deemed private, officials are required to provide an affidavit of explanation.

The court acknowledged the possibility of abuse, so lawmakers may need to find a more objective way for texts on private phones to be reviewed.

Nonetheless, attorney Michele Earl-Hubbard of the Washington Coalition of Open Government called this ruling a "fabulous win," and we agree.

Public servants are officially on notice. Private phones do not create a zone of privacy.

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