

Public records can't hide in private cellphones



Pierce County Prosecutor Mark Lindquist

The News Tribune
September 1, 2015

The state Supreme Court anchored Washington's open government law firmly in the 21st century last Thursday.

In an important ruling involving Pierce County Mark Lindquist, the court ruled that officials can't turn public documents into secrets by stashing them on their own mobile devices. Like personal computers, private cellphones are subject to the state's Public Records Act.

The decision arose from a former sheriff's deputy's claim that Lindquist had secretly retaliated against her in the course of a legal dispute. Suing Pierce County, Deputy Glenda Nissen asserted that evidence of retaliation could be found in his cellphone records over a two-day period in August 2011; she asked a court to order the county to release them.

Lindquist let the county release copies of logs that itemized the dates and times of his calls and text messages, though he withheld the details on communications he described as purely personal. He said he'd erased the actual messages, but Verizon presumably has copies of them.

Nissen wanted a judge to review any text messages that Lindquist deems personal. She ultimately lost that battle.

The public stood to lose a much larger battle when the county's attorneys began arguing that *nothing* on the cellphone belonged to the public.

Since Lindquist acknowledged that there was government business on his phone, that claim amounted to a frontal attack on the Public Records Act. If the act didn't apply to the mobile devices that dominate modern communications, secretive officials would have an impenetrable fortress in which to hide information.

The court unanimously refused to go there, noting that "the public's right to a transparent government" depended on access to work documents stored or created by individual employees on their personal devices.

This wasn't an absolute victory for open government. Under the ruling – which cost county taxpayers a reported \$304,000 – it's still up to government officials to decide which messages to release and which to withhold. The court did not allow for judicial review in the absence of evidence that public documents were being wrongly concealed.

But governments can still take steps to deter illegal secrecy.

Pierce County could, for example, forbid the transaction of any public business on private devices. Hillary Clinton notwithstanding, it's not hard to carry a second smartphone to ensure a clean separation between business and personal messaging.

There is also off-the-shelf technology – widely employed – that automatically syncs private devices to the government computer system. Business calls are thus captured in public databases. Local governments that haven't adopted policies or systems to segregate the public from the private are asking for trouble.

As for Lindquist, this dispute has left some with the impression that he may have something to hide in the Nissen case. It would be in his own interest to definitively dispel this perception.

The court has held that he doesn't have to let a court certify that the text messages he redacts are genuinely personal. With that established, nothing stops him from voluntarily running his redactions past a judge, who would review them in confidence. That would be a smart way to put this case behind him.

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