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## Editorial: Expect more disclosure from next governor

If taken at their word, both candidates for Washington governor would be better advocates and practitioners of open government than the current officeholder.

Gov. Chris Gregoire maintains that her office is entitled to a constitutionally protected special exemption from the state's Public Records Act. While executive privilege is not explicit, she claims that it is implied. A Superior Court judge has ruled in her favor, and the libertarian Freedom Foundation has appealed. The state Supreme Court has agreed to take the case and will hear arguments Thursday.

Whether such a privilege exists or not, both gubernatorial candidates have said they wouldn't invoke it to shield information from the public. The state Legislature has adopted more than 300 exemptions to the Public Records Act, which was overwhelmingly backed by the voters in 1972. Rob McKenna and Jay Inslee say the governor's office doesn't need more.

Like a lot of politicians, Gregoire says some level of secrecy is needed so that politicians can get candid advice. But a recent ruling shows how far her office is willing to go to keep information under wraps.

The state Court of Appeals last Tuesday upheld a \$2,175 fine against the governor's office for withholding public information. In 2009, as part of a larger request for public documents, Olympia activist Arthur West sought a memo from the governor's office about an upcoming meeting with the Washington State Association of Counties. Citing executive privilege, the governor's office took months, rather than the requisite five days, to produce that document.

Thurston County Superior Court Judge Paula Casey ruled that even if the governor's office had executive privilege, it would not have applied for this request. Casey affirmed an 87-day fine against the office.

The problem with executive privilege is that it is simple to abuse. It's a nebulous claim that puts the burden of proof on the requestor to show that transparency trumps the governor's interest. That can be an insurmountable hurdle even if the request is legitimate. The default position of government ought to be disclosure. The Public Records Act supports this. Explicitly.

Even if the state Supreme Court rules that such a power exists, it doesn't mean the governor must invoke it. This would remain a judgment call.

In June, Jay Inslee, the Democratic candidate for governor, told the Olympian that he didn't think the office needed an exemption beyond those granted under state laws. Attorney General Rob McKenna, whose office must defend the governor in such disputes, said he would not claim the privilege himself. Both candidates have records that reflect support for government transparency.

Regardless of how the state Supreme Court rules, we can expect greater transparency from the governor's office for the next four years – if both men are true to their words.

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