

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

GLEND A NISSEN,  
Respondent,

v.

PIERCE COUNTY and PIERCE COUNTY PROSECUTOR'S  
OFFICE,  
Petitioners,

v.

MARK LINDQUIST,  
Petitioner.

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Apr 27, 2015, 1:48 pm  
BY RONALD R. CARPENTER  
CLERK

---

RECEIVED BY E-MAIL

---

**BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES  
UNION OF WASHINGTON**

---

Filed  
Washington State Supreme Court

MAY 13 2015

Ronald R. Carpenter  
Clerk

E  
b/h

NANCY L. TALNER, WSBA #11196  
talner@aclu-wa.org  
DOUGLAS B. KLUNDER, WSBA #32987  
klunder@aclu-wa.org  
ACLU of Washington Foundation  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
(206) 624-2184

Attorneys for *Amicus Curiae*  
American Civil Liberties Union of Washington

 ORIGINAL

**TABLE OF CONTENTS**

INTEREST OF *AMICUS CURIAE*.....1

ISSUES TO BE ADDRESSED BY *AMICUS*.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....3

    A. Work-Related Text Messages Are Public Records but Call  
    Logs Are Usually Not Public Records ..... 4

    B. Federal Law Prevents Public Agencies from Accessing  
    Records, Including Text Messages and Call Logs,  
    Maintained by a Telecommunications Company in  
    Connection with a Private Phone..... 8

    C. Public Agencies Are Liable for Fees and Penalties When  
    They Violate Their Duty to Ensure Public Records are  
    Retained and Disclosed..... 11

CONCLUSION.....17

**TABLE OF AUTHORITIES**

**State Cases**

*Concerned Ratepayers Ass’n v. Pub. Util. Dist. No. 1 of Clark County*, 138 Wn.2d 950, 983 P.2d 635 (1999) ..... 5, 17

*Nissen v. Pierce County*, 183 Wn. App. 581, 333 P.3d 577 (2014)... passim

*O’Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010)..... 10, 13, 17

**Federal Cases**

*F.T.C. v. Netscape Communications Corp.*, 196 F.R.D. 559 (N.D. Cal. 2000)..... 10

*Louisiana Public Service Comm’n v. FCC*, 476 U.S. 355, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986) ..... 10

*Quon v. Arch Wireless Operating Co.*, 529 F.3d 892 (9th Cir. 2008) ..... 8

**Statutes**

18 U.S.C. § 2702(b)(3) ..... 10

18 U.S.C. § 2703(a) ..... 9

18 U.S.C. § 2703(b) ..... 9

18 U.S.C. § 2703(c) ..... 11

18 U.S.C. §§ 2701-12 ..... 8, 10

Chapter 42.56 RCW ..... passim

RCW 40.14.070 ..... 12

RCW 42.56.010(3)..... 4

RCW 42.56.100 ..... 12, 13

RCW 42.56.550(4)..... 16

**Regulations**

WAC 44-14-03002(3)..... 14

**Constitutional Provisions**

U.S. Const. amend. IV ..... 8

U.S. Const. art. VI..... 10

Wash. Const. art. 1, § 7 ..... 8

**Other Authorities**

Cellular Phone Policies <<http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Telecommunications/Cellular-Phone-Policies.aspx>> ..... 14

City of Bellevue, Mobile Phone Policy FAQ ..... 15

City of Everett, Electronic Communications & Technology Resources Policy No. 400-10-01, § 2.3(g) (July 1, 2010) ..... 15

City of Grandview, Personnel Policy Manual § 25.02 (May 5, 2008) ..... 15

State Auditor’s Office, *Opportunities to Reduce State Cell Phone Costs*, Report No. 1006772 (2011) ..... 4

Thurston County, Personal Mobile Device Policy, § 10 (June 12, 2012) ..... 15

### **INTEREST OF *AMICUS CURIAE***

The American Civil Liberties Union of Washington (“ACLU”) is a statewide, nonpartisan, nonprofit organization of over 20,000 members, dedicated to the preservation of civil liberties; it has long sought to protect both privacy rights and the public’s right to oversight of government. The ACLU has participated in numerous cases involving the Public Records Act as *amicus curiae*, as counsel to parties, and as a party itself; it has similarly participated in numerous cases involving the privacy of communications, including telephone communications. In addition to litigation, the ACLU has participated in legislative and rule-making processes involving privacy, public records, and the intersection of the two.

### **ISSUES TO BE ADDRESSED BY *AMICUS***

- 1) Whether work-related text messages and logs of work-related calls made by a public employee on a personal phone are public records.
- 2) Whether a government agency may obtain from a telecommunications company text messages and call logs that are related to a public employee’s personal phone without that employee’s consent.

3) Whether attorney fees and penalties should be awarded when an agency fails to disclose public records because the agency has not ensured that those records remain under its control.

#### STATEMENT OF THE CASE

The parties have presented the case thoroughly, as has the Court of Appeals in its decision. *See Nissen v. Pierce County*, 183 Wn. App. 581, 586-89, 333 P.3d 577 (2014). The facts relevant to the issues presented in this *amicus* brief are as follows:

Mark Lindquist, Pierce County Prosecutor, generally eschewed use of a County-provided cell phone. Instead, he conducted his work using either office landlines or, at least occasionally, his personal cell phone. He also used his personal cell phone for personal matters. On August 2, 2011, Lindquist made some work-related calls and sent and received some work-related text messages on his personal cell phone; he deleted those messages from his phone at some point. On August 3, 2011, Glenda Nissen, a detective in the Pierce County Sheriff's Department, submitted a request pursuant to the Public Records Act (PRA), Chapter 42.56 RCW. She asked for records of all work-related calls made on Lindquist's personal phone, specifically including any work-related text messages sent on August 2. Nissen also used her position as a detective in order to induce Lindquist's cellular service provider, Verizon, to preserve those

text messages beyond Verizon's normal 3-5 day retention period.

Lindquist Petition for Review at 2 n. 1. On September 13, 2011, Nissen submitted another request for records related to Lindquist's personal cell phone. This time, she did not limit the request to work-related calls.

The County responded by producing heavily redacted records of some calls, and did not provide any text messages. Nissen sued the County for an inadequate response to her records request, and Lindquist intervened. The superior court ruled that records related to Lindquist's personal phone are not public records, and dismissed the action. On appeal, the Court of Appeals held that work-related text messages are public records, even when sent on a personal phone. *See Nissen*, 183 Wn. App. at 593-94. It remanded for further factual determination as to whether any or all of the call logs are public records. *Id.* at 595. This Court granted petitions of both Pierce County and Lindquist for review.

### ARGUMENT

Although a few of the specific facts in this case are unusual, the general scenario is increasingly common. As cell phones have become ubiquitous, and virtually a body appendage for many of us, it is inevitable that government officials conduct some business using their personal cell phones. Even when agencies issue cell phones to employees, many of the agency-issued cell phones are barely used; perhaps those employees use

their personal phones instead because they wish to carry only one phone or they prefer the familiar interface of their personal phones. *See* State Auditor's Office, *Opportunities to Reduce State Cell Phone Costs*, Report No. 1006772 (2011). As a result, the auditor recommends that agencies consider encouraging the use of personal cell phones as a cost-saving alternative to agency-issued phones. *Id.* at 18. The auditor recognized that this approach affects both public records and privacy, but offered no guidance as to how to address those issues. *Id.*

*Amicus* is concerned that agencies and employees may not be properly meeting their obligations to retain and disclose public records. We therefore urge this Court to clarify the law, and reiterate that public records obligations apply regardless of where, and on what devices, those records are created or maintained.

**A. Work-Related Text Messages Are Public Records but Call Logs Are Usually Not Public Records**

*Amicus* fully agrees with the analysis of the Court of Appeals with regard to whether text messages and call logs are public records. *See Nissen*, 183 Wn. App. at 590-96. A public record is defined as “any writing ... relating to the conduct of government ... prepared, owned, used, or retained by any state or local agency.” RCW 42.56.010(3).

The Court of Appeals analyzed each of these elements in turn. There is no dispute that both call logs and text messages are “writings.” One would think that it is also clear that work-related<sup>1</sup> text messages and logs of work-related calls are related “to the conduct of government;” the Court of Appeals disposed of that question in just one paragraph. *See Nissen*, 183 Wn. App. at 591.

The County and Lindquist now challenge that proposition by an inexplicable reference to *Concerned Ratepayers Ass’n v. Pub. Util. Dist. No. 1 of Clark County*, 138 Wn.2d 950, 983 P.2d 635 (1999). They claim “that to meet the ‘government conduct’ aspect of the definition of a public record, the record must have a nexus to agency decisionmaking.” County Petition for Review at 13; *see also* Lindquist Petition for Review at 9-10. In actuality, *Concerned Ratepayers* did not even consider the “relating to government conduct” prong of the public records definition; the only question addressed was the scope of the term “use” in the *third* prong of the definition. This Court has never suggested that the phrase “relating to government conduct” should be interpreted in other than the obvious

---

<sup>1</sup> For purposes of this brief, “work-related” means communications or documents written or received in an employee’s official capacity to conduct government business. *Amicus* believes this is what was intended by the Court of Appeals; in most instances, it would not include an employee’s reference to his or her work during the course of a personal conversation or while preparing a personal document such as a diary.

manner—i.e., any work-related record of a public employee is by definition a record “relating to government conduct.”<sup>2</sup>

It also seems obvious that work-related text messages sent and received on Lindquist’s personal phone were either “prepared” or “used” by him in his official capacity. *See Nissen*, 183 Wn. App. at 593-94. Both the County and Lindquist claim that the PRA does not apply to individual employees, only to agencies themselves. But agencies can only function through their employees; with the exception of a few records automatically generated by computers, *all* public records are created by individual employees working on behalf of an agency. If work-related text messages written by Lindquist are not records prepared by an agency, then neither are memos written by Lindquist, nor any documents created by any other employees of the Prosecutor’s Office. Such an interpretation would eviscerate the Public Records Act, and was rightly dismissed by the Court of Appeals, meriting only a footnote. *See id.* at 594 n. 15.

Unlike work-related text messages, call logs for personal phones are not prepared or owned by public employees in their official capacities,

---

<sup>2</sup> Nissen originally argued that all records of Lindquist’s personal phone are public records because he sometimes used the phone for government business. The Court of Appeals rightly dismissed that argument, *see Nissen*, 183 Wn. App. at 591-93. Nissen appears to now concede the point, recognizing that Division Two wrote “a well-reasoned opinion.” Answer to Petition for Review at 1. Only work-related records are public records.

nor are they typically used or retained by a public agency. This is not surprising, as those logs are prepared by the telecommunications provider primarily for billing purposes, and it is the individual employee who pays the bill for a personal phone, from personal funds. As noted by the Court of Appeals, there are some potential governmental uses for these call logs,<sup>3</sup> but there is no evidence in this record that the County or any other public agency made such use of any call logs related to Lindquist's phone. *See id.* at 595.<sup>4</sup> In fact, those potential uses seem speculative in nature, and it is unlikely that public agencies or their employees actually use call logs for personal phones on a regular basis. As such, most call logs for personal phones are not public records, even when they are logs of work-related calls.<sup>5</sup>

---

<sup>3</sup> For example, an employee might submit call logs in support of a request for reimbursement from the agency for all or part of the charges for a personal cell phone.

<sup>4</sup> *Amicus* disagrees with the parties' characterization of the opinion below, claiming that it authorized the trial court to conduct an *in camera* review of the call logs. All the court actually authorized was "developing the record," to determine whether the logs were "actually reviewed, referred to, or otherwise 'used'" by the County. *Id.* Examination of the logs is neither necessary nor helpful for such a determination; it is the actions of the County that are significant, not the content of the logs.

<sup>5</sup> *Amicus* takes no position on Nissen's argument that the County "used" the call logs by responding to Nissen's records requests. We do note, however, that the likely result of such a determination would be that future employees would never voluntarily provide logs from personal phones to their agencies, in either redacted or unredacted form, for fear they would become "public records," subject to full disclosure.

**B. Federal Law Prevents Public Agencies from Accessing Records, Including Text Messages and Call Logs, Maintained by a Telecommunications Company in Connection with a Private Phone**

While the Court of Appeals is correct that some of the requested records, particularly work-related text messages sent by or to Lindquist, are public records, the court failed to address how and whether the County could obtain those records in order to disclose them to Nissen—or to the superior court for *in camera* review.

The County, Lindquist, and various *amici* assert that the text messages are constitutionally protected by the Fourth Amendment and Article 1, Section 7. *E.g.*, Lindquist Petition for Review at 12-18. That assertion is likely correct, but this Court need not tackle constitutional issues in this case. Federal statutes clearly prohibit the County from obtaining the texts from Verizon without Lindquist’s consent—and it is undisputed that the requested text messages, if they still exist at all, are held only by Verizon, not by Lindquist or the County.

Access to text messages held by a telecommunications provider is governed by the Stored Communications Act (SCA), 18 U.S.C. §§ 2701-12. Since Verizon enables its users to send and receive text messages, it is an “electronic communication service” for purposes of the Act. *See Quon v. Arch Wireless Operating Co.*, 529 F.3d 892, 900 (9th Cir. 2008), *rev’d*

*on other grounds sub nom. City of Ontario v. Quon*, 560 U.S. 746, 130 S. Ct. 2619, 177 L.Ed.2d 216 (2010) (holding that pager company that provided text message capability was an “electronic communication service”). At the time the records request was received, the requested text messages had been stored for less than 180 days. As such, the County would have needed a warrant in order to force Verizon to disclose the text messages. 18 U.S.C. § 2703(a). Since there was, and is, no related criminal investigation, let alone probable cause to believe the text messages are evidence of a crime, the County thus had no power to compel Verizon to disclose the text messages.

Now that 180 days have passed, access to the text messages is governed by a somewhat lower standard under 18 U.S.C. § 2703(b), but the text messages are still beyond the County’s reach.<sup>6</sup> § 2703(b)(1)(B)(ii) allows access with a court order based on relevance to a criminal investigation, but there is no criminal investigation here.

§ 2703(b)(1)(B)(i) allows access with an administrative subpoena, but no such subpoena is authorized for the County by any relevant statute. The same subsection allows access with a grand jury or trial subpoena, but again that is not applicable because there is no relevant investigation or

---

<sup>6</sup> This lesser, but still unsatisfied, standard is also what would apply if Verizon were determined to be a “remote computing service” for purposes of storage of already-delivered text messages.

trial. Under the SCA, a regular discovery subpoena does not suffice to gain access to the content of communications. *F.T.C. v. Netscape Communications Corp.*, 196 F.R.D. 559 (N.D. Cal. 2000).

Other than compelling Verizon to disclose the text messages, the only way the County can obtain them is with Lindquist's consent. 18 U.S.C. § 2702(b)(3). In a previous case dealing with potential public records stored on a public official's personal computer, this Court assumed the official would consent to an inspection of her computer. *See O'Neill v. City of Shoreline*, 170 Wn.2d 138, 150 n. 4, 240 P.3d 1149 (2010). Such an assumption cannot be made in this case; Lindquist has repeatedly stated that he “*does not and will not* consent to the production” of records related to his personal phone. Lindquist Petition for Review at 13 (emphasis in original).

The County's obligations under the PRA do not allow it to circumvent the SCA; federal statutes preempt state law pursuant to the Supremacy Clause of Article VI of the U.S. Constitution. *See Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 368-369, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986). Accordingly, without Lindquist's consent, and unable to meet any of the other requirements of the SCA, the County is simply unable to obtain the requested text messages, and cannot disclose them to Nissen.

The analysis is much the same for call logs held by a service provider such as Verizon. A governmental entity such as the County cannot compel a telecommunications provider to disclose customer records absent a warrant, a court order related to a criminal investigation, an administrative subpoena, a grand jury or trial subpoena, or the consent of the customer. 18 U.S.C. § 2703(c). This limitation on access to call logs is far less relevant here than the limitation on access to text messages, however, because call logs will rarely qualify as public records, as discussed above. In those rare cases where they do qualify as public records, it will be because the logs have been used or retained by the agency, and the agency should therefore be in possession of the logs. This is demonstrated by the present case; the only argument made that the call logs were used by the County is that they were used in connection with Nissen's records request and are in the County's possession.<sup>7</sup>

**C. Public Agencies Are Liable for Fees and Penalties When They Violate Their Duty to Ensure Public Records are Retained and Disclosed**

The foregoing discussion demonstrates both that the work-related text messages are public records, and that those same records are legally

---

<sup>7</sup> *Amicus* takes no position on the merits of this argument. The limited nature of this argument does, however, obviate the need for this Court to make any rulings on either constitutional or statutory implications involved in an agency's attempt to obtain call logs for a personal phone from an employee or phone company. Such logs will only be public records if the agency already possesses them.

inaccessible to the County (and thus cannot be disclosed by the County to Nissen). The County and Lindquist assert that this inaccessibility operates as an exemption to the PRA. County Petition for Review at 16-20; Lindquist Petition for Review at 11-18. In fact, the County goes so far as to claim that a determination to the contrary would place it “in an ultimately untenable position,” subject to penalties for nondisclosure, but unable to obtain the records in order to disclose them. County Petition for Review at 20. Both of these arguments miss the mark and belie the root cause of the problem, which lies in the County’s and Lindquist’s failure to take any steps whatsoever to preserve the County’s access to public records created by Lindquist on his personal phone. If they had taken such steps, they would not now need to hope that Verizon retained the records, nor would they need to seek an end-run around federal privacy law to obtain them.

Preservation of public records is not merely good policy; it is required by law. Public records may not be destroyed except in compliance with retention schedules, or with the approval of the local records committee. RCW 40.14.070. Even when destruction of public records would otherwise be in compliance with a retention schedule, such destruction is prohibited if there is a pending public records request. RCW 42.56.100. And, finally, the PRA requires agencies to “adopt and

enforce” policies to prevent public records from “damage or disorganization.” RCW 42.56.100.

Despite these clear requirements, *amicus* is not aware of any County policy providing guidance to employees on how to meet their preservation requirements for records created or received on personal phones or other personal devices. Certainly Lindquist makes no claim that he complied with such a policy, but instead asserts (incorrectly) that records created on his personal phone are by definition not public records.

Astonishingly, the County disclaims all responsibility for preservation of public records created by employees on personal phones, suggesting instead that the Legislature should address the issue. County Supplemental Brief at 19-20. The County ignores the fact that the Legislature has *already* mandated preservation of public records, as described above, no matter how they are created. This is not an instance where the development of new technology requires an update of applicable rules; public employees have *always* been able to create public records outside the office, whether using a home computer, typewriter, or quill pen. The rules in such instances are clear; it is the obligation of the agency to ensure that those public records are under the control of the agency. *See, e.g., O’Neill*, 170 Wn.2d at 150 (“If government employees could circumvent the PRA by using their home computers for government

business, the PRA could be drastically undermined.”); *see also* WAC 44-14-03002(3) (“Agencies should instruct employees that all public records, regardless of where they were created, should eventually be stored on agency computers.”). The *only* change required of agencies as a result of the spread of new technology is additional education and training of employees to meet their public records duties on new devices—including the development and distribution of clear policies explaining to employees how their existing duties apply to use of personal devices.

The County’s lack of a policy on appropriate employee use of personal cell phones for work purposes can be contrasted with other jurisdictions. The Municipal Resource Service Center has collected a sample of policies from jurisdictions of all sizes throughout the state. *See* Cellular Phone Policies <<http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Telecommunications/Cellular-Phone-Policies.aspx>>. There is no excuse for the County’s failure to adopt and enforce such a policy as well, ensuring that its public records obligations could be met in all cases.

Adoption and enforcement of a policy regarding the use of personal devices for work-related business need not be onerous for either the County or its employees. There are a variety of mechanisms to ensure public records are preserved. For example, all email should use agency-

supplied email addresses, and be routed through agency servers, which can properly preserve a copy of the emails. Similarly, any documents prepared on personal devices should be stored on agency servers, or in cloud services controlled by the agency. In addition to meeting public records requirements, these are simply good practices for any agency.

Text messages are a little more problematic, because such messages do not typically pass through user-controlled servers, but there are a variety of possible solutions. At one extreme, work-related text messages can simply be prohibited. *See, e.g.*, City of Everett, Electronic Communications & Technology Resources Policy No. 400-10-01, § 2.3(g) (July 1, 2010); Thurston County, Personal Mobile Device Policy, § 10 (June 12, 2012) (“Employees shall not use texting for any County business.”). There are alternative communication methods (e.g., voice, email, and a variety of messaging apps) that will comply with public records responsibilities.

Some agencies choose to allow the use of text messages, but require employees to take steps to ensure those messages are available as public records. *See, e.g.*, City of Grandview, Personnel Policy Manual § 25.02 (May 5, 2008) (“Employees have a duty to maintain [work-related texts] in accordance with the Washington Local Government Record Retention Schedules.”); City of Bellevue, Mobile Phone Policy FAQ

(“you should preserve it just like you would any other public record”). It would be helpful if these policies provided better guidance on the methods to be used to preserve work-related texts, such as including an agency custodian as a recipient on all text messages sent. Despite that shortcoming, those agencies have at least alerted their employees to the issue—unlike the total silence on the County’s part.

Here, the County failed to provide any guidance to its employees about the proper usage of text messaging for work-related matters. As a result, Lindquist’s text messages were not preserved, at least not in a manner accessible to the County. When those public records were then requested by a member of the public, the County failed to disclose them—not due to any applicable exemption, but due to the County’s failure to preserve the text messages. In other words, the County has wrongfully failed to disclose public records (Lindquist’s work-related text messages).

As such, Nissen is a prevailing party in this action, and “shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.” RCW 42.56.550(4). Nissen may also be entitled to statutory penalties for the wrongful nondisclosure. *Id.* This result should apply even though Nissen will not actually obtain the requested text messages. Although this Court has stated that it is premature to award fees until “documents are disclosed to a prevailing

party,” *Concerned Ratepayers*, 138 Wn.2d at 964, *amicus* respectfully suggests that this language was not intended to require actual disclosure of the documents as a prerequisite to an award of fees; instead, it was intended to mean only that fees should not be granted “until an actual violation of the PRA is found,” *O’Neill*, 170 Wn.2d at 154.

In other words, the fact that the County will *never* be able to disclose the requested text messages should not bar an award of fees; it would be an absurdity to allow the County’s violation of its preservation requirements to immunize it from liability. This interpretation is further supported by *O’Neill*, which directed the trial court on remand to determine appropriate penalties if “the City’s deletion of the metadata violated the PRA.” *Id.* Surely if wrongful deletion of metadata supports liability for fees and penalties, wrongful deletion of actual content (text messages) does as well.

### CONCLUSION

For the foregoing reasons, *amicus* respectfully requests that the Court hold that work-related text messages sent and received by public employees are public records, and further hold that Pierce County violated the Public Records Act by failing to preserve and disclose work-related text messages sent by Lindquist.

Respectfully submitted this 27th day of April 2015.

By   
\_\_\_\_\_  
Douglas B. Klunder, WSBA #32987  
Nancy L. Talner, WSBA #11196  
ACLU of Washington Foundation

Attorneys for *Amicus Curiae*.  
American Civil Liberties Union of Washington

## OFFICE RECEPTIONIST, CLERK

---

**To:** Doug Klunder  
**Cc:** Nancy Talner; michele@alliedlawgroup.com; info@alliedlawgroup.com; dhamilt@co.pierce.wa.us; phil@tal-fitzlaw.com; sestres@kbmlawyers.com; RamseyRamerman@gmail.com; speter3@co.pierce.wa.us; anitah@wfse.org; Alverson@WashingtonEA.org; garfinkel@sgb-law.com; jeffj@vjmlaw.com; Pamloginsky@waprosecutors.org; PeterG@ATG.WA.GOV; CallieC@ATG.WA.GOV; jendejan@gsblaw.com  
**Subject:** RE: Nissen v. Pierce County (No. 90875-3)

Rec'd 4/27/2015

**From:** Doug Klunder [mailto:klunder@aclu-wa.org]  
**Sent:** Monday, April 27, 2015 1:37 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Nancy Talner; michele@alliedlawgroup.com; info@alliedlawgroup.com; dhamilt@co.pierce.wa.us; phil@tal-fitzlaw.com; sestres@kbmlawyers.com; RamseyRamerman@gmail.com; speter3@co.pierce.wa.us; anitah@wfse.org; Alverson@WashingtonEA.org; garfinkel@sgb-law.com; jeffj@vjmlaw.com; Pamloginsky@waprosecutors.org; PeterG@ATG.WA.GOV; CallieC@ATG.WA.GOV; jendejan@gsblaw.com  
**Subject:** Nissen v. Pierce County (No. 90875-3)

Dear Clerk,

Please accept for filing in Nissen v. Pierce County (No. 90875-3) the attached documents:

1. *Motion for Leave to File Amicus Curiae Brief*
2. *Brief of Amicus Curiae American Civil Liberties Union of Washington*
3. *Certificate of Service*

Thank you.

Doug Klunder  
ACLU-WA Privacy Counsel  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
206.624.2184 ext. 293  
[klunder@aclu-wa.org](mailto:klunder@aclu-wa.org)