Editorial: Don’t excuse state lawmakers from transparency law

The argument they’re already exempt is easily refuted and defies the intent of the Public Records Act.

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By The Herald Editorial Board

Paul J. Lawrence, attorney for the Legislature, returns to his seat after addressing justices during a hearing before the Washington Supreme Court on Tuesday, in Olympia. The court heard oral arguments in the case that will determine whether state lawmakers are subject to the same disclosure rules that apply to other elected officials under the voter-approved Public Records Act. The hearing before the high court was an appeal of a case that was sparked by a September 2017 lawsuit filed by a media coalition, led by The Associated Press. (Elaine Thompson / The Associated Press)

Now we wait.

The Washington state Supreme Court heard arguments Tuesday in an appeal of a 2018 Superior Court decision that held that state lawmakers, just as with nearly every other public official and agency, are required to provide documents to the public, including

correspondence, written reports, investigative reports and more under the Public Records Act, adopted in 1972 by citizen initiative.

In 2017, a coalition of newspapers, TV and radio media, the Associated Press and open government advocates — after being denied a specific request for legislative documents — sued, challenging the notion that the law doesn't apply to state lawmakers or the Legislature in general.

For decades, state legislators have attempted to excuse themselves from provisions of the Public Records Act, which requires elected officials, state agencies and all forms of local government to comply with specific requests for public records and documents. And they used a number of justifications to explain why the law shouldn't — or doesn't — apply to them.

Lawmakers and their attorneys have insisted that full compliance with the public records law would:

Threaten the privacy of constituents who contact lawmakers on issues and personal matters and chill the communication between them;

Be too costly and cumbersome to comply with, especially for the Legislature's part-time lawmakers who are expected to complete their work in 60- and 90-day sessions; and

Discourage the deliberations and compromises that legislation requires.

But the arguments crumble under scrutiny, because all manner of agencies and officials already are expected — and typically do — comply with those requests without dire consequences.

Concerns over privacy are routinely handled by redacting information that would identify individuals. While the cost of processing requests has been a concern — particularly for smaller cities and districts — state and other officials have looked for solutions to address requests and help assure that requests receive timely responses. And the Public Records Act hasn't yet appeared to have severed the lines of communication between the state's residents and cities; counties; school, port and hospital districts and myriad other agencies.

And many of those and other remedies were helpfully outlined last year by a task force of representatives of the press, open-government advocates and lawmakers themselves.

The line of argument that justices heard Tuesday, however, took a different tack: that the Public Records Act didn't apply to state lawmakers because legislators had already amended the law to exempt themselves from its requirements.

In a brief to the court prior to Tuesday's hearing, the Legislature's attorneys argued that the Superior Court judge failed to recognize amendments to the records act — adopted in 2005 and 2007 — that had removed lawmakers from the act's disclosure requirements, when amendments changed the act's language and definitions to separate campaign finance provisions from the act.

At least two members of the court, Justice Steven Gonzalez and Justice Susan Owens, had questions for the Legislature's attorney.

"If it was so plain, why didn't the Legislature just say 'This doesn't apply to us'?" Gonzalez asked.

Said Owens: "I don't recall seeing anything in the paper saying the Legislature exempted themselves from the Public Records Act."

The attorney representing the media coalition, Michele Earl-Hubbard, filed an earlier brief that challenged the rationale that excusing lawmakers from the records act was the intent of the earlier amendments.

"(I)t is reasonable that IF such action was the intent, that there would have been some hint of that fact, some discussion of it, before, during, and after it was passed," she wrote. "But there is none. This is because the Amendments were never intended to change the scope of the PRA or the reach of the law to individual legislators or the many departments, offices, and subparts of the Legislature."

In our unofficial friend-of-the-court brief, we'll add that if lawmakers sincerely believed that the amendments the Legislature passed more than a decade ago had already excused lawmakers from the act, the Legislature wouldn't have bothered with its attempts this year and last to codify those exemptions, legislation that ultimately was undone by condemnation from the public, the media and advocates for government transparency.

Had anyone — public, press or official — understood the Legislature's previous actions as permission for state lawmakers to ignore requests, you would have heard about it. Because everyone heard it a year ago, when 19,000 calls and emails barraged Gov. Jay Inslee's office demanding his veto on a bill that shot through the Legislature in 48 hours.

In the end, there is no better friend of the court — or of government transparency — than the language of the Public Records Act, itself, which was approved by 72 percent of the voters:

"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created."