

CHRISTINE O. GREGOIRE  
Governor



STATE OF WASHINGTON  
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August 11, 2009

Michael Reitz, General Counsel  
Evergreen Freedom Foundation  
PO Box 552  
Olympia, WA 98507

Re: Reconsideration of Records Request

Dear Mr. Reitz:

Your correspondence of August 7, 2009, was referred to my attention. You may not be surprised that I do not accept your analysis of the applicability of executive privilege in Washington State.

As you are no doubt aware, the Snohomish County Superior Court, in concert with the United States Supreme Court and numerous other State courts, recently recognized executive privilege for written communications between the Governor and members of the Governor's staff, at least insofar as such documents reflect deliberative communications containing opinions, recommendations or advice about policy. *Washington State Farm Bureau Federation, et al., v. Gregoire, et al.*, Snohomish County No. 05-2-10166-99, Court's Oral Decision, January 13, 2006.

Although the claim of executive privilege at issue in the *Farm Bureau* case arose in the context of documents requested in litigation and although the Washington Supreme Court later found it unnecessary to consider executive privilege to resolve that case, Washington courts do recognize that "a privilege may be based on constitutional law, a statute, or the common law." *State v. Maxon*, 110 Wn.2d 564, 756 P.2d 1297 (1988). I have no doubt that when presented with a question requiring the Court to consider the executive privilege in Washington, our Supreme Court would follow the prevailing national consensus.



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Your interpretation of the preliminary drafts and deliberative process exemptions is similarly constrained. The mere promulgation of an Executive Order does not render its objectives complete. As many of the actions contemplated by the Executive Order are still prospective, the privilege applies to the documents reflecting predecisional opinions or recommendations. *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 256, 884 P.2d 592 (1994).

Nonetheless, I accepted your invitation to review several decisions on the records you requested. Without waiving any right to assert executive privilege or the deliberative process exemption for any other documents, please find several additional documents and a revised privilege log. Please do not hesitate to contact me if I can be of any further assistance.

Very truly yours,

A handwritten signature in cursive script, reading "Martin C. Loesch". The signature is written in dark ink and is positioned above the typed name.

Martin C. Loesch  
Senior Advisor and General Counsel

Enclosures