

*Editor's note: This article was originally published in slightly different form in The Tri-City Herald on Oct. 10, 2010.*

# Open government depends on citizen vigilance

By David Seago

Do the citizens of Washington have a right to ensure that their state and local officials are spending public dollars wisely?

Sure they do. But to do that requires information, and all too often citizens and journalists find that government officials would much rather withhold public information and operate in the dark.

For example, let's consider a case from Yakima County now pending before the state Supreme Court. In a horrific 2005 double-murder case that potentially involved the death penalty, court-appointed defense attorneys racked up more than \$2 million in fees and other costs.

The trial is over and done with. In 2007, a gang member was convicted of aggravated first-degree murder and sentenced to life without parole for killing a young father and his three-year-old daughter in a home-invasion robbery. In a separate trial later, his partner pleaded guilty and was sentenced to 30 years. Justice was done. But a nagging question remains: Were those sky-high defense costs truly legitimate and justified?

That's what the Yakima Herald-Republic wants to know. Yakima County taxpayers have a right to know, too. But the answers are shrouded in secrecy because county officials are hiding behind a judge's order sealing records that would show how the defense attorneys billed the county for their work. Sealing court files made sense before the trial, because the records might have told the prosecution how the defense was preparing its case.

But the trial is over. Yakima County Superior Court Judge James Lust still won't unseal the records. So the Herald-Republic, at no small expense, went to court, contending the records are covered by the state's Public Records Act and should be released. The newspaper lost the first round in Superior Court but won a direct appeal to the state Supreme Court.

The stakes here are enormous. It's important to understand that the billing records in the case are administrative in nature. They include, among other things, receipts, invoices and other documents detailing expenses covered by public funds. And the expenses were approved by Judge Lust himself, who was acting as a so-called "budget judge" to oversee spending requests from defense attorneys.

Did the judge do his job properly? Did defense attorneys pad their bills? We don't know, because the judge is keeping his review work under seal.

If the lower-court ruling stands, it will be nearly impossible for journalists and citizens to properly hold the judicial system accountable for its use of public funds. In a setback for open government,

the Supreme Court last year reaffirmed a 24-year-old ruling that exempts the judiciary from the Public Records Act. On the bright side, however, Washington's lawmakers agree that taxpayer-funded attorney fees are subject to public disclosure. In 2007, they amended the act to make that clear.

For its courageous and costly battle, the Herald-Republic was honored with a Key Award from the Washington Coalition for Open Government, an independent, non-partisan organization dedicated to defending and strengthening the state's open-government laws, particularly the state Public Records Act and the Open Public Meetings Act.

Those two laws, enacted by citizen initiative nearly three decades ago, are vital tools for holding government accountable. For example, the coalition also presented a Key Award to Eric Rachner, a Seattle man wrongly arrested solely for refusing to give his name to a Seattle police officer investigating a public-disturbance call. Rachner received a \$60,000 settlement from the city. But he also discovered, through public-records requests, that Seattle police tend to use video recordings to exonerate officers but deny the recordings when they suggest officer misconduct or error.

Thomas Jefferson wrote that "the price of freedom is eternal vigilance." The same is true of preserving the principles of open government.

Without strong disclosure and open-meetings laws, citizens cannot be fully informed about the work and conduct of their public officials. It's often said that "sunshine is the best disinfectant." So it is, but it takes constant vigilance to keep the curtains open and let the sunshine in.

*David Seago is a board member for the Washington Coalition for Open Government and a retired editorial page editor for The News Tribune in Tacoma.*