

Check It Out! Podcast Transcript  
Episode #48  
“Keeping government open and transparent with Toby Nixon”  
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Speaker 1: 00:00:00 Coming up in this episode, we spend time with someone who's focused on keeping government open, transparent and honest. Stay tuned for a conversation with Toby Nixon, president of the Washington Coalition for Open Government. Welcome to season two and episode 48 of Check It Out, the Sno-Isle Libraries podcast for lifelong learners with inquiring minds.

Speaker 2: 00:00:31 The views and opinions expressed on this podcast may not necessarily reflect the official position of Sno-Isle Libraries.

Ken Harvey: 00:00:39 Hi, I'm Ken Harvey.

Jim Hills: 00:00:40 And I'm Jim Hills.

Ken Harvey: 00:00:41 We are here in the podcast studio delighted to have with us a special guest. Our guest today is Toby Nixon who is the president of the Board of the Washington Coalition for Open Government and that's a group which advocates for the people's right to access government information. Toby, thanks so much for being with us.

Toby Nixon: 00:00:58 I'm happy to join you today.

Ken Harvey: 00:00:59 So Toby came up, drove up to a beautiful Marysville on a wonderful autumn day. I can officially say autumn because of the time we're taping this autumn has just occurred and let me give you a little bit more about Toby and the group that he represents. The Washington Coalition for Open Government works as an independent, nonpartisan nonprofit organization through the courts and the legislature of our state to defend and strengthen our open government laws. Mr. Nixon has served as a Kirkland city council member since January, 2012 which... That's a number of years of punishment.

Toby Nixon: 00:01:38 In my eighth year but I love it.

Ken Harvey: 00:01:41 Well, thank you for your service and that love, which I don't know that I can probably understand, but that's okay. He was

(Continued)

also previously a Republican member of the Washington house of representatives from the 45th legislative district. He previously served if that wasn't enough, as a fire commissioner and in the Washington State House of Representatives, as I mentioned from 2002 through 2006 where he was a ranking member of the committee, which has responsibility for overseeing Washington's open government and election laws. He has received a number of recognitions in his time and in his role. He was a 2012 inductee to Heroes of the 50 States and the State Open Government Hall of Fame. And that was by the National Freedom of Information Coalition and the Society Professional Journalists. Congratulations.

- Toby Nixon: 00:02:33 Thank you.
- Ken Harvey: 00:02:34 In 2006, he received the Freedom lights Award from the Washington Newspaper Publishers Association in recognition of his work to protect and advance first amendment interests in Washington. He's also a member of the Washington State Historical Records Advisory Board and serves as an officer and board member of a number of local nonprofit organizations because he's just a guy who cannot say no. He have mentioned before we began taping that these are things that don't pay the bills. What does pay the bills is his work in the computer industry for over 40 years. He currently works for Microsoft.
- Toby Nixon: 00:03:15 That's right.
- Ken Harvey: 00:03:15 You're still in the Windows group?
- Toby Nixon: 00:03:17 Still on the Windows group, although it's not called windows anymore. Now it's called COSIE.
- Ken Harvey: 00:03:21 COSIE?
- Jim Hills: 00:03:22 COSIE?
- Ken Harvey: 00:03:23 Core Operating System and Intelligent Edge.
- Jim Hills: 00:03:26 Oh, of course. Yeah, it rolls off the tongue.
- Toby Nixon: 00:03:27 Yeah.
- Ken Harvey: 00:03:29 I had not heard that before and so everyone can see that the news breaks here on this podcast. We're going to talk about some other things about him a little bit later, but we want to start the conversation with him and just ask him if he could

describe to us who the Washington Coalition for Open Government is and what is its work?

- Toby Nixon: 00:03:57 Well, Washington's Public Records Act came into existence by initiative in 1972 and initiative to the people and it got 72% of the vote-
- Ken Harvey: 00:04:12 That's remarkable.
- Toby Nixon: 00:04:12 Which was one of the highest votes ever received on an initiative in the state. It went into effect in 73 and immediately it was attacked. Members of the legislature say, we don't want to do all this personal finance reporting that the law requires and agencies said, Oh, we don't want to have to really turn over all these records. There were several lawsuits filed and the original group that sponsored the initiative was called the Coalition for Open Government without the Washington in front of it. They hung around for a few years. They were there during these various lawsuits that were successful in defending the act against claims that it was unconstitutional, things like that.
- Toby Nixon: 00:04:54 But then the organization kind of shut down and then about 30 years later people started to realize we have a problem. The number of exemptions from records disclosure in the law was originally 10 and by 2002 it was over 300 different exemptions and the courts were issuing a lot of opinions that weaken the law. A group of folks got together and decided that we needed to pull our resources to try to defend the law from this erosion by the courts and the legislature. In 2002 the Washington Coalition for Open Government was created and they put the Washington, because by that time there were a number of other state coalitions, a lot of which use the same name COG and so they created the organization and the number one initial priority was to do friend of the court briefs.
- Toby Nixon: 00:06:02 So that the appellate courts in particular though the court of appeals, the Supreme court would be able to understand the broader impacts of the decisions they were making. Not just the narrow facts of the case, but how that would be likely to be interpreted across the entirety of state and local government. That was job number one. Job number two was to educate the public about what their rights were under our open government laws. I joined the board in 2005 so three years in. The first thing I did is say we need to have a legislative agenda and we need to be actively working lobbying in the legislature to defend our open government laws. And so that program got started. Then about that same time they also started an awards program just

to recognize people who do good things in support of open government.

- Toby Nixon: 00:06:58 We now have like six different award programs for different areas. We can talk about that a little bit later, but that's basically the mission of the coalition. It's a group of people who maybe don't have very much else in common, but they all recognize the importance of government transparency and the preservation of democracy.
- Ken Harvey: 00:07:18 So could I just take you back for just a second? You mentioned the initiative and I think it was an initiative 276.
- Toby Nixon: 00:07:25 Right 276.
- Ken Harvey: 00:07:26 Almost 30 years ago. Passes by 72%.
- Toby Nixon: 00:07:29 That's 47 years ago now? [crosstalk 00:07:35].
- Ken Harvey: 00:07:33 Okay. All right. My math was off. That's why I had trouble with calculus. So why do you think it passed with such overwhelming support? What was there about it that the voters liked?
- Toby Nixon: 00:07:51 So what was the huge thing happening nationally in the early seventies. Can you think of it?
- Jim Hills: 00:07:59 Yeah.
- Toby Nixon: 00:07:59 Something about a break in at a hotel or Boston DC, Watergate hotel. This was the Watergate era and people were very concerned about corruption in government in general. And you know, bags of money being passed around like Spiro Agnew, right? He had to resign over it. There was this huge uproar all around the country, including in Washington state. People said, we need to also make sure that the people can get access to information about what the government's doing so they can hold the government accountable. We need to be able to know details about campaign finance, who's making contributions to campaigns, trying to influence people who are running for office or currently holding office. What business engagements do people have when they're in office so that we can know when they have a conflict of interest, when they should have recused from certain decisions that are being made. All of these were in initiative 276 but it really came from this era of Watergate when people were nationwide concern about government corruption.

Jim Hills: 00:09:03 I think it was interesting as you were describing the initiative and its initial 10 exemptions. So I'll age myself a little bit that a decade after it passed, a little less than a decade after passed, I got my degree in journalism and began working and at the time it was pretty easy to recite the exemptions.

Toby Nixon: 00:09:23 Yes.

Jim Hills: 00:09:25 But over the years of my time before working for the library and other places working in journalism, you could no longer recite the exemptions to the open government law. There's no way, and it required an interpretation every time. You're never sure where you were. I'm interested to hear you talk about did the 10 stop short of perhaps need or did we end up mucking it up and now we don't really have an open government?

Toby Nixon: 00:10:00 Well, so the first 10 were similar to what's in the federal Freedom of Information Act, which was passed just a few years before and they were very broad and had to do with things like privacy of personal information, social security numbers and those kinds of very broad things, the national security and the deliberative process.

Ken Harvey: 00:10:26 And could I just jump in for a second? Yeah. I don't want you to lose your train of thought, but I just want to make sure that your audience understands what we mean by the word exemptions.

Toby Nixon: 00:10:33 So an exemption is when a record meets the definition of a public record.

Ken Harvey: 00:10:39 So it should be disclosed. It should be shared.

Toby Nixon: 00:10:42 By default, it would be disclosed. But an exemption means that the people through the legislature usually have decided that it's more in the public interest than not for that record to not be disclosed for at least a defined period of time. I could give examples like imagine that the state administers a licensing exam. Well, there is a record someplace about what all the answers to the questions are, right?

Toby Nixon: 00:11:12 It's not necessarily in the public interest for somebody to be able to do a public records request and get the answers to the test. There's a lot of things like that are really narrow. I think the main reason that we have so many exemptions now is that the law requires that exemptions be construed narrowly. That has meant that anytime even one bit of information in a record

should be kept private, a social security number or something. You get a new exemption that declares that specific thing should not be disclosed. It's just built up a lot over time. Some of them are problematic and Jim said, the problem is that they end up being vaguely written.

Toby Nixon: 00:12:04 They're not very crisp and they're open to interpretation. The requesters and the agencies view them differently. I'll continue down this rabbit hole for a second. One of the reasons for that is that exemptions are often defined in bills that do not go through the committees of the legislature that are in charge of the Public Records Act. This might be one little section in a 50 page bill about agriculture and it says, by the way, the people who have a mad cow disease on their farm that they don't have to be disclosed or whatever it might be, right? There actually is a mad cow disease. And so they never get reviewed by the state government committee of the house or the Senate. They get reviewed by the agriculture committee and that those aren't the experts in how the Public Records Act works. That's how you get the vaguely worded exemptions into the law because they're done by people who aren't experts in it.

Jim Hills: 00:13:09 The other part I was curious about, I thought it was as you were describing how those can come about in the courts, that, so case law can set a precedent, but that's not codified in RCW in state law, right? There's these two things that are happening at the same time, you have exemptions that are running through the legislature and being codified and then you have case law by decision. Now we have interpretation of something and it's up to the individual or the agency or whatever to decide how far out on a limb or not they want to go based on whatever set of circumstances they're facing.

Ken Harvey: 00:13:52 You know what that sounds like to me, that that sounds like a block of vanilla ice cream that comes out of the freezer. It's a perfect rectangular cube shape. But the longer it sits out, it starts to melt. The shape starts to modify and then every now and then someone's taking a spoonful out and eating it. And so the shape is changing based upon two different factors.

Toby Nixon: 00:14:17 Yeah, it's not just open government laws that have that problem, right? All different areas of the law end up being a turpitude by the courts. While we think the legislature actually meant this and that case law becomes law. But you only know about it if you know what the cases are, right? Imagine that you're the public records officer for the Sno-Isle Libraries and you have to.

Ken Harvey: 00:14:46 Which unfortunately I have done.

Toby Nixon: 00:14:49 You think, well, I can read the Public Records Act and understand it. Well, no, because unless you have those dozens and maybe even now hundreds of cases that have interpreted the law, you really don't know what the law is. The Attorney General's office publishes a desk book that interprets the law. There's other groups that do training on the law, the Municipal Research and Services Center, the Washington Association of Public Records Officers, the Association of Washington Cities and Washington Coalition for Open Government that sort of gather all that information together and make it available to people so that they can understand what the law really is.

Toby Nixon: 00:15:35 That that training used to be completely optional, but a few years ago under Rob McKenna as Attorney General, we got a bill passed that made the training mandatory. Everybody, elected officials, city council members, the public records officers themselves have to get their training updated at least every four years. I think that's helped with a lot of the problems that we've had with agency compliance now that they're required to have the training, they know more about what the up-to-date interpretations are.

Jim Hills: 00:16:06 How did... So you've been involved with this for a long time and you've been on both sides, you have been watchdog and you had been the recipient of your watch dogging this as an elected official. I'm just curious about what fascinates you because clearly something fascinates you about this subject.

Toby Nixon: 00:16:26 Well, I could go back to seventh grade.

Jim Hills: 00:16:29 Let's start there.

Toby Nixon: 00:16:30 So I had just an excellent civics teacher in seventh grade and she made us all of her students do things like memorize the opening paragraph of the declaration of independence and the preamble of the constitution and the Gettysburg address and all the words to the national Anthem, all the verses, even the gory verse and talking about stamping their blood in the mud. And anyway, but, and most of the kids thought it was torture, but I just fell in love with it. That same year, my seventh grade year, I did the citizenship and the Nation Merit Badge as a boy scout and had a merit badge counselor who was a superior court judge in Shasta County, California, who every scout he worked with, he went through each clause of the first paragraph of the declaration of independence and made sure we knew what's

the role of government, that the people are sovereign and we have the right to control the government, all of those things.

- Toby Nixon: 00:17:27 It just really sunk into me and I got really passionate about, well, if somebody's going to defend what the founders of our country created, why not me? Right? And if not me, who? And if not now when?
- Ken Harvey: 00:17:41 And this was in seventh grade.
- Toby Nixon: 00:17:44 That was the first year I ran for office.
- Ken Harvey: 00:17:46 That's awesome.
- Toby Nixon: 00:17:47 And I lost, a pretty girl won this class treasure and not me. It's more popularity contest then. But and every year since then I have either run for office or helped somebody else run for office or worked on a ballot measure and but always in the back of my mind, what can I do to uphold the fundamental principles on which our country was founded. I even talk about that as a city council member and candidate. The criticality of the people being able to know what the government is doing just pervades that.
- Toby Nixon: 00:18:27 Before I entered the legislature in 2002 I didn't really have a platform to talk much about that. But as soon as I was in the legislature, I say, I got to be on the committee that's in charge of government transparency and managed to get on that committee. Not my first year because my first year was they basically get to choose.
- Jim Hills: 00:18:47 Yeah. They tell you [crosstalk 00:18:49].
- Toby Nixon: 00:18:49 Yeah you're that you're going there. But after that I was able to specify my preference and I and I invested just a lot of time and energy in it. In fact, our Public Records Act used to be part of the public disclosure act RCW 42 17 but it was confusing to people because all of the Public Disclosure Act is enforced by the Public Disclosure Commission except the Public Records Act. And the PDC was always complaining that we keep getting all these requests to enforce the public records provisions of the Public Disclosure Act.
- Toby Nixon: 00:19:26 We have to keep telling people, no we can't. The other thing was that with the number of exemptions growing exponentially, it made the law really messy because those exemptions had basically all been just shoved into one section as new

subsections and completely random order because anytime you wanted to amend an exemption or add a new exemption, you had to have at least a 10 page bill just to, because you have to quote the existing section in its entirety and show the changes and the changes might be one line at the end. That's in the state constitution. I undertook a project while I was in the legislature to separate the public records part out of the Public Disclosure Act and make it into a new section of law. That's what the Public Records Act is now RCW 42 56. After I did that was when the board of Washington Coalition for Open Government says, we have to get this guy. They came and invited me to be on the board after that. Yeah.

- Jim Hills: 00:20:31 So the coalition, as I look at your board members, that is a full spectrum of political viewpoints from across the state. Both geographically and partisanship wise. How do you view the coalition and its work in that kind of lens?
- Toby Nixon: 00:20:53 Yeah, it's difficult at times. People right now in Washington assume that we are a conservative organization. But the reason for that is that the people use the Public Records Act to seek information on whoever is in power at the time. It just happens right now the Democrats are completely in charge of the state government. Anytime you raise any concern about what state government is doing, it seems you're attacking the Democrats. It's just the opposite at the federal level right now. People assume that all of the open government national organizations are conservative Republican groups. Because, I mean, excuse me, are Democratic liberal groups because they're attacking a Republican administration, right? But it's really just you're kind of the watchdog and if you're watch dogging, whoever's in charge, you're going to be viewed as an opponent, whoever's in charge. But we're really Washington Coalition for Open Government is very much a nonpartisan group.
- Jim Hills: 00:22:03 That's what it appears when you look at your board members.
- Toby Nixon: 00:22:05 Yes. Yeah. I like to say that we don't disagree. I mean, we don't agree on much besides the fact that transparency is important. We tend not to talk about how we're going to use the records once we get them because we'll all use them in different ways, but just the fact that we collaborate together to make sure that the government is transparent because pendulum swing and you never know who's going to be in charge next time stuff happens.
- Ken Harvey: 00:22:35 Well it seems like that's one of the, one of the beautiful things about the coalition and that the diversity of partisan views,

political view, world view and yet unanimity around this kind of the essence, the quintessence of what makes America great, which is a government that's really for the people, by the people. What's the other one I'm missing?

- Jim Hills: 00:23:09 Of the people by the people and for the people.
- Ken Harvey: 00:23:09 Of the people [crosstalk 00:23:10] That-
- Jim Hills: 00:23:12 You needs to go back to seventh grade.
- Toby Nixon: 00:23:13 Yes.
- Ken Harvey: 00:23:17 Having government open and transparent to us enables us to be part of it.
- Toby Nixon: 00:23:24 Yes.
- Ken Harvey: 00:23:24 One of the things that I wanted to make sure that we talked about in this conversation is that we've been talking about exemptions and records. That's not all that the coalition has really been intent on ensuring is made, kept available to the people who live here in the State of Washington. It's the openness of government.
- Toby Nixon: 00:23:51 In general.
- Ken Harvey: 00:23:52 That government itself would not do this business in private or behind closed doors.
- Toby Nixon: 00:23:57 Yeah. Public records are a big part of what we do because they tend to be the most controversial. But the second say big area of our work is open public meetings. That's an area where there're just a lot of problems around the state. Where councils or boards have secret meetings. Sometimes they don't even realize they're having a secret meeting, right? Because when I'm-
- Ken Harvey: 00:24:24 It's a pool party in the summer and they all are invited along with their families and then they'll show up.
- Toby Nixon: 00:24:30 If they start talking about agency business, they're having an illegal meeting right? It's especially when you come from the corporate America or you come even from nonprofits where there's no law against having a meeting by email or by telephone or spontaneously at the chamber of commerce meeting, sitting down at the same table and talking. There's no

rules against it. But when you're a public agency, all of those things I just mentioned is having a conversation by email or text message or Facebook messenger or whatever it might be, can instantly turn into an illegal meeting if more than a majority of the or majority of the members of a board or commission participate in it.

- Jim Hills: 00:25:17 I just saw a notice, don't make me say where it came from, but it sounded like it was the authoritative in the state that, so you mentioned Facebook messenger for example, but that if a majority of a particular elected body begins to comment, for example, on Facebook around a particular post that that can constitute a public meeting, which I was surprised to see. It makes sense in my understanding of the spirit of the Public Meetings Act. But yeah, it never would have occurred to me.
- Toby Nixon: 00:25:55 Yeah. That's an area that people kind of can accidentally fall into that trap, right? Because there's four members of our city council out of seven who are very active on Facebook. I'm on Facebook multiple times every day. And the-
- Jim Hills: 00:26:12 If you could take a break so you could check if you want.
- Toby Nixon: 00:26:17 No, I was just, it's a spam call. I was just going to get rid of it. But the neighborhood Facebook groups are really hotbeds of, I would say controversy commentary, right? We wish the city would do this or the city wouldn't do that. Having a presence from the city council in those conversations is really valuable. But I feed things to the staff of the city all the time based on Facebook posts. Yeah. The challenge is if you get a really large discussion going on and multiple city council members start jumping in, commenting on various aspects of it, as soon as the fourth one does that, now you have a meeting and that's a problem.
- Toby Nixon: 00:27:04 We are very aware of that in the Kirkland city council. We actually have a formal policy that once three members of the council have commented. Then we're supposed to post a link to our social media disclaimer saying additional council members may not be able to participate because of the Open Public Meetings Act. People can click on that and go to the link and see the whole policy. I dare say the vast majority of agencies in Washington do not have such a policy and and so you have to be really careful whenever you're going to comment to have read through what's been said before and to see if any of your colleagues have already commented so that you avoid breaking the law even accidentally.

- Jim Hills: 00:27:50 Do you think that there, where do you see the pendulum swinging right now? Both in, well let's just stay within the States. Where do you see the pendulum swinging around government transparency on government?
- Toby Nixon: 00:28:05 Well, I'll say that the coalition is worried right now and we're worried because one of the currently the biggest threats to open government is concerns about privacy and we've actually lost a couple of our board members because of this disagreement over the past few years. The ACLU used to be on our board, but they're not anymore because they focus very much on personal privacy and they have felt that the coalition was a bit too radical in our views about records being available, even if they disclose some personal information of individuals. A lot of it's exempt, but there's other information that the ACLU would prefer not be disclosed.
- Toby Nixon: 00:29:00 The other groups that kind of share that opinion, but in a slightly different way are labor unions, particularly public sector labor unions and what they're concerned about is information about public employees being released in public records. They're concerned about things like identity theft and that's the one they talk about the most. Even though there's not really any evidence that public records are used for identity theft, it's nevertheless brought up as a concern. Now with a democratic governor and the house and the Senate, both being Democrats and the labor unions are able to have greater influence than they might have had when power was divided. We're really concerned that in the 2020 session we will see a number of bills submitted to try to clamp down on the public employee privacy issues in particular.
- Jim Hills: 00:30:07 I'm not so well verse, I'm going to ask you to fill in the blanks about, was it the most recent prior legislative session where they had to walk themselves back on an exemption, they legislators walk themselves back from giving themselves an exemption to laws that would apply to everybody else. I'm brushing that very large and hoping that you can help fill that in. But I thought that was an interesting point where a moment where legislators decided to exempt themselves and citizens in the state said no and they did walk themselves.
- Ken Harvey: 00:30:49 I'm going to... I think this is a great place to take a little bit of a break because I think Toby is going to have a very fascinating response to what you said because I've heard him respond to this before and that was good.
- Toby Nixon: 00:31:05 It will take me half an hour, right?

- Ken Harvey: 00:31:08 We're going to take a short break. When we come back. Toby's going to essentially kind of give us some juicy history and maybe more than one account of instances in which the both open meeting and public records exemptions have... It's been really good that we had the transparency laws on the books and some watchdogs making sure that the players in the public sector were following them. So right back in a minute.
- Speaker 5: 00:31:46 Join business people from around the region who are taking advantage of free expert business advice through business pro classes from Sno-Isle Libraries. Find a business pro class at a library near you by searching online for events at Sno-Isle Libraries.
- Speaker 1: 00:32:03 If you have a great library experience you'd like to share with us, we would love to know about it. Drop us a line at check it out podcast at sno-isle.org again, that's check it out podcast, all one word at sno-isle.org. Who knows we might even invite you to share your story on a future podcast.
- Ken Harvey: 00:32:34 We are backward. Toby Nixon, the president of the board of the Washington coalition for open government and right before the break Jim had thrown out a a nice pitch around a recent incident in which the state legislature had taken a look at some of the exemptions under the Public Records Act and had exempted themselves from having to disclose some things that they prefer not to and we'd love to know more about this particular incident or other incidents in which those who say that they are for transparency think it's great for everyone but themselves.
- Toby Nixon: 00:33:24 Yeah, it's fascinating. If you go back and talk to the people who led the campaign to get initiative 276 passed back in 1972. They will say that it was absolutely their intention from the start, that it applied to the entire government, not just the executive brands, not just local governments, but also the legislature and the courts. But the legislature and the courts have these kinds of unique abilities to change the law to suit their own purposes one way or another. The courts issued an interpretation in a case in which they simply said the Public Records Act doesn't apply to the courts because in this long list of different government departments and everything, the word court did not explicitly appear. So no, it doesn't apply to us.
- Toby Nixon: 00:34:16 The legislature was not quite so bold, but within a few years after I 276 passed, we saw the first amendment to it and the first amendment that the legislature made was to remove public officials from the list of people who were subject to the

law. How does this happen? Well, if you really look at it, it was an amendment that was added to a bill and the dark of night without any public hearings just slipped in at the last minute, right before it was passed.

- Ken Harvey: 00:34:49 That literally happens.
- Toby Nixon: 00:34:50 Absolutely it happens.
- Ken Harvey: 00:34:52 After midnight, they're trying to finish up and before the recess. If you're not there watching you discover it 10 minutes after one, suddenly new language occurs or appears that.
- Toby Nixon: 00:35:07 Yeah. And it might not be just one sentence. It might be the entire text of the bill gets replaced. That's called a striking amendment, right? All of a sudden it's a completely different bill that happens to fit under the same title, but you're asked to vote on it. Those tend to be the most controversial votes that happen, right? But it's quite routine in the legislature to do things like that. Well, anyway, over the next 40 or so years, the legislature kept chipping away at it and making little amendments here and there. But they got to the point where they thought they had inserted enough little amendments that they were now exempt from the law, that they had made it clear that it didn't apply the legislature. But even before they got to that point, they were acting as though it didn't apply to them.
- Toby Nixon: 00:35:59 The legislature would routinely reject public records requests except for certain specific things like expense records and travel records. They would turn those over. But anything about internal discipline reports of malfeasance by legislators, sexual harassment, whatever it might be, those would never come out. Finally back in 2016 a group of media companies said, we've had enough of this, we're going to challenge this. They submitted a public records request to every legislator, the same request for their calendars and emails and a few other things. Out of 147 legislators, three responded.
- Toby Nixon: 00:36:51 One of them only halfway. So there were two who did exactly the right thing. The media companies then use that as the basis to file a lawsuit against the legislature. Asking the courts to declare that they were subject to the Public Records Act the same as other agencies and that lawsuit was filed in Thurston County a superior court because that's where the legislature is located. The judge Linneys agreed with the media companies and said, yes, the legislature is subject to the Public Records Act. And the-

Jim Hills: 00:37:27 But not the courts.

Toby Nixon: 00:37:31 Well, I didn't know what turned the courts thing. No. And very quickly thereafter, and this, this was during the 2017 legislative session. The legislature, this was late in the session after bill cutoff, they introduced a bill that would have created a whole new law just for legislative records that basically exempted them from all the other provisions, especially the procedural provisions. There's no requirement that they ever respond to our request. It's discretionary. They were not subject to having to pay attorney's fees or penalties to people who won a lawsuit against them.

Toby Nixon: 00:38:23 Probably the greatest thing was that you could not take them to court over it. If you filed a complaint about them not complying with their own law, they would have a hearing in a committee made up of legislators and legislative staff whose decision was final. Wouldn't we all love to be able to grade our own homework?

Jim Hills: 00:38:44 Yes exactly. Yeah.

Toby Nixon: 00:38:46 That's exactly what they did. They introduced the bill. They did not have a public hearing on it. The next day, literally the next day after it was introduced, they had what they call a work session, which is, there were five people who showed up and it was amazing that they were able to react quickly enough to show up to testify against the bill. Five people. But the next day after that, it passed the house and the Senate.

Ken Harvey: 00:39:18 These five people.

Toby Nixon: 00:39:19 Yeah.

Ken Harvey: 00:39:20 Where did they come from? How do they show up there?

Toby Nixon: 00:39:21 They were just ordinary citizens, right?

Ken Harvey: 00:39:24 And it happened to [crosstalk 00:39:25] there?

Toby Nixon: 00:39:25 Well, they were for ordinary citizens and Tim Eyman.

Ken Harvey: 00:39:32 You go, okay.

Toby Nixon: 00:39:33 Yeah. Every now and then Tim does the right thing. But yeah, there was somebody, a gentleman from Vancouver, there was a

lady from Olympia, I'm trying to remember where the others came from, but-

Jim Hills: 00:39:48 People with sack lunches who needed a place to sit.

Toby Nixon: 00:39:51 David Zeke, the publisher of the Tacoma news Tribune, he was one of the five, but it was basically just a show. It was a sham hearing just to say that they gave the people an opportunity to comment. The next day the bill passed the house and the Senate and was sent to the governor's desk to be signed. Fortunately the governor was not there. He was in Washington DC at the National Governors Conference. Otherwise I think he would've signed it the same day and it would've been over. But there was this weekend in between-

Ken Harvey: 00:40:32 He was already running for president then, wasn't he?

Jim Hills: 00:40:34 No-

Toby Nixon: 00:40:34 Not the beginning 2017 no. I'm sure he was thinking about it. Why else would he go? I shouldn't comment. Go to Washington DC and stand up and verbally abuse the president face to face, right? So yeah, he had a motivation, but the key was he wasn't there. The Lieutenant governor said, "I'm not signing that bill." So there were a few days for people to react. As soon as the bill was introduced, Wash COG was up on social media trying to get people excited about it. Those five people who did show up came because they heard about it from our social media posts or tweets and things. We managed to get a lot of people to write in. There were over the next days, well I should explain the Tuesday after this, this happened on a Friday, the Tuesday after the Seattle Times editorial page editor, Kate Riley got The Times and 12 other daily newspapers around the state to run front page editorials against this bill and to ask the people of the state to contact the legislature and the governor and say for the governor to veto the bill. And-

Jim Hills: 00:42:01 I'll just interrupt. Sn my experience in newspapers that 12 doing it, but one doing it, it just never happens. That doesn't happen in-

Toby Nixon: 00:42:12 It had been decades since the last time any of those newspapers ran an editorial on the front page, right? And-

Ken Harvey: 00:42:20 So this is an extraordinary.

Toby Nixon: 00:42:24 Extremely unusual. It tells you how strongly people felt about that. And so between our tweeting and social media campaign and The Times and all the other newspapers, over 20,000 people wrote to just the governor between emails and letters, and that doesn't even count the thousands that went to each legislator, right? There it was astounding. Finally the governor has five days during the session to either sign a bill or veto it, and on the fifth day at 11:00 PM he vetoed the bill. There was just too much pressure. But I should also say the in between there, three of the four caucuses of the legislature wrote to the governor and said, "please veto the bill." Isn't that lovely that the people had such an impression on the legislators that they wrote to the governor and said, "we made a mistake please veto the bill." Yeah.

Jim Hills: 00:43:31 I think that was, that's part of my takeaway from my recollection of the of that episode is that it's also evidence of the people voice rising up and letting their electeds know, we don't like what you've done and they changed course.

Toby Nixon: 00:43:50 Exactly.

Ken Harvey: 00:43:50 Well isn't that one of the actual intense behind actually having a public records act and an open government legislation in place in the [inaudible 00:44:02] so that the people can continue to have a role in the way that government operates.

Toby Nixon: 00:44:10 Especially the legislature.

Ken Harvey: 00:44:12 That only comes if they are informed.

Toby Nixon: 00:44:14 Exactly. Yep. The legislature in general is pretty open. I mean our legislature and I say this being proud of it because I was in the legislature when this stuff was going on has really set the nationwide for how open we are in terms of the posting of the bill texts, the votes in committee, the bill reports, all this stuff goes online. Everything that's presented to the legislature is available online. The meetings of every committee are recorded and many of them are videotaped, you can watch them live on TVW or look at the TVW archives and the legislative website links to the TVW tapes, right? We are really leading nationwide in that part of the public process. We're a little behind and on doing remote testimony. We're just getting started in allowing people say from Spokane to easily participate in legislative hearings by letting them go someplace in Spokane and testify via remote video as opposed to having to drive all the way to Olympia.

Toby Nixon: 00:45:22 Other States are better at that, but we're getting there. And so I'm always very complimentary of the legislature for making the public part of that bill making process. But there's so much else that the public is excluded from. And those are the things that this legislative public records activity is about.

Ken Harvey: 00:45:42 Well, before we pivot away from public records and open government, because there, there are a few other questions we want to ask you too. In the last 10 minutes. We have just wanted to ask you this in your mind or in the coalitions mind, have there been any unanticipated consequences from instituting a public records law?

Toby Nixon: 00:46:12 Well, I think the biggest problem that people in government express about it is how it can be abused. For the first few decades of the Public Records Act, it really wasn't abused because private citizens didn't use it very much. It was mostly members of the news media making requests on behalf of the public in order to write their stories. But around about the turn of the century.

Ken Harvey: 00:46:42 The most recent century.

Toby Nixon: 00:46:44 Yes. And Wash COG might be able to take some blame for this because you remember I said that one of our core missions is to educate the public about their rights under the open government laws. We did dozens and dozens of town hall meetings and seminars all around the state from large cities to small every corner of the state explaining how the law works to people. And about that same time, you started to see a lot more individuals making records requests.

Toby Nixon: 00:47:15 Again, a lot of those are just absolutely routine. There's no abuse involved at all, very narrowly focused. But every now and then you'll see somebody who has a beef with agency, they got a speeding ticket that they didn't think they deserved or they were denied a building permit that they thought they should have gotten or they're required to... This is literally when that happened, they were required to put in a three quarter inch water supply line instead of a half inch water supply line, right? They just get furious at the agency and they say, how am I going to get back at these people? The Public Records Act can be a convenient weapon.

Toby Nixon: 00:48:00 Over the last few years we have been trying to close down those opportunities to abuse. But the problem is that if you swing that pendulum too far, you start making it very hard for people who are, and I hate to use this word, legitimate

requesters to get the records that they need. We're always trying to follow a very narrow path down the center to where we try to discourage abusive requests like, I want every record in the County since 1776 which of course somebody in Snohomish County actually put in that request.

Toby Nixon: 00:48:47 It doesn't matter that the County didn't exist in 1776 they put their requests in any way and there have been people, there was one fellow down in King County who asked every city in King County to give him a copy of all of their records and that got the legislature really excited. We have to do something about this. The coalition works collaboratively with lawmakers to try to figure out what's the right way to stop the abuse. Because what we don't want to see is a knee jerk reaction by the legislature that shuts down access to everybody else, right? That's I think the single biggest challenge we face.

Jim Hills: 00:49:37 Well that'll be interesting to see how that goes. Because I think in, in public government, one government anyway, there's always that balance between constituency rights, access as a public agency, the public libraries, public agency, we're always balancing access to facilities, access to the collection and finding ways to serve everyone as equitably as possible. That is an ongoing-

Ken Harvey: 00:50:10 It's a balancing.

Toby Nixon: 00:50:12 Yeah.

Jim Hills: 00:50:13 That goes back and forth. I mean it happens all the time.

Toby Nixon: 00:50:17 Well and, and there've been very controversial issues in libraries. Like should people be able to watch pornography on computers in libraries, right? Where do you draw the line on their first amendment rights. Yeah.

Jim Hills: 00:50:32 I would love to ask another kind of question off of your resume because at the beginning of this conversation you talked about your day job that pays for everything else and everything else is volunteers. But some of your non-paying day jobs are pretty darn interesting. One of them that I saw is you are the... What's the actual title? You are the-

Toby Nixon: 00:50:56 Chairman of the board.

Jim Hills: 00:50:57 Head of a Bluetooth SIG, which I think stands for-

Toby Nixon: 00:51:03 Special Interest Group.

Jim Hills: 00:51:04 Yeah. So what is the chairman of the board of Bluetooth SIG, which sounds really impressive but apparently is a non-paying thing?

Toby Nixon: 00:51:12 That's correct.

Jim Hills: 00:51:13 What is that? What does that mean?

Toby Nixon: 00:51:15 I will clarify that as a Microsoft employee, a big part of my job is representing Microsoft in organizations that do technical standards for things, technologies that Microsoft implements. Microsoft is a promoter member of the Bluetooth Special Interest Group means the highest level membership. We have a seat on the board of directors and Microsoft has appointed me to fill that seat on their behalf. Then the board itself elects me as chair.

Jim Hills: 00:51:51 Bluetooth, this is the thing on my phone that allows me to do all kinds of fun stuff.

Toby Nixon: 00:51:55 Correct.

Jim Hills: 00:51:56 Is Bluetooth a company? Is it a standard? Is it a, what is Bluetooth? How do you get to be chairman of the board that doesn't have anything? How does that work?

Toby Nixon: 00:52:09 Bluetooth is-

Jim Hills: 00:52:09 This is understanding how my phone works. I don't even understand. I mean that, but how does that work? How does it-

Toby Nixon: 00:52:14 Bluetooth as a technology and a brand, right? It's not a company that creates products itself. It's the members of the Bluetooth Special Interest Group who create the products that incorporate the technology and what the Bluetooth special interest group is. It's first of all, there's over 35,000 companies who are members and it's based in Kirkland of all places.

Jim Hills: 00:52:38 Lucky for you.

Toby Nixon: 00:52:39 Yeah. It makes it really convenient me.

Jim Hills: 00:52:40 Right from City Council then the Bluetooth meeting.

- Toby Nixon: 00:52:42 Yeah, and especially interesting because the companies that created the Bluetooth SIG were all from Scandinavia. But they ended up basing it in the US and initially it was in the St. Louis area, but then moved to Kirkland. The purpose of the SIG is to number one, develop the specifications for Bluetooth technology. If the companies that build products have the opportunity to participate in the development of the documents that describe how the technology works, that we're all agreeing to implement it that way so that all of our products work together. It's the interoperability of the products is the key. Then Bluetooth SIG also has compliance tests. There's a suite of tests that you have to pass for your product to be authorized to use the Bluetooth symbol on it, the Bluetooth logo and it's not an easy set of test to pass, right? It's pretty complicated. There's over 9,000 different tests that are individually defined for different parts of the specifications, right?
- Toby Nixon: 00:53:47 There's several hundred individuals who participate in the standards development activity on a regular basis. Bluetooth SIG itself has about a hundred employees, most of which are based in Kirkland. To me, it's fascinating work, right? To be in a such a vibrant technology that even though it's 20 years old, is continually evolving and getting better and adding more capabilities. Then the group that I'm in at Microsoft is the group that implements Bluetooth in Windows, right? I work closely with my colleagues inside the company to make sure that Microsoft's perspectives are correctly reflected in the work of the organization.
- Ken Harvey: 00:54:30 For years, I did not understand Bluetooth nor what benefit it could have to me. Then one day it suddenly clicked, and this may be incorrect, but in my mind it clicked. Oh, it's like having a FM transmitter in my device and I can send a signal to something that recognizes it and broadcast a signal will narrowcast a signal. It recognizes it. It can do the same back to me. Oh my gosh. It's like creating a little network that's like an FM radio network.
- Toby Nixon: 00:54:59 And the key thing is you don't have wires.
- Ken Harvey: 00:55:02 With no wires?
- Toby Nixon: 00:55:05 Yes.
- Ken Harvey: 00:55:05 You have worked for Microsoft for how long?

Toby Nixon: 00:55:08 I've been at Microsoft 26 and a half years.

Ken Harvey: 00:55:12 In that timeframe, and I think in our notes that 40 years within the computer industry as a whole, you've seen a tremendous amount of innovation and technology change.

Toby Nixon: 00:55:23 Yeah. My first job as a computer programmer was with Shasta County, California and we had to punch our programs on key punches, on-

Ken Harvey: 00:55:33 I remember-

Toby Nixon: 00:55:33 Punch Cards, right?

Ken Harvey: 00:55:34 I remember the technology.

Toby Nixon: 00:55:37 In fact, the Shasta County, we had unionized key punch operators, so we couldn't even punch our own cars. We had to-

Ken Harvey: 00:55:44 Don't you dare touch my [crosstalk 00:55:47].

Toby Nixon: 00:55:44 We had to write the programs out in longhand on coding sheets. I have very clear printing from that day. But, yeah, you turn them over, the cards get punched, they read them into the computer. The computer that we worked on at Shasta County was a Honeywell 1250 was means nothing. But it consisted of 10 cabinets, each of which were four feet by four feet by four feet, right? That entire computer had probably a hundredth of the processing power of our cell phones right? But it did a great job at printing property tax bills and welfare checks. It was perfect for that. Yeah.

Ken Harvey: 00:56:27 And now?

Toby Nixon: 00:56:28 Yeah. Now you look at Azure or Amazon web services, the cloud service providers with hundreds of thousands of computers in basically warehouse size spaces. And all of our data is accessible from anywhere. We carry almost the whole sum of knowledge of the world around in our pockets all the time.

Ken Harvey: 00:56:54 Surely is amazing.

Toby Nixon: 00:56:55 It is astounding. Yeah. And of course not everybody can afford, several hundred dollars smartphone or a couple of hundred dollars a month for service. I mean one of the great things that libraries provide is access to all that information for anybody who walks in the door.

Jim Hills: 00:57:15 We do see that as one of the really valued services that the 23 community libraries that make up Sno-Isle libraries serves in those communities is access to technology. Not only just walk in and use it, but learn about it, have it available to you, being able to become more technologically literate. It's a huge piece of one of the things we just, I think finished doing is upgrading our wireless speeds in all of those libraries so that it is equitable across the entire system no matter where you are. That's a big deal to us in terms of... As a public library, that's a priority for us. That the service delivery is equitable across the entire system no matter where you are.

Toby Nixon: 00:58:11 To loop back to public records. A lot of public records are available online now and a lot of agencies are putting their records online proactively. I mean a public records request is kind of a reactive access to records, but many of them have them online. Many of them, even if you do a public records request, you can do the request online. Having access to the internet for everybody means that everybody has access to those public records as well.

Ken Harvey: 00:58:39 Well it does make it a lot more convenient to display those records and make them available for inspection. If someone really wants it for themselves, they can simply download it and store it locally or decide if they want to print it out at home or in their own office and they bear the cost of that.

Toby Nixon: 00:58:59 Of that. Yes.

Ken Harvey: 00:59:00 Yeah. Hey, I'm just, I'm thinking in our last couple of minutes, something in terms of the time you spent in the computer industry and what you mentioned in terms of the Honeywell 1250 I think.

Toby Nixon: 00:59:15 Yes 1250.

Ken Harvey: 00:59:16 I kind of remember those days and I remember the key punch and I can, well imagine if you're a grandfather, your grandsons and grandpa, tell me about those days when the computer was this big, that big and could only do such and such or whatever. They have no in some ways, appreciation at all for what they take for granted today.

Toby Nixon: 00:59:46 Yes. I find that to be true even with my own kids. I still remember when my seven year old daughter, this was 20 plus years ago now, but came to me and said, dad, I need more RAM. My computer's a slug. What seven year old says, right?

But, yeah, that I mean the world has definitely changed from when we were young.

- Ken Harvey: 01:00:15 Yeah. Well in terms of in our last minute, in terms of maybe how the world has changed and I'm thinking back to you're sharing the story about seventh grade and civics class and suddenly being inspired to be active and participate in government. Do you have any stories around kind of other early learning that you did or even recent learning that you've done that has been both either inspiring or just eyeopening, helped open your eyes? Maybe that occurred in and around libraries but maybe not. Maybe it's occurred someplace else.
- Toby Nixon: 01:01:00 Yeah, it's interesting these days to find time to read entire books. My wife loves to listen to books online. I tend to just read books through, what's my Amazon app called that lets me read, The Kindle App. I carry dozens of books around in my phone with me-
- Ken Harvey: 01:01:27 Smartphone.
- Toby Nixon: 01:01:28 On my smartphone and can read just whenever there's a spare time to do that. And because life is so busy that usually I'm trying to grab a few minutes here and there or on an airplane flight or something like that to to be able to do the reading. But I like to read about how to make government better and have read some recent... The most recent book that I've been reading is done about, well how do you motivate people who work in government to improve the way government works and a hope that we will be able to implement some of those philosophies, some of those principles in the way the city of Kirkland works. But I think that reading and learning about new things is a lifelong endeavor. If you're going to... Especially if you're going to be a public official, you have to be curious about a lot of things. You have to be passionate about learning about new things. It's almost like it's a responsibility to do so. So that you are taking advantage of the most recent thinking on how to do things better in government.
- Ken Harvey: 01:02:50 Well, Jim has a, well, I'll tell you what, if you leave the title of that book that you've been reading The Kindle, we will post it as part of the show notes for this episode, but I'm just thinking that you're referring to lifelong learning and Jim has a phrase that he's been using recently called leisure learning. I think you're right that so many of us are so busy that we don't feel we have a significant time to just set aside for the pure pleasure of reading, to learn or reading to entertain ourselves. We grab it when we can and the more convenient it is to grab it, then we

can take advantage of it. Otherwise, it's kind of lost opportunities.

Toby Nixon: 01:03:41 Indeed.

Jim Hills: 01:03:42 Thank you so much for your time. This has been really entertaining for me.

Toby Nixon: 01:03:47 Well, I'm happy to have been here today. I appreciate the invitation.

Ken Harvey: 01:03:51 Yes, it's been great. Thank you.

Speaker 6: 01:03:54 Did you know you could download some of the best business and finance magazines for free with your Sno-Isle libraries card? Learn more online at sno-isle libraries.

Ken Harvey: 01:04:11 Toby Nixon was one cool dude [crosstalk 01:00:04:15].

Jim Hills: 01:04:14 I really enjoyed listening to him. What and, so how steep he is in his subject matter.

Ken Harvey: 01:04:20 Yeah. He didn't use one single note and I think the audience should take take note of that.

Jim Hills: 01:04:27 What I thought was so interesting is that he set upon this path of civic engagement, civic knowledge by one teacher in seventh grade.

Ken Harvey: 01:04:37 Well just shows the power of saying the right thing, being the right type of person and influencing and sending a life on a blazing trail.

Jim Hills: 01:04:48 Yeah and he made such a difference throughout this State for decades.

Ken Harvey: 01:04:51 Yes, he has and continues to do so.

Jim Hills: 01:04:53 Yeah.

Ken Harvey: 01:04:54 Hey, I really also just appreciate that he has with his public service just done so much to help keep government open, honest and transparent.

Jim Hills: 01:05:12 That's not a partisan deal, right? And we talked about that. Sometimes feels like it depending on which side is in power at

the moment. But at its core it's not. The board that he has for the Washington-

Ken Harvey: 01:05:26 Yeah, its coalition has people from all over.

Jim Hills: 01:05:29 All over the place, geographically in political bent and the whole thing. I thought that was also very interesting.

Ken Harvey: 01:05:36 Well, there was something that he mentioned too that came up as we were talking about trying to find the balance and all, and he mentioned the use of, I think with public computers in libraries, pornography.

Jim Hills: 01:05:52 Right? The way he said it was individuals using public computers to view pornography in libraries. I think that's an issue that we need to talk about and explain a little bit. I don't know that people understand that when our librarian see illegal activity happening in the library, they call the police.

Ken Harvey: 01:06:14 Yep, they dial 911 they get the police or sheriffs over.

Jim Hills: 01:06:19 Illegal content on a public computer prompts a phone call to the police.

Ken Harvey: 01:06:25 But then there's other instances in which someone may be taking a look at something that's not illegal, but it's disturbing people around them.

Jim Hills: 01:06:36 Others may find that objectionable. When that happens, we have a policy for that too. It's called, hardly enough, the Disruptive Behavior Policy because that's what it's about, disruptive behavior to others. That policy is used by librarians to step into a time when another customer may find a behavior or activity by somebody else to be objectionable or impacting their own use of the library. That's when our librarian step in and talk to the individuals.

Ken Harvey: 01:07:11 Yeah, so a great opportunity just to remind our listeners, if you're in a library and you're seeing something that's disturbing you, alert the library staff know so they can step in and take a look at it.

Jim Hills: 01:07:24 Yeah, that's what they're there for and they're well prepared to do that.

Ken Harvey: 01:07:28 Well. Just going back to Toby, so many things that he talked about that come out of this history that he has with they call it

the Washington Coalition for Open Government I think are great and should help continue to motivate all of us to make sure that we are just paying attention to what others who are serving in government or working in government are doing just to make sure that our best interests are being heated.

- Jim Hills: 01:08:01 Yeah, absolutely.
- Ken Harvey: 01:08:02 Last thing I just wanted to mention is that if you're interested in the libraries kind of open government or public records stance, we have a board policy on public records. You'll find a link to that in our show notes for this episode and also our administrative procedures around that Public Records Policy and how we deal with public records requests that might come to us.
- Jim Hills: 01:08:29 Since I'm the guy who posts those show notes I can pledge here now in an open and honest way that it'll be there.
- Ken Harvey: 01:08:37 Yeah. Last thing in the show notes that I want to just mention is that we will have the title and a link to the book that Toby said he was reading, Government That Works the Results Revolution in the States.
- Jim Hills: 01:08:50 It's actually interesting-
- Ken Harvey: 01:08:51 By John Bernard. So-
- Jim Hills: 01:08:53 Could be a whole list on that because as soon as we're done here, I'm going to go out and put a hold on it.
- Ken Harvey: 01:08:58 Me too. Maybe I'll get there first. All right, that's a wrap.
- Speaker 1: 01:09:03 Thank you for listening to the Check It Out Podcast. For free resources and materials connected to today's guest and topic. Head over to the library's website and search for the word podcast. The library's website is [sno-isle.org/podcast](http://sno-isle.org/podcast).