

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

House Bill No. 2475

(By Delegates Perry and Ellem)



Passed February 16, 2011

In Effect Ninety Days From Passage

ENROLLED

H. B. 2475

(BY DELEGATES PERRY AND ELLEM)

[Passed February 16, 2011;
in effect ninety days from passage.]

AN ACT to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating to including certain records of the Division of Juvenile Services in the exemptions from disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

- 1 (a) The following categories of information are
- 2 specifically exempt from disclosure under the provisions of
- 3 this article:

4 (1) Trade secrets, as used in this section, which may
5 include, but are not limited to, any formula, plan pattern,
6 process, tool, mechanism, compound, procedure, production
7 data or compilation of information which is not patented
8 which is known only to certain individuals within a
9 commercial concern who are using it to fabricate, produce or
10 compound an article or trade or a service or to locate
11 minerals or other substances, having commercial value, and
12 which gives its users an opportunity to obtain business
13 advantage over competitors;

14 (2) Information of a personal nature such as that kept in
15 a personal, medical or similar file, if the public disclosure
16 thereof would constitute an unreasonable invasion of privacy,
17 unless the public interest by clear and convincing evidence
18 requires disclosure in the particular instance: *Provided*, That
19 nothing in this article shall be construed as precluding an
20 individual from inspecting or copying his or her own
21 personal, medical or similar file;

22 (3) Test questions, scoring keys and other examination
23 data used to administer a licensing examination, examination
24 for employment or academic examination;

25 (4) Records of law-enforcement agencies that deal with
26 the detection and investigation of crime and the internal
27 records and notations of such law-enforcement agencies
28 which are maintained for internal use in matters relating to
29 law-enforcement;

30 (5) Information specifically exempted from disclosure by
31 statute;

32 (6) Records, archives, documents or manuscripts
33 describing the location of undeveloped historic, prehistoric,
34 archaeological, paleontological and battlefield sites or

35 constituting gifts to any public body upon which the donor
36 has attached restrictions on usage or the handling of which
37 could irreparably damage such record, archive, document or
38 manuscript;

39 (7) Information contained in or related to examination,
40 operating or condition reports prepared by, or on behalf of, or
41 for the use of any agency responsible for the regulation or
42 supervision of financial institutions, except those reports
43 which are by law required to be published in newspapers;

44 (8) Internal memoranda or letters received or prepared by
45 any public body;

46 (9) Records assembled, prepared or maintained to
47 prevent, mitigate or respond to terrorist acts or the threat of
48 terrorist acts, the public disclosure of which threaten the
49 public safety or the public health;

50 (10) Those portions of records containing specific or
51 unique vulnerability assessments or specific or unique
52 response plans, data, databases and inventories of goods or
53 materials collected or assembled to respond to terrorist acts;
54 and communication codes or deployment plans of law-
55 enforcement or emergency response personnel;

56 (11) Specific intelligence information and specific
57 investigative records dealing with terrorist acts or the threat
58 of a terrorist act shared by and between federal and
59 international law-enforcement agencies, state and local law-
60 enforcement and other agencies within the Department of
61 Military Affairs and Public Safety;

62 (12) National security records classified under federal
63 executive order and not subject to public disclosure under
64 federal law that are shared by federal agencies and other

65 records related to national security briefings to assist state
66 and local government with domestic preparedness for acts of
67 terrorism;

68 (13) Computing, telecommunications and network
69 security records, passwords, security codes or programs used
70 to respond to or plan against acts of terrorism which may be
71 the subject of a terrorist act;

72 (14) Security or disaster recovery plans, risk assessments,
73 tests or the results of those tests;

74 (15) Architectural or infrastructure designs, maps or other
75 records that show the location or layout of the facilities where
76 computing, telecommunications or network infrastructure
77 used to plan against or respond to terrorism are located or
78 planned to be located;

79 (16) Codes for facility security systems; or codes for
80 secure applications for such facilities referred to in
81 subdivision (15) of this subsection;

82 (17) Specific engineering plans and descriptions of
83 existing public utility plants and equipment;

84 (18) Customer proprietary network information of other
85 telecommunications carriers, equipment manufacturers and
86 individual customers, consistent with 47 U.S.C. §222; and

87 (19) Records of the Division of Corrections, Regional Jail
88 Authority and the Division of Juvenile Services relating to
89 design of corrections, jail and detention facilities owned or
90 operated by the agency, and the policy directives and
91 operational procedures of personnel relating to the safe and
92 secure management of inmates or residents, that if released,
93 could be utilized by an inmate or resident to escape a facility,

94 or to cause injury to another inmate, resident or to facility
95 personnel.

96 (b) As used in subdivisions (9) through (16), inclusive,
97 subsection (a) of this section, the term “terrorist act” means
98 an act that is likely to result in serious bodily injury or
99 damage to property or the environment and is intended to:

100 (1) Intimidate or coerce the civilian population;

101 (2) Influence the policy of a branch or level of
102 government by intimidation or coercion;

103 (3) Affect the conduct of a branch or level of government
104 by intimidation or coercion; or

105 (4) Retaliate against a branch or level of government for
106 a policy or conduct of the government.

107 (c) Nothing in the provisions of subdivisions (9) through
108 (16), inclusive, subsection (a) of this section should be
109 construed to make subject to the provisions of this chapter
110 any evidence of an immediate threat to public health or safety
111 unrelated to a terrorist act or the threat thereof which comes
112 to the attention of a public entity in the course of conducting
113 a vulnerability assessment response or similar activity.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor