

H. B. 2475

(BY DELEGATES PERRY AND ELLEM)

[Introduced January 14, 2011; referred to the
Committee on the Judiciary.]

A BILL 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 describing
33 the location of undeveloped historic, prehistoric, archaeological,
34 paleontological and battlefield sites or constituting gifts to any
35 public body upon which the donor has attached restrictions on
36 usage or the handling of which could irreparably damage such
37 record, archive, document or manuscript;

38 (7) Information contained in or related to examination,
39 operating or condition reports prepared by, or on behalf of,
40 or for the use of any agency responsible for the regulation or

41 supervision of financial institutions, except those reports
42 which are by law required to be published in newspapers;

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

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

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

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

61 (12) National security records classified under federal
62 executive order and not subject to public disclosure under
63 federal law that are shared by federal agencies and other records
64 related to national security briefings to assist state and local
65 government with domestic preparedness for acts of terrorism;

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

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

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

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

80 (17) Specific engineering plans and descriptions of
81 existing public utility plants and equipment;

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

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

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

98 (1) Intimidate or coerce the civilian population;

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

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

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

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

NOTE: The purpose of this bill is to include certain records of the Division of Juvenile Services in the exemptions from Freedom of Information Act requests.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority.