

H. B. 4476

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(By Delegates Armstead, Border, Rowan, Cowles,
Overington, Kump, Anderson, Hamilton,
Azinger, Householder and Ellem.)

[Introduced February 9, 2012; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §29B-1-4 of the Code of West Virginia,
1931, as amended, relating to exemptions from 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.

(a) All documents maintained by any agency or department of
the State of West Virginia are public records and there is a
presumption of accessibility to the records by the public unless
they are expressly excluded under other provisions of this code or
fall within the following categories of information which are
specifically exempt from disclosure under the provisions of this
article:

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

10 (2) Information of a personal nature such as that kept in a
11 personal, medical or similar file, if the public disclosure ~~thereof~~
12 of the information would constitute an unreasonable invasion of
13 privacy, unless the public interest by clear and convincing
14 evidence requires disclosure in the particular instance: *Provided,*
15 That ~~nothing in this article shall be construed as precluding~~ does
16 not preclude an individual from inspecting or copying his or her
17 own personal, medical or similar file;

18 (3) Test questions, scoring keys and other examination data
19 used to administer a licensing examination, examination for
20 employment or academic examination;

21 (4) Records of law-enforcement agencies that deal with the
22 detection and investigation of crime and the internal records and
23 notations of such law-enforcement agencies which are maintained for
24 internal use in matters relating to law enforcement; the agency

1 shall, at the conclusion of any investigation resulting in a
2 criminal charge, prepare a full report of the investigation; and
3 unless the agency determines that disclosure of that report would
4 hinder prosecution of those criminal actions or any other ongoing
5 investigation, the report is subject to disclosure;

6 (5) Information specifically exempted from disclosure by
7 statute;

8 (6) Records, archives, documents or manuscripts describing the
9 location of undeveloped historic, prehistoric, archaeological,
10 paleontological and battlefield sites or constituting gifts to any
11 public body upon which the donor has attached restrictions on usage
12 or the handling of which could irreparably damage ~~such~~ the record,
13 archive, document or manuscript;

14 (7) Information contained in or related to examination,
15 operating or condition reports prepared by, or on behalf of, or for
16 the use of any agency responsible for the regulation or supervision
17 of financial institutions, except those reports which are by law
18 required to be published in newspapers;

19 (8) Internal memoranda or letters received or prepared by any
20 public body, to the extent that the internal memoranda or letters
21 contain information which is specifically exempt from disclosure
22 under any of the other subdivisions of this section;

23 (9) Records assembled, prepared or maintained to prevent,
24 mitigate or respond to terrorist acts or the threat of terrorist

1 acts, the public disclosure of which threaten the public safety or
2 the public health;

3 (10) Those portions of records containing specific or unique
4 vulnerability assessments or specific or unique response plans,
5 data, databases and inventories of goods or materials collected or
6 assembled to respond to terrorist acts; and communication codes or
7 deployment plans of law enforcement or emergency response
8 personnel;

9 (11) Specific intelligence information and specific
10 investigative records dealing with terrorist acts or the threat of
11 a terrorist act shared by and between federal and international
12 law-enforcement agencies, state and local law enforcement and other
13 agencies within the Department of Military Affairs and Public
14 Safety;

15 (12) National security records classified under federal
16 executive order and not subject to public disclosure under federal
17 law that are shared by federal agencies and other records related
18 to national security briefings to assist state and local government
19 with domestic preparedness for acts of terrorism;

20 (13) Computing, telecommunications and network security
21 records, passwords, security codes or programs used to respond to
22 or plan against acts of terrorism which may be the subject of a
23 terrorist act;

24 (14) Security or disaster recovery plans, risk assessments,

1 tests or the results of those tests;

2 (15) Architectural or infrastructure designs, maps or other
3 records that show the location or layout of the facilities where
4 computing, telecommunications or network infrastructure used to
5 plan against or respond to terrorism are located or planned to be
6 located;

7 (16) Codes for facility security systems; or codes for secure
8 applications for ~~such~~ facilities referred to in subdivision (15) of
9 this subsection;

10 (17) Specific engineering plans and descriptions of existing
11 public utility plants and equipment;

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

15 (19) Records of the Division of Corrections, Regional Jail and
16 Correctional Facility Authority and the Division of Juvenile
17 Services relating to design of corrections, jail and detention
18 facilities owned or operated by the agency, and the policy
19 directives and operational procedures of personnel relating to the
20 safe and secure management of inmates or residents, that if
21 released, could be ~~utilized~~ used by an inmate or resident to escape
22 a facility, or to cause injury to another inmate, resident or to
23 facility personnel.

24 (b) As used in subdivisions (9) through (16), inclusive,

1 subsection (a) of this section, the term "terrorist act" means an
2 act that is likely to result in serious bodily injury or damage to
3 property or the environment and is intended to:

4 (1) Intimidate or coerce the civilian population;

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

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

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

11 (c) ~~Nothing in~~ The provisions of subdivisions (9) through
12 (16), inclusive, subsection (a) of this section ~~should be construed~~
13 ~~to~~ do not make subject to the provisions of this chapter any
14 evidence of an immediate threat to public health or safety
15 unrelated to a terrorist act or the threat ~~thereof~~ a terrorist act
16 which comes to the attention of a public entity in the course of
17 conducting a vulnerability assessment response or similar activity.

18 (d) Any agency that denies access to records pursuant to an
19 exemption set forth in this section, shall file with the Secretary
20 of State, for inclusion in a publicly accessible publication or
21 resource, a detailed explanation of the information requested and
22 the reasons for the denial of the access, with the specific
23 exemptions claimed duly noted in the filing.

NOTE: The purpose of this bill is to clarify language relating to which materials are due exemptions from discovery under a Freedom of Information Act request.

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