

H. B. 2991

(By Mr. Speaker (Mr. Armstead))

[Introduced February 24, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29B-1-3a; and to amend and reenact §29B-1-4 of said code, all relating to the Freedom of Information Act; redefining the term "public record"; establishing reporting of actions taken to Secretary of State; directing Secretary of State to establish web site of FOIA responses; and revising the exemption for communications received or prepared by any public body.

Be it enacted by the Legislature of West Virginia:

That §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto one new section, designated §29B-1-3a; and that §29B-1-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

As used in this article:

1 (1) "Custodian" means the elected or appointed official charged with administering a public
2 body.

3 (2) "Person" includes any natural person, corporation, partnership, firm or association.

4 (3) "Public body" means every state officer, agency, department, including the executive,
5 legislative and judicial departments, division, bureau, board and commission; every county and city
6 governing body, school district, special district, municipal corporation, and any board, department,
7 commission council or agency thereof; and any other body which is created by state or local authority
8 or which is primarily funded by the state or local authority.

9 (4) "Public record" includes any writing containing information ~~relating~~ prepared or received
10 by a public body, the content or context of which, judged either by content or context relates to the
11 conduct of the public's business. ~~prepared, owned and retained by a public body.~~

12 (5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or
13 other documentary materials regardless of physical form or characteristics.

14 **§29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act**
15 **requests registry.**

16 (1) ~~(a)~~ (a) Every person has a right to inspect or copy any public record of a public body in this
17 state, except as otherwise expressly provided by section four of this article.

18 (2) ~~(b)~~ (b) A request to inspect or copy any public record of a public body shall be made directly
19 to the custodian of such public record.

20 (3) ~~(c)~~ (c) The custodian of any public records, unless otherwise expressly provided by statute,
21 shall furnish proper and reasonable opportunities for inspection and examination of the records in
22 his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the

1 usual business hours, to all persons having occasion to make examination of them. The custodian
2 of the records may make reasonable rules and regulations necessary for the protection of the records
3 and to prevent interference with the regular discharge of his or her duties. If the records requested
4 exist in magnetic, electronic or computer form, the custodian of the records shall make ~~such~~ copies
5 available on magnetic or electronic media, if so requested.

6 ~~(4)~~ (d) All requests for information must state with reasonable specificity the information
7 sought. The custodian, upon demand for records made under this statute, shall as soon as is
8 practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

9 ~~(a)~~ (1) Furnish copies of the requested information;

10 ~~(b)~~ (2) Advise the person making the request of the time and place at which he or she may
11 inspect and copy the materials; or

12 ~~(c)~~ (3) Deny the request stating in writing the reasons for such denial. ~~Such~~ A denial shall
13 indicate that the responsibility of the custodian of any public records or public body to produce the
14 requested records or documents is at an end, and shall afford the person requesting them the
15 opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the
16 county where the public record is kept.

17 ~~(5)~~ (e) The public body may establish fees reasonably calculated to reimburse it for its actual
18 cost in making reproductions of ~~such~~ records.

19 (f) The Secretary of State shall maintain an electronic data base of notices of requests as
20 required by section three-a of this article. The data base shall be made available to the public via the
21 Internet and shall list each freedom of information request received and the outcome of the request.
22 The Secretary of State shall provide on the web site, a form for use by a public body to report the

1 results of the freedom of information request, providing the nature of the request and the public
2 body's response thereto, whether the request was granted, and if not, the exemption asserted under
3 section four of this article to deny the request.

4 **§29B-1-3a. Reports to Secretary of State by public bodies.**

5 Each public body that is subject to a freedom of information request, shall within thirty days
6 upon a final action of a freedom of information request, submit a form provided on the Secretary of
7 State's web site providing information required by the Secretary of State.

8 **§29B-1-4. Exemptions.**

9 (a) There is a presumption of public accessibility to all public records subject only to
10 exemptions of the following categories of information which are specifically exempt from disclosure
11 under the provisions of this article:

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

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

- 1 (3) Test questions, scoring keys and other examination data used to administer a licensing
2 examination, examination for employment or academic examination;
- 3 (4) Records of law-enforcement agencies that deal with the detection and investigation of
4 crime and the internal records and notations of such law-enforcement agencies which are maintained
5 for internal use in matters relating to law enforcement;
- 6 (5) Information specifically exempted from disclosure by statute;
- 7 (6) Records, archives, documents or manuscripts describing the location of undeveloped
8 historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any
9 public body upon which the donor has attached restrictions on usage or the handling of which could
10 irreparably damage ~~such~~ the record, archive, document or manuscript;
- 11 (7) Information contained in or related to examination, operating or condition reports
12 prepared by, or on behalf of, or for the use of any agency responsible for the regulation or
13 supervision of financial institutions, except those reports which are by law required to be published
14 in newspapers;
- 15 (8) ~~Internal memoranda or letters received or prepared by any public body~~ Internal or external
16 communications received by any member or employee of the public body expressing opinions and
17 mental impressions intended to facilitate deliberation of a matter pending before the public body's
18 deliberative decision-making process: *Provided*, That those communications received after a public
19 body's decision shall be disclosed.
- 20 (9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist
21 acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the
22 public health;

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

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

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

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

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

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

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

22 (17) Specific engineering plans and descriptions of existing public utility plants and

1 equipment;

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

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

10 (b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term
11 "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or
12 the environment and is intended to:

13 (1) Intimidate or coerce the civilian population;

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

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

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

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

NOTE: The purpose of this bill is to redefine public record, to require the Secretary of State to maintain a record of FOIA requests and responses; to require public bodies to submit information to the Secretary of State following final action on a FOIA request, and to redefine exemption as to internal communications to protect deliberative process.

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

§29B-1-3a is new; therefore, it has been completely underscored.