

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 2800

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ROHRBACH, FOLK, AND ELDRIDGE)

[Originating in the Committee on the Judiciary]

1 A BILL to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as
 2 amended, all relating to adding law-enforcement officers' contact information and the
 3 names and contact information of family members to the list of exemptions from public
 4 records requests; providing exception for law-enforcement information voluntarily
 5 disclosed on campaign documentation; providing exception for law-enforcement officers'
 6 government-issued email addresses and telephone numbers; and defining law-
 7 enforcement officers.

Be it enacted by the Legislature of West Virginia:

1 That §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted, all to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

1 As used in this article:

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

4 (2) "Law-enforcement officer" shall have the same definition as this term is defined in
 5 W.Va. Code §30-29-1, except for purposes of this article, "law-enforcement officer" shall
 6 additionally include those individuals defined as "chief executive" in W.Va. Code §30-29-1.

7 ~~(2)~~ (3) "Person" includes any natural person, corporation, partnership, firm or association.

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

13 ~~(4)~~ (5) "Public record" includes any writing ~~(5)~~ containing information prepared or received by
 14 a public body, the content or context of which, judged either by content or context, relates to the
 15 conduct of the public's business.

16 ~~(5)~~ (6) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings
17 or other documentary materials regardless of physical form or characteristics.

§29B-1-4. Exemptions.

1 (a) There is a presumption of public accessibility to all public records, subject only to the
2 following categories of information which are specifically exempt from disclosure under the
3 provisions of this article:

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

10 (2) Information of a personal nature such as that kept in a personal, medical or similar file,
11 if the public disclosure of the information would constitute an unreasonable invasion of privacy,
12 unless the public interest by clear and convincing evidence requires disclosure in this particular
13 instance: *Provided*, That this article does not preclude an individual from inspecting or copying
14 his or her own personal, medical or similar file;

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

17 (4) Records of law-enforcement agencies that deal with the detection and investigation of
18 crime and the internal records and notations of such law-enforcement agencies which are
19 maintained for internal use in matters relating to law enforcement;

20 (5) Information specifically exempted from disclosure by statute;

21 (6) Records, archives, documents or manuscripts describing the location of undeveloped
22 historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any
23 public body upon which the donor has attached restrictions on usage or the handling of which
24 could irreparably damage the record, archive, document or manuscript;

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

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

30 (9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist
31 acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the
32 public health;

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

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

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

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

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

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

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

55 (17) Specific engineering plans and descriptions of existing public utility plants and
56 equipment;

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

59 (19) Records of the Division of Corrections, Regional Jail and Correctional Facility
60 Authority and the Division of Juvenile Services relating to design of corrections, jail and detention
61 facilities owned or operated by the agency, and the policy directives and operational procedures
62 of personnel relating to the safe and secure management of inmates or residents, that if released,
63 could be used by an inmate or resident to escape a facility, or to cause injury to another inmate,
64 resident or to facility personnel; ~~;~~

65 (20) Information related to applications under section four, article seven, chapter sixty-one
66 of this code, including applications, supporting documents, permits, renewals, or any other
67 information that would identify an applicant for or holder of a concealed weapon permit: *Provided:*
68 That information in the aggregate that does not identify any permit holder other than by county or
69 municipality is not exempted: *Provided, however,* That information or other records exempted
70 under this subdivision may be disclosed to a law-enforcement agency or officer: (i) to determine
71 the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful
72 law-enforcement purposes; ~~;~~ and

73 (21) The names, residential addresses, mailing addresses, telephone numbers and email
74 addresses of a law-enforcement officer's family members; and the residential addresses, personal
75 mailing addresses, personal telephone numbers and personal email addresses of

76 law-enforcement officers: *Provided*, That this exemption shall not apply to campaign
77 documentation voluntarily provided by law-enforcement officers running for political office:
78 *Provided, however*, That nothing shall be construed to prohibit the disclosure of the law-
79 enforcement officer's government-issued email address or telephone number.

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

- 83 (1) Intimidate or coerce the civilian population;
84 (2) Influence the policy of a branch or level of government by intimidation or coercion;
85 (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
86 (4) Retaliate against a branch or level of government for a policy or conduct of the
87 government.

88 (c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section
89 do not make subject to the provisions of this chapter any evidence of an immediate threat to public
90 health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the
91 attention of a public entity in the course of conducting a vulnerability assessment response or
92 similar activity

NOTE: The purpose of this bill is to add law-enforcement officers' contact information and names and contact information of family members to the list of FOIA exemptions.

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