

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2800**

**2015 Carryover**

(BY DELEGATES MILLER, FERRO, SOBONYA, BORDER,  
ROHRBACH, FOLK, AND ELDRIDGE)

[Introduced January 13, 2016; referred to the  
Committee on the Judiciary.]

1 A BILL to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating  
 2 to adding law-enforcement officers' contact information and names of family members to  
 3 the list of exemptions from public records requests.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 1. PUBLIC RECORDS.**

**§29B-1-4. Exemptions.**

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

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

9 (2) Information of a personal nature such as that kept in a personal, medical or similar file,  
 10 if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the  
 11 public interest by clear and convincing evidence requires disclosure in the particular instance:

12 *Provided,* That nothing in this article shall be construed as precluding an individual from inspecting  
 13 or copying his or her own personal, medical or similar file;

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

16 (4) Records of law-enforcement agencies that deal with the detection and investigation of

17 crime and the internal records and notations of such law-enforcement agencies which are  
18 maintained for internal use in matters relating to law enforcement;

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

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

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

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

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

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

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

40 (12) National security records classified under federal executive order and not subject to

41 public disclosure under federal law that are shared by federal agencies and other records related  
42 to national security briefings to assist state and local government with domestic preparedness for  
43 acts of terrorism;

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

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

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

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

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

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

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

64 (20) The names of family members and personal physical addresses, mailing addresses,

65 telephones numbers and email addresses of law-enforcement officers.

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

69 (1) Intimidate or coerce the civilian population;

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

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

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

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

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

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