

Freedom of Information Act



The Public Has a Right to Know



Freedom Of Information Act

CHAPTER 29B. FREEDOM OF INFORMATION. ARTICLE 1. PUBLIC RECORDS.

WV Code §29B-1-1. This chapter is often referred to as FOIA or the Freedom of Information Act.



Why do we have FOIA?

- Government is the servant of the people, and not the master of them.
- All persons are... entitled to full and complete information regarding the affairs of government.
- The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to.
- The people insist on remaining informed so that they may retain control over the instruments of government they have created.



FOIA Applies to...

- All State, county and municipal officers, governing bodies, agencies, departments, boards and commission, and any other bodies created or primarily funded by State or local authority, unless their enabling statute specifically exempts them from its provisions.
- This means conservation district supervisors are subject to FOIA.



What is a Public Record?

- Virtually all documents and information retained by a public body, regardless of their form.
- This includes written, electronic, digital, and voice records and texts.
- Public records are available to every person for inspection or copying when there has been a request made to the custodian, if those records are not specifically exempted from disclosure.



FOIA nuts and bolts...

- There is no statutory requirement that requests be in writing, however a writing is preferred to ascertain scope and timing and to ensure that the information sought is stated “with reasonable specificity”.
- The records custodian must respond within 5 working days by either granting the request or giving written reasons for its denial.
- A public body may not charge a search or retrieval fee. A reasonable copy fee may be charged that reflects actual costs.



FOIA Exemptions

- Trade Secrets.
- Personal information (such as medical information).
- Test questions, scoring keys.
- Law enforcement records generally.
- Information specifically exempted by statute.
- Certain historic records, archives, and manuscripts.
- Certain financial institution regulatory records.
- Internal memoranda received or prepared by a public body
- Homeland security and intelligence records related to terrorist acts or threats
- Disaster recovery and telecommunications plans
- Records of the Division of Corrections, Regional jail authority and the Division of Juvenile Services that could be used by an inmate/resident to escape or cause injury.



FOIA Enforcement

§29B-1-5. Enforcement.

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision.



FOIA Enforcement

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- The court shall determine the matter ... and the burden is on the public body to sustain its action.
- The court may view the documents in controversy in camera before reaching a decision.
- Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.



FOIA Penalties

§29B-1-6. Violation of article; penalties.

- Any custodian of any public records who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than \$1,000.
- Or be imprisoned in the county jail for not more than 20 days, or, in the discretion of the court, by both fine and imprisonment.



FOIA Database Rule

- The Secretary of State's Freedom of Information Act Database is required by WV Code §29B-1-3(f) and 29B-1-3a(a).
- In order to enter information into the database, state agencies and county and municipal governments must set up an account.
- All public bodies are required to enter certain information on the database for each FOIA request they receive.
- The FOIA database is searchable by the public.



FOIA Recap

1. FOIA usually applies to all supervisor records.
2. FOIA requests start a legal process and cannot be ignored, they are time sensitive.
3. You can only charge a reasonable copy fee, you may not charge for the time spent replying to a FOIA request.
4. The database rule requirements apply to all FOIA requests.

