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State of West Virginia

Department of Mines

Charleston 25305

JOHN D. ROCKEFELLER, IV.
Governor

WALTER N. MILLER
Director

September 15, 1983

The Honorable A. James Manchin
Secretary of the State of West
Virginia
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Manchin:

Enclosed are two copies of final rules and regulations of the Department of Mines governing requests for information. These regulations were promulgated by the Department pursuant to Chapter 29B-1-1 et seq. and 29A-3-3 of the West Virginia Code, and are effective October 14, 1983. This replaces the proposed regulation on the same subject submitted to your office on June 22, 1983.

Should there be any questions or problems with this submission, please notify me immediately.

Yours for Mine Safety,

Walter N. Miller, Director
West Virginia Department of Mines

WNM:te

Enclosures

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Sept. 15, 1983
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

SERIES 39

(1983)

SUBJECT: RULES AND REGULATIONS GOVERNING REQUESTS FOR INFORMATION (FREEDOM OF
INFORMATION ACT)

PROMULGATED
REGULATION

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 9/15/83
Administrative Law Division

FINAL
REGULATION

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

SERIES 39

(1983)

SUBJECT: Rules and Regulations Governing Requests for Information

WHEREAS, the State Department of Mines is a public body subject to the provisions of Chapter 29B-1-1 et seq. of the West Virginia Code, 1931, as amended, (commonly known as the Freedom of Information Act) and

WHEREAS, the purpose of such Act is to ensure the full and complete disclosure of agency records to the public.

Now, therefore, the Department promulgates the following procedural rules for the implementation of the provisions of said Act:

Section 1. General

1.01 Scope - These rules prescribe procedures under which the public may inspect and obtain information and records generated, developed or held by the Department of Mines. These rules do not apply to the disclosure of information to any officer, employee or authorized representative of the State or Federal government.

1.02 Authority - These rules are promulgated pursuant to the authority of Chapter 29B-1-1 et seq., and Chapter 29A-3-3, of the West Virginia Code, 1931, as amended.

1.03 Filing Date - These rules were filed in the Office of the Secretary of State on the 15 day of September, 19 83.

1.04 Effective Date - These rules become legally effective on the 14th day of October, 19 83.

1.05 Certification - These rules are certified authentic by the Director of the Department of Mines.

Section 2. Definitions

2.01 For the purposes of these rules:

(a) "Act" means the Freedom of Information Act, Chapter 29B-1-1 et seq.

(b) "Department" means the State Department of Mines, and all boards, divisions and offices thereof.

(c) "Record" means any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics which are possessed by the Department. The term does not include materials that are legally owned by a Department employee in his or her personal capacity and does not include materials which are readily available to the public such as books, journals and periodicals available through a reference library. Nor does the term include documents that have been advertised as being available to the public, such as applications or draft permits, draft plans, laws and regulations or other reports and brochures which may be obtained without a written request.

(d) "Request" means a written request to inspect or obtain a copy of one or more records.

(e) "Requestor" means any person, including any natural person, corporation, partnership, firm or association, who has submitted a request to the Department.

Section 3. Policy on Disclosure

3.01 (a) All Department records shall be available to the public unless they are exempt from the disclosure requirements of the Act.

(b) All nonexempt records shall be available to the public upon request regardless of whether any justification or need has been shown by the requestor and regardless of whether or not the request cites the Act.

Section 4. Form of Request

4.01 A request shall be made in writing, shall reasonably describe the records sought in a way that will permit their identification and location and should be addressed to the West Virginia Department of Mines, at Room E-153, State Capitol, Charleston, West Virginia 25305 for Department records.

(a) Requests which do not reasonably describe records sought. If the description of the records sought in the request is not sufficient to allow the Department to identify and locate the request records, the requestor will be notified within five working days that the request cannot be further processed until additional information is provided. Until such additional information is provided, the five-day time limit under Section 5 shall not begin.

(b) Misdirected requests; oral requests. The Department cannot assure that requests received by offices other than those referenced in Section 4.01 will be answered in a timely manner. The five-day period, as provided for in Section 5, shall begin at the time the Department receives the request. Oral or phone requests for the records may be honored if followed by a written request. The written request may be hand delivered if previous arrangements for an appointment or to receive copied material have been made by phone.

Section 5. Responsibilities of the Department

5.01 (a) The Department shall, upon receipt of a written request, mark the request with the date of receipt, and begin to identify and locate the requested information or ask for a more specific request under Section 4.01(a) if necessary.

(b) The Department shall respond in writing to the requestor within five working days of the receipt of the request. Such response shall:

- (1) Furnish copies of the requested information;
- (2) Advise the requestor of the time and place at which he/she may inspect and copy the information; or
- (3) Deny the request stating in writing the reason for such denial.

5.02 (a) Denials of requests may be issued only in following circumstances:

- (1) The requested record is not known to exist;
- (2) The record is not the Department's possession;
- (3) The record is exempt from disclosure under the Act.

(b) A letter informing the requestor of the denial must be sent within the time period specified in Section 5. The letter must clearly state the basis for the denial. The denial notice shall inform the requestor that he or she may appeal the agency's action in accordance with the provisions of Chapter 29B.

Section 6. Exemptions

6.01 The following categories of information are specifically exempt from disclosure under the provisions of the Act:

(a) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which

is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, that nothing in this article shall be construed as precluding an individual from inspecting or copying his own personal, medical or similar files;

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

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

(e) Information specifically exempted from disclosure by statute;

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

(g) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency respon-

sible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers; and

- (h) Internal memoranda or letters received or prepared by any public body.

Section 7. Partial disclosure

If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed after the exempt material has been deleted.

Section 8. Fees

8.01 Fees will be charged requestors for searching for and reproducing requested records, in accordance with the following:

(a) Copying costs shall be .25 per page, provided that if the total cost is less than \$1.00, there shall be no charge.

(b) The charge for copying materials that must be reproduced outside the Department's facilities shall be the actual cost of such copying.

(c) A search and copying fee of \$5.00 per hour or fraction thereof shall be charged for the agency's time spent in trying to locate and copy requested records beyond the initial half hour used to locate and copy such records.

(d) An invoice for the total amount of fees will be sent to the requestor. Checks or money orders shall be made payable to the Department of Mines.

(e) Total or partial prepayment may be required if the Department determines that the unpaid fees attributable to one or more requests by the same requestor exceed or will exceed \$15.00.

(f) The following fees apply to specific records or types of copies:

- (1) Copies:

(i)	Xerox	\$.25	per copy
(ii)	Blueline	\$ 5.00	per copy
(iii)	Mylar	\$ 15.00	per copy
(iv)	Computer Printout . .	\$100.00	per printout plus .25 per page
(v)	Microfilm	\$ 2.00	per copy
(vi)	Transcripts	\$ 1.50	per page
(vii)	Certification of Copies	1.00	per document
(viii)	Letter of Certification for copies	\$ 10.00	per request

(2) Publications are as follows:

Mine Law Book	\$ 2.00	each
Administrative Regulation Book (Before Revision)	\$ 5.00	each
Administrative Regulation Book (Revisions)	\$ 2.00	each
Administrative Regulations and Revisions	\$ 7.00	each
Pocket Size Electrical Study Guide	\$ 2.50	each
Standard Size Electrical Study Guide	\$ 15.00	each
Surface Blasters Certification Study Guide	\$ 10.00	each
Underground Mine Foreman Study Guide	\$ 10.00	each
Surface Mine Foreman Study Guide .	\$ 5.00	each
Map Showing Approximate Locations of Open Deep Mines	\$ 25.00	each
Oil and Gas Regulation Books . . .	\$ 4.00	each
Oil and Gas Erosion and Sediment Control Manuals	\$ 4.00	each

(3) Search and copying fee \$ 5.00 per hour
(See paragraph (c) above)

(4) Postage and handling fees are as follows:

If total order is less than \$5.00	\$.50
If total order is \$5.00 to \$10.00	\$ 1.00
If total order is \$10.00 to \$25.00	\$ 2.00
If total order is greater than \$25.00	\$ 3.00

(g) The above stated fees are subject to periodic change.