

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DIVISION OF PUBLIC SAFETY TITLE NUMBER: 81

RULE TYPE: PROCEDURAL; CITE AUTHORITY WV CODE §29B-1-3

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: SERIES VII

TITLE OF RULE BEING PROPOSED: RULES AND REGULATIONS GOVERNING

REQUESTS FOR INFORMATION (FREEDOM OF INFORMATION ACT).

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 11, 1994 AT 8:30 a.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

OFFICE OF THE SUPERINTENDENT

725 JEFFERSON ROAD

SOUTH CHARLESTON WV 25309-1698

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Lt. Col. Gary N. Griffith

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3-60



Joseph J. Skaff
SECRETARY
(304) 558-2930

State of West Virginia
OFFICE OF THE SECRETARY
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY
P. O. Box 50155
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0155

June 8, 1994

Division of Corrections
Adjutant General's Office:
Division of Engineering & Facilities/
State Armory Board
Military Awards Board
Division of Public Safety - WV State Police:
Commission on Drunk Driving Prevention
Office of Emergency Services:
Emergency Services Advisory Council
Disaster Recovery Board
Emergency Response Commission
State Fire Commission/State Fire Marshal
Board of Probation and Parole
Regional Jail and Correctional Facility Authority
Office of Veterans' Affairs

TO: Ken Hechler
Secretary of State

FROM: Joseph J. Skaff, Secretary

RE: ... Freedom of Information Act Requests

Pursuant to W. Va. Code Sec. 5F-2-2(a)(12), I have reviewed West Virginia Legislative Rule, Department of Military Affairs and Public Safety, Division of Public Safety, Title 81, Series VII, concerning rules and regulations governing requests for information (Freedom of Information Act), as proposed by the Division of Public Safety. I hereby approve the proposed regulation for filing with the Secretary of State.

S/b

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rules and Regulations Governing Requests for Information
(Freedom of Information Act).

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency WV Division of Public Safety

Address 725 Jefferson Road
South Charleston, WV 25309

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

These rules basically document existing procedures and should not result in any additional cost to this agency.

3. Objectives of these rules:

Establish procedures whereby any person may inspect and copy any public record prepared, owned, and retained by the West Virginia Division of Public Safety, except as provided in Section 4, Article 1, Chapter 29B of the Code of West Virginia

Rule Title: Rules and Regulations Governing Requests for Information
(Freedom of Information Act)

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Due to the nature of these rules, the economic impact on state government will be negligible.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

Citizens requesting information will be required to pay a nominal fee for obtaining reproductions of records and documents desired.

Date: 4-12-94

Signature of Agency Head or Authorized Representative

St. Col. Lang T. Griffith Deputy Superintendent

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF PUBLIC SAFETY
TITLE 81
SERIES VII

SUMMARY OF PROPOSED RULE

This proposed rule is to be promulgated pursuant to W. Va. Code §29B-1-3 (West Virginia Freedom of Information Act), which permits an agency of state government to establish procedures whereby any person may inspect and copy any public record prepared, owned, and retained by the agency. The rule is being proposed as a means of providing order and predictability in the Division's release of information process. Currently, requests are being received by all Division offices resulting in both delays for the requestor and diverse release policies. The proposal addresses these problems by requiring that persons making a request for information under the Freedom of Information Act do so in writing to the Superintendent of the Division. Further, the rule states that the correspondence must include the person's name, address, interest or affiliation, telephone number, and a statement specifically describing the information sought. In addition, the individual must agree in writing to pay any costs associated with the information release in advance of receipt. The Division is required to respond to the request within five (5) days and give a reason when the request is denied. Finally, the proposed rule allows the Division to set fixed rate fees for the reproduction of documents, records, and files.

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF PUBLIC SAFETY
TITLE 81
SERIES VII

Title: Rules and Regulations Governing Requests for Information
(Freedom of Information Act).

Section 1. General

1.1 Scope - These rules and regulations establish procedures whereby any person may inspect and copy any public record prepared, owned, and retained by the West Virginia Division of Public Safety, except as provided in Section 4, Article 1, Chapter 29B of the Code of West Virginia.

1.2 Authority - W. Va. Code §29B-1-3

1.3 Filing Date -

1.4 Effective Date -

Section 2. Purpose

2.1 To establish procedures for the orderly dissemination of public records pursuant to the Freedom of Information Act by the West Virginia Division of Public Safety.

Section 3. Definitions

As used in these regulations, unless used in a context that clearly requires a different meaning, the term:

3.1 "Act" means the "Freedom of Information Act" Chapter 29B-1-1 et. seq.

3.2 "Superintendent" means the Superintendent of the West Virginia Division of Public Safety.

3.3 "Division" means the West Virginia Division of Public Safety.

3.4 "Public records" means any books, papers, maps, photographs, cards, tapes, recordings, and other documentary materials, regardless of physical forms or characteristics, containing information relating to the conduct of the public's business which are proposed, owned, and retained by the West Virginia Division of Public Safety, and which are not held in confidence pursuant to federal or state laws.

Department of Military Affairs and Public Safety
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Section 4. Form of Request

4.1 Each request to inspect or copy any public record of the Division shall be made, in writing, directly to the Superintendent and shall include the following:

- (a) The name of the person making the request,
- (b) The person's interest or affiliation,
- (c) The address and telephone number where the person may be contacted,
- (d) A statement describing, with reasonable specificity, the information sought and whether or not the person will be requiring reproductions of the public record. The statement shall include a description of each document sought and if available, the title, date, and author of each such document, and
- (e) A statement that the person is prepared to pay any fees covering the actual cost to the Division for making reproductions of the public record.

4.2 Requests may be filed either in person or by U. S. mail at the Office of the Superintendent, 725 Jefferson Road, South Charleston, West Virginia, 25309-1698. Requests made in person shall only be made during the Division's regular business hours.

Section 5. Responsibilities of the Division.

5.1 The Division shall, upon receipt of a properly filed request, affix the date of receipt and initiate a search for the requested information.

5.2 The Division shall respond to each request, in writing, as soon as practicable, but within a maximum of five (5) working days of receipt of the request. Such response shall:

- (a) Provide requested information,
- (b) Advise the requestor of the time and place at which he/she may inspect and/or copy the information,

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(c) Advise the requestor that the description of the information sought is not sufficient to allow the Division to identify and locate the information and that the request cannot be further processed until additional information is made available to the Division. Upon receipt by the Division of additional information, the five (5) day time limit shall begin anew; or

(d) Deny the request stating in writing the reason for such denial and informing the requestor that he/she may appeal the Division's action in accordance with W. Va. Code §29B-1-5. The basis for denial shall include, but not be limited to, the following:

(1) The requested record is not known to exist,

(2) The record is not in the Division's possession,
and/or

(3) The record is exempt from disclosure under Section 4 of the Act or other provisions of federal or state law.

5.3 The Division may decline to honor requests which require the creation of a record containing a compilation of records, extraction of information from other records, or any statistical analysis of records.

5.4 The Division will not honor requests received by Division offices other than that of the Superintendent. The five (5) day time limit shall not begin until the request is properly filed with the Office of the Superintendent as detailed in §4.2 above.

Section 6. Fees.

6.1 The Division shall establish fixed rate fees for reproduction of documents, records, and files.

6.2 All fees shall be paid in advance of receipt of the requested information by certified check, cashier's check, or money order made payable to the Superintendent, Division of Public Safety.