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MEMORANDUM

Date: March 23, 2020
To: Maureen Lewis, Administrative Law Division Director
From: Donald Kersey, General Counsel
RE: Suspension of 153 CSR 52. Freedom of Information Act Database

On March 16, 2020, the Governor issued a proclamation declaring a State of Emergency in response to the public health risks posed by the Coronavirus epidemic in West Virginia, which proclamation “delegate[s] to all state agencies the ability to suspend rules, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency” pursuant the Governor’s authority set forth in W. Va. Code § 15-5-6(c)(7).

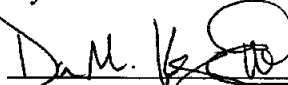
153 CSR 52 (“rule”) establishes an administrative process for all public bodies subject to the WV Freedom of Information Act (“FOIA”) as set forth in W. Va. Code § 29B-1-1 *et seq.* Under FOIA, the Secretary of State has legislative rule-making authority to establish and maintain a public database for public bodies to report FOIA request information. The rule does not govern FOIA responses by public bodies, but merely sets forth the database requirements for public bodies to log FOIA requests that have been completed.

Under the rule, public bodies must log completed FOIA request information into the database on every tenth (10) day of the month. Under the current State of Emergency, state and federal officials have called for non-essential personnel to self-quarantine, avoid public places, close public offices and shut down some services. As such, many public bodies are unable to meet the requirements of the rule while dealing with employee and resource shortages that affect the public bodies’ regular statutory duties. Therefore, strict compliance with the rule will hinder and delay necessary action in coping with the emergency declared by the Governor.

Pursuant to the authority delegated to the Secretary of State by the Governor’s proclamation, the Secretary of State hereby declares that the provisions of 153 CSR 52 pertaining to the deadline to log FOIA entries into the database are **SUSPENDED**, effective as of the date of this Memorandum. The rule suspension shall remain in effect until such time that the State of Emergency is lifted.

MAC WARNER
WV Secretary of State

By Counsel:


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