

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Department of Environmental protection - Secretary's Office TITLE NUMBER: 60

CITE AUTHORITY: W.Va. Code 29A-3-3, 29B-1-3(5), 22-1-1, 22-5-10

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES  NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Freedom of Information Act Requests

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS September 1, 2010

  
Authorized Signature

**TITLE 60  
PROCEDURAL RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SECRETARY'S OFFICE**

**SERIES 2  
RULES ON FREEDOM OF INFORMATION ACT REQUESTS**

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§60-2-1. General.**

1.1. Scope. This rule sets forth the procedures for filing requests with the Department of Environmental Protection for the inspection and copying of Department records under W. Va. Code § 29B-1-1 et seq. (commonly known as the Freedom of Information Act or Act).

The Department of Environmental Protection's policy is to provide public access to Department records, when access is allowed by law, and to minimize costs and time delays to those requesting such information.

1.2. Authority. W. Va. Code §§ 29A-3-3, 29B-1-3(5), 22-1-1 et seq., and 22-5-10.

1.3. Filing Date. July 31, 2010.

1.4. Effective Date. September 1, 2010.

**§60-2-2. Definitions.**

2.1. "Act" means the Freedom of Information Act, W. Va. Code § 29B-1-1 et seq.

2.2. "Department" means the West Virginia Department of Environmental Protection.

2.3. "Public Record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

2.4. "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

2.5. "Request" means a written request made in accordance with these rules of procedure to inspect or obtain a copy of one or more Department records.

2.6. "Requester" includes any person, corporation, partnership, firm or association.

**§60-2-3. Policy on Disclosure.**

3.1. All Department records shall be available to the public unless they are made exempt by the disclosure requirements of the Act.

3.2. All nonexempt records shall be available to the public upon request regardless of whether any justification or need has been shown by the requester and regardless of whether the request cites the Act.

**§60-2-4. Form of Requests.**

A request shall be made in writing and shall reasonably describe the record(s) sought so as to make their identification and location possible. A written request sent by facsimile or electronic mail is acceptable. Requests for information should be sent to Department of Environmental Protection's Public Information Office.

**§60-2-5. Requests That Do Not Reasonably Describe Records Sought.**

If the description of a record sought is not sufficient to allow the Department to identify and locate the requested information, the requester will be notified within five (5) working days that the request is insufficient for the Department to locate and provide the information. Upon request, the Department will assist the requester in identifying the records sought. Until such additional information is provided, the Department has no further obligation to fulfill the request.

**§60-2-6. Misdirected Requests.**

The Department cannot assure that a response to requests received in a manner inconsistent with this rule will be handled in a timely manner.

**§60-2-7. Responsibilities of the Department.**

7.1. 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.

7.2. The Department shall respond in writing to the requester within five (5) working days of receipt of the request. The response shall:

7.2.a. Furnish copies of the requested material;

7.2.b. Advise the requester of the date, time, and place where the information may be inspected and copied; or

7.2.c. Deny the request or inform the requester that the information does not exist.

**§60-2-8. Denial of Requests.**

8.1. Denial of requests may be issued only in the following circumstances:

8.1.a. The information is not known to exist;

8.1.b. The information is not in the Department's possession;

8.1.c. The requested information is exempt from disclosure under the Act or another statute.

8.2. A denial letter shall be sent within five (5) working days of receiving the request. The letter shall state the following:

8.2.a. The reasons for denial;

8.2.b. That the Department's responsibility to provide information is at an end; and

8.2.c. The requester may pursue injunctive or declaratory relief in the circuit of Kanawha County.

**§60-2-9. Exemptions.**

9.1. The Act provides that the Department may exempt the following from disclosure:

9.1.a. Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compounds, procedure, production data, or compilation of information that is not patented and 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 that gives its users an opportunity to obtain business advantage over competitors; provided that in no case shall effluent data submitted pursuant to the West Virginia Water Pollution Control Act [W. Va. Code § 22-11-1, et seq.] be considered exempt from disclosure;

9.1.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 rule shall be construed as precluding an individual from inspecting or copying his or her own personal, personnel, medical or similar file;

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

9.1.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 that are maintained for internal use in matters relating to law enforcement;

9.1.e. Information specifically exempted from disclosure by statute;

9.1.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;

9.1.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 responsible for the regulations or supervision of financial institutions, except those reports that are by law required to be published in newspapers;

9.1.h. Internal memoranda or letters received or prepared by any public body;

9.1.i. Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

9.7.j. Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases, and inventories of goods or materials collected or assembled to respond to terrorist acts, and communication codes or deployment plans of law enforcement or emergency response personnel;

9.7.k. Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law enforcement agencies, state and local law enforcement and other agencies within the Department of Military Affairs and Public Safety;

9.7.l. National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

9.7.m. Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist attack;

9.7.n. Security or disaster recovery plans, risk assessments, tests or the results of those tests;

9.7.o. Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

9.7.p. Codes for facility security systems or codes for secure applications for such facilities referred to in subdivision (o) of this subsection;

9.7.q. Specific engineering plans and descriptions of existing public utility plants and equipment; and

9.7.r. Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. § 222.

#### **§60-2-10. 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 or redacted.

#### **§60-2-11. Fees.**

11.1. Fees will be charged to the requester for searching for and reproducing requested records, in accordance with the following:

11.1.a. A search fee of twenty dollars (\$20.00) per hour will be charged, or a quarter-fraction thereof, for the Department's time spent in locating, duplicating and compiling the requested records.

11.1.b. Copying of the first 20 pages shall be free. For each page thereafter, a copying cost of twenty-five cents (\$0.25) per page shall be charged to the requester.

11.1.c. The charge for copying materials that must be reproduced outside the Department's facilities shall be the actual cost to reproduce the record;

11.1.d. Mailing or delivery charges may be charged, at the actual cost, in connection with sending the requested information to a requester;

11.1.e. If the information requested exists as a computer record in the form of a printout, diskette, or tape, and the request is for the information to be produced in electronic form (such as an Excel spreadsheet), the fee will be the actual cost of the computer system time added to any applicable search, in-house programming, reproduction, or contract programming costs;

11.1.f. Diskette, tape or other storage media will be provided at a cost of ten dollars (\$10.00) each);

11.1.g. An invoice for the total amount of fees will be sent to the requester. Payment shall be made by check or money order payable to the West Virginia Department of Environmental Protection;

11.1.h. Total or partial pre-payments may be required if the Department determines that the cost to reproduce the information will exceed twenty-five dollars (\$25.00);

11.1.i. Total or partial pre-payments may be required if the Department determines that unpaid fees on one (1) or more requests by the same requester exceeds twenty-five dollars (\$25.00); and

11.1.j. Any requester who claims that he or she cannot afford to pay the fees established by this rule may file an affidavit with the Department stating the reason the requester cannot afford to pay. If the Department agrees, the Department shall process the request in accordance with this rule and as if the fees have been paid.

BEFORE THE WEST VIRGINIA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

PROPOSED 2010 RULES  
60CSR2 - Rules on Freedom of Information  
Act Requests

**TRANSCRIPT OF PROCEEDINGS** had or testimony  
adduced in the above-entitled matter, on the 15<sup>th</sup> day of  
July, 2009, commencing at 6:08 p.m. and concluding at 6:09  
p.m., at the Coopers Rock Training Room, 601 57<sup>th</sup> Street,  
S.E., Charleston, Kanawha County, West Virginia, pursuant  
to notice to all interested parties.

BEFORE: KATHY COSCO, Public Information Office

**ORIGINAL**

**NANCY MCNEALY**  
CERTIFIED COURT REPORTER  
Post Office Box 13415  
Charleston, West Virginia 25360-0415  
(304) 988-2873 FAX (304) 988-1419

**I N D E X**

Reporter's Certificate.....Page 5

1 MS. COSCO: Good evening. My name is Kathy  
2 Cosco and I am with the Public Information Office. Welcome  
3 to the DEP and the public hearing on four of the agency's  
4 proposed rule changes. This evening, we will be taking  
5 comments on changes to 33CSR 20 - *Hazardous Waste*  
6 *Management System*; 47CSR12 - *Requirements Governing*  
7 *Groundwater Standards*; 47CSR60 - *Monitoring Well Design*  
8 *Standards*; and 60CSR2 - *Rules on Freedom of Information Act*  
9 *Requests*.

10 To make the most efficient use of our time,  
11 we will open the hearing for comments on the first rule,  
12 and once everyone who wishes to speak about that rule has a  
13 chance to do so, we will close the hearing on that rule and  
14 immediately open the next hearing for the next rule.

15 We have four sign-in sheets at the back of  
16 the room. If you wish to speak about all four rules,  
17 please make sure your name is on each sign-in sheet.  
18 However, if you only want to comment on one rule, your name  
19 only needs to be on the sign-in sheet for that rule.

20 \* \* \* \*

21 The last rule that we will accept comments  
22 on this evening is 60CSR2 - *Rules on Freedom of Information*  
23 *Act Requests*.

24 This rule was promulgated last in 1997.

1 Revisions to this rule include changing the fee structure  
2 for searching for and reproducing requested records to  
3 bring it in line with other State agencies by setting a  
4 flat search fee of \$20.00 per hour (or a quarter fraction  
5 thereof) for a Division's time spent in locating,  
6 duplicating or compiling the requested records provided and  
7 a cost of \$10.00 if the information is produced on  
8 diskette, tape or other storage media.

9           Please make sure you have signed in and have  
10 indicated whether you are going to make a comment. If you  
11 have written comments, please provide them to me when you  
12 speak or at the close of this hearing.

13           If everyone is ready, the floor is now open.  
14 Seeing as how no one wishes to speak, this concludes the  
15 public hearing for the proposed rule 60CSR2 *Rules on*  
16 *Freedom of Information Act Requests.*

17           The agency will review all comments and  
18 prepare a written response which will be filed when the  
19 final rule is filed with the Secretary of State. This  
20 concludes are hearing on all four rules. Thank you for  
21 coming.

22           (WHEREUPON, the hearing was concluded.)

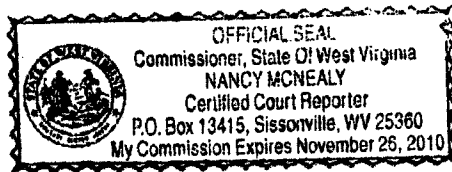
BEFORE THE WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to wit:

I, **NANCY MCNEALY**, Certified Verbatim Court Reporter and Commissioner of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 16<sup>th</sup> day of July, 2010.

My commission expires November 26, 2010.



*Nancy McNealy*  
\_\_\_\_\_  
Certified Verbatim Reporter  
Commissioner of West Virginia



## **60 CSR 2. RULES ON FREEDOM OF INFORMATION ACT REQUESTS.**

### **RESPONSE TO COMMENTS**

On June 14, 2010, the Department of Environmental Protection commenced a thirty-day public comment period and subsequently held a public hearing on July 15, 2010 to accept oral comments on proposed revisions to legislative rule 60 CSR 2. Written comments were also accepted through 6:30 p.m. on Thursday, July 15, 2010. No commenter submitted written comments regarding proposed revisions to rule 60 CSR 2, and no commenter provided verbal comments.