

Form #1

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

September 25, 1996

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

RE: 60CSR2 - "Rules for Filing Freedom of Information
Act Requests"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-referenced rule as a proposed procedural rule and notice of public hearing/comment period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Mark Scott at 759-0515.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Laidley Eli McCoy", written over the typed name and title.

Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc ---

Attachment

ENVIRONMENTAL PROTECTION

DIRECTOR'S OFFICE

BRIEFING DOCUMENT

Rule Title: 60CSR2 - "Rules for Filing Freedom of Information Act Requests"

A. AUTHORITY: WV Code 29A-3-3, 29B-1-3(5), 22-1-1 et seq.
and 22-5-10

B. SUMMARY OF RULE:

Freedom of Information Request Procedures for the Division
of Environmental Protection

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

To develop agency-wide rule on Freedom of Information Act
requests

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 60CSR2 - "Rules on Freedom of Information Act Requests"

Type of Rule: Legislative Interpretive X Procedural

Agency Environmental Protection - Director's Office

Address #10 McJunkin Road

Nitro, West Virginia 25143-2506

1. Effect of Proposed Rule

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

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To establish uniform Freedom of Information Act Policy
within Division of Environmental Protection

Rule Title: 60CSR2 - Rules on Freedom of Information Act Requests

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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

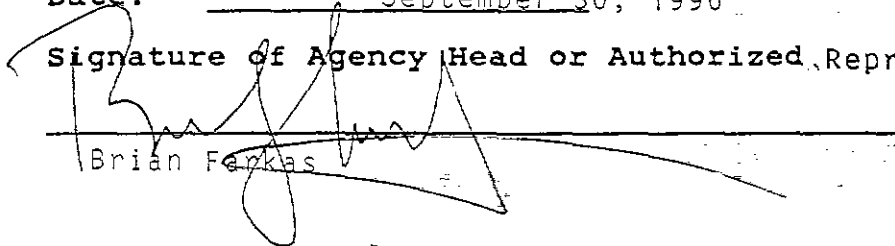
N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: September 30, 1996

Signature of Agency Head or Authorized Representative



Brian Farkas

TITLE 60
PROCEDURAL RULES
DIVISION OF ENVIRONMENTAL PROTECTION
DIRECTOR'S OFFICE
SERIES 2
RULES ON FREEDOM OF INFORMATION ACT REQUESTS

FILED
SEP 30 3 51 PM '88
OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

§60-2-1. General.

1.1. Scope/Policy. -- This rule sets forth the procedures for filing requests with the Division of Environmental Protection for the inspection and copying of Division records under Chapter 29B-1-1 et seq. of the West Virginia Code, 1931, as amended (commonly known as the Freedom of Information Act or Act).

The Division of Environmental Protection's policy is to provide public access to Division records, when access is allowed by law, and to minimize costs and time delays to those requesting such information. These rules do not apply to the disclosure of information to any state or federal government officer, employee or authorized representative.

1.2. Authority. -- West Virginia Code 29A-3-3, 29B-1-3(5), 22-1-1 et seq., and 22-5-10.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- This procedural rule repeals and replaces 38CSR12, "Rules and Regulations Governing Requests for Information," which went into effect on May 1, 1988.

§60-2-2. Definitions.

For the purposes of these rules:

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

2.2. "Division" means the state Division of Environmental Protection.

2.3. "Record" means any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics which are in the possession of the Division, but does not include materials that are personal property of a Division employee and does not include materials which are copyrights or are readily available to the public such as books, journals, and periodicals.

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

2.5. "Requestor" means any person, including corporation, partnership, firm or association, who has submitted a request to the Division.

§60-2-3. Policy on Disclosure.

3.1. All Division records shall be available to the public unless they are exempt from 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 requestor and regardless of whether the request cites the Act.

§60-2-4. Forms of Request. -- A request shall be made in writing and shall state with reasonable specificity the record(s) sought so as to make their identification and location possible. A written request sent by facimilie machine is acceptable. Requests for information should be sent to Division of Environmental Protection's Public Information Office.

§60-2-5. Misdirected Requests and Oral Requests. -- The Division cannot assure that a response to requests received in a manner inconsistent with this rule will be handled in a timely manner. The Division shall respond to written requests within five (5) working days after a request is received. The Division will honor oral or telephone requests if followed by a written request.

§60-2-6. Responsibilities of the Division.

6.1. The Division 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.

6.2. The Division shall respond in writing to the requestor within five (5) working days of the receipt of the request. The response shall:

6.2.a. Furnish copies of the requested material;

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

6.2.c. Deny the request or inform the requestor that the information does not exist.

§60-2-7. Denials of Requests.

7.1. Denials of requests may be issued only in the following circumstances:

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

7.1.b. The information is not in the Division's possession;

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

7.1.d. The description of the record sought is insufficient for the Division to identify and locate.

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

7.2.a. The reason for denial;

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

7.2.c. The requestor may pursue injunctive or declaratory relief in the circuit court in the county where the public record is kept.

§60-2-8. Exemptions.

8.1. The following categories of information are specifically exempt from disclosure under the Act:

8.1.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 Chapter 22 of the West Virginia Code be considered trade secrets;

8.1.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 regulation shall be construed as precluding an individual from inspecting or copying his or her own personal, personnel, medical or

similar file;

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

8.1.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;

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

8.1.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;

8.1.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; and

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

§60-2-9. 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.

§60-2-10. Fees.

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

10.1.a. Copying costs shall be twenty-five cents (\$0.25) per page; provided that the first 20 pages are free;

10.1.b. No charge will be made if the total copying fee in connection with a request is \$5 or less;

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

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

10.1.e. If the information requested exists as a computer record and a printout, diskette, or tape, 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;

10.1.f. Diskette, tape or other storage media will be provided at actual cost to agency for medium;

10.1.g. A fee will be charged per hour, or one-quarter fraction thereof, for the Division's time spent in locating and duplicating requested records. The first half hour used to locate such records is free. The fee is:

Category	Pay Grades	Hourly Rate Averages (includes 31% for benefits)
1.	Pay Grades 1-10	\$11.46
2.	Pay Grades 11-15	\$18.82
3.	Pay Grades 16-23	\$29.50

10.1.h. An invoice for the total amount of fees will be sent to the requestor. Payment shall be made by check or money order payable to the Division of Environmental Protection;

10.1.i. Total or partial pre-payments may be required if the Division determines that the cost to reproduce the information will exceed \$25;

10.1.j. Total or partial pre-payments may be required if the Division determines that unpaid fees on one (1) or more request by the same requestor exceeds \$25; and

10.1.k. Any requestor who cannot afford to pay the fee(s) established by this rule may file an affidavit with the Division stating the reason the requestor cannot afford to pay. Upon filing the affidavit, the Division shall process the request in accordance with this rule and as if the fee(s) had been paid.