WEST VIRGINIA CODE: §22-26-4

§22-26-4. Confidentiality.

(a) Information required to be submitted by a person as part of the water withdrawal survey and registration that may be a trade secret, contain protected information relating to homeland security or be subject to another exemption provided by the state freedom of information act may be deemed confidential. Each such document shall be identified by that person as confidential information. The person claiming confidentiality shall provide written justification to the secretary at the time the information is submitted stating the reasons for confidentiality and why the information should not be released or made public. The secretary has the discretion to approve or deny requests for confidentiality as prescribed by this section.

(b) In addition to records or documents that may be considered confidential under article one, chapter twenty-nine-b of this code, confidential information means records, reports or information, or a particular portion thereof, that if made public would:

(1) Divulge production or sales figures or methods, processes or production unique to the submitting person;

(2) Otherwise tend to adversely affect the competitive position of a person by revealing trade secrets, including intellectual property rights; or

(3) Present a threat to the safety and security of any water supply, including information concerning water supply vulnerability assessments.

(c) Information designated as confidential and the written justification shall be maintained in a file separate from the general records related to the person.

(d) Information designated as confidential may be released when the information is contained in a report in which the identity of the person has been removed and the confidential information is aggregated by hydrologic unit or region.

(e) Information designated as confidential may be released to governmental entities, their employees and agents when compiling and analyzing survey and registration information and as may be necessary to develop the legislative report required by this section or to develop water resources plans. Any governmental entity or person receiving information designated confidential shall protect the information as confidential.

(f) Upon receipt of a request for information that has been designated confidential and prior to making a determination to grant or deny the request, the secretary shall notify the person claiming confidentiality of the request and may allow the person an opportunity to respond to the request in writing within five days.

WV Legislature

(g) All requests to inspect or copy documents shall state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within ten business days of the receipt of a request, the secretary shall: (1) Advise the person making the request in writing of the time and place where the person may inspect and copy the documents which, if the request addresses information claimed as confidential, may not be sooner than twenty days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the person claiming confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, then notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

(h) Any person adversely affected by a determination regarding confidential information under this article may appeal the determination to the appropriate circuit court pursuant to the provisions of article five, chapter twenty-nine-a of this code. The filing of a timely notice of appeal shall stay any determination to disclose confidential information pending a final decision on appeal. The scope of review is limited to the question of whether the portion of the records, reports, data or other information sought to be deemed confidential, inspected or copied is entitled to be treated as confidential under this section. The secretary shall afford evidentiary protection in appeals as necessary to protect the confidentiality of the information at issue, including the use of in camera proceedings and the sealing of records when appropriate.

WV Legislature