WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

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ENROLLED
Committee Substitute for
HOUSE BILL No. 838

(By Mr. Satter)

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PASSED April 1, 1977

In Effect ninety days from Passage
AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-nine-b, relating to public access to and inspection of public records; declaration of policy; definitions of terms; inspection and copying of public records and exemptions therefrom; rules and regulations for the protection of the records; enforcement of right of inspection; violations of article and penalties therefor.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter twenty-nine-b, to read as follows:

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

§29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of West Virginia that all persons are, unless
otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.

§29B-1-2. Definitions.

As used in this article:

(1) “Custodian” includes the elected or appointed official charged with administering a public body.

(2) “Person” includes any natural person, corporation, partnership, firm or association.

(3) “Public body” means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(4) “Public record” includes any writing containing information relating to the conduct of the public’s business, prepared, owned and retained by a public body.

(5) “Writing” includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

§29B-1-3. Inspection and copying.

(1) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.

(2) A request to inspect or copy any public record of a
public body shall be made directly to the custodian of such public record.

(3) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

(4) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

(a) Furnish copies of the requested information;

(b) Advise the person making the request of the time and place at which he may inspect and copy the materials; or

(c) Deny the request stating in writing the reasons for such denial.

Such a denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(5) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records.

§29B-1-4. Exemptions.

The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production
data, or compilation of information which is not patented
which is known only to certain individuals within a com-
mercial 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 which gives
its users an opportunity to obtain business advantage over
competitors;

(2) 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 article shall be construed as precluding an in-
dividual from inspecting or copying his own personal, medical
or similar file;

(3) Test questions, scoring keys and other examination
data used to administer a licensing examination, examination
for employment or academic examination;

(4) 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 which
are maintained for internal use in matters relating to law
enforcement;

(5) Information specifically exempted from disclosure by
statute;

(6) Records, archives, documents or manuscripts describ-
ing the location of undeveloped historic, prehistoric, archeolo-
gical, paleontological and battlefield sites or constituting gifts
to any public body upon which the donor has attached restric-
tions on usage or the handling of which could irremediably
damage such record, archive, document or manuscript;

(7) 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 regulation or
supervision of financial institutions, except those reports
which are by law required to be published in newspapers; and
§29B-1-5. Enforcement.

1. (1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

2. (2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

3. (3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date.

§29B-1-6. Violation of article; penalties.

Any custodian of any public records who shall willfully violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than ten days, or, in the discretion of the court, by both such fine and imprisonment.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

(Handwritten name)
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

J. Delanna
Clerk of the Senate

O.A. Blankenship
Clerk of the House of Delegates

W. Butkus
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 13 day of April, 1977.

[Signature]
Governor