WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

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ENROLLED

House Bill No. 3009
(By Mr. Speaker, Mr. Kiss, and Delegates Varner, Amores, Browning, Kominar, Palumbo, and Swartzmiller)

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Passed March 8, 2003

In Effect from Passage
AN ACT to amend and reenact section four, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excluding certain records from disclosure under the freedom of information act collected in response to and in preparation for terrorist acts or threats of terrorist acts; definitions; and exceptions.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

(a) 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 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 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 individual from inspecting or copying his or her 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 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
(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;

(8) Internal memoranda or letters received or prepared by any public body;

(9) 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;

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

(11) 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;

(12) 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;
(13) 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 act;

(14) Security or disaster recovery plans, risk assessments, tests, or the results of those tests;

(15) 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; and

(16) Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15), subsection (a) of this section.

(b) As used in subdivisions (9) through (16), subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) Nothing in the provisions of subdivision (9) through (16), subsection (a) of this section, should be construed to make subject to the provisions of this chapter any evidence of an
immediate threat to public health or safety unrelated to a
terrorist act or the threat thereof which comes to the attention
of a public entity in the course of conducting a vulnerability
assessment response or similar activity.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of March, 2003.

Governor