



STATE OF WEST VIRGINIA

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING  
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL AFFAIRS

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GASTON CAPERTON  
GOVERNOR

STEPHEN F. WEBBER  
DIRECTOR

MEMORANDUM

TO: ALL INSPECTORS AT LARGE                    CONFIDENTIAL  
   ATTORNEY/CLIENT PRIVILEGE

FROM: CHRIS QUASEBARTH *CQ*  
   DIRECTOR OF LEGAL SERVICES

DATE: April 7, 1993

RE: FREEDOM OF INFORMATION ACT REQUESTS

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The purpose of this memorandum is to help ensure uniform response to FOIA requests, and to bring to your attention certain limitations in responding to FOIA requests. I appreciate your cooperation in providing me with copies of the FOIA requests that you receive. While the office fully supports the concept of open government embodied in the Freedom Of Information Act, W. Va. Code § 29B-1-1, we must also recognize the limitations which the legislature has included in that statute.

Please follow the following guidelines in responding to FOIA requests:

- 1) Familiarize yourself with 56 CSR 9, a copy of which is attached, which is the procedural rule for receiving and responding to FOIA requests.
- 2) Continue to provide me with copies of requests you receive, so that I may keep track of the types of requests, and the types of information leaving the office. Ask me when you have any question!
- 3) Please be aware that inspectors notes and internal

memoranda or letters are exempt from disclosure.

4) Please be aware that any record, such as certain maps, required to be kept confidential under Chapters 22 or 22A are exempt from disclosure.

5) Please be aware that all information being gathered as part of a fatal investigation, including video- or audio-tapes, transcripts, and photos, should not be disclosed until after the investigation is complete. Requests for information relating to the violation history, or similar records, of an operator being investigated may be responded to.

6) Each FOIA response should follow the basic form letter attached.

7) Keep a file copy of the documents sent, in case there is any question later as to whether the documents were provided, and exactly what they were.

8) Any fee for a FOIA response should be billed and paid in advance.

If you have any questions, please do not hesitate to contact me. Please share this memorandum with any members of your staff who may be responding to requests for information. Your continued cooperation is appreciated.

CQ/ms

cc: Stephen F. Webber, Director  
Doug Conaway, Administrator

<sup>56</sup>  
**TITLE ~~38~~**  
**PROCEDURAL RULES**  
**DEPARTMENT OF ENERGY**

**SERIES 9**  
**RULES AND REGULATIONS GOVERNING REQUESTS FOR**  
**INFORMATION (FREEDOM OF INFORMATION ACT)**

<sup>56</sup>  
~~§38-9-1.~~ **General.**

1.1. **Scope.** -- These rules and regulations establish procedures whereby any person may inspect and copy any public record prepared, owned, and retained by the West Virginia Department of Energy, except as provided in Section 4, Article 1, Chapter 29B of the Code of West Virginia.

1.2. **Authority.** -- W. Va. Code §29B-1-3

1.3. **Filing Date.** -- April 27, 1988

1.4. **Effective Date.** -- May 1, 1988

1.5. **Purpose.** -- This rule repeals and repromulgates existing Title 38, Series 9.

<sup>56</sup>  
~~§38-9-2.~~ **Definitions.**

As used in these regulations, unless used in a context that clearly requires a different meaning, the term:

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

2.2 Commissioner means the Commissioner of the West Virginia Department of Energy.

2.3 Department means the West Virginia Department of Energy.

2.4 Public Records means any books, papers, maps, photographs, cards, tapes, recordings and other documentary materials, regardless of physical forms or characteristics, containing information relating to the conduct of the public's businesses which are proposed, owned, and retained by the West Virginia Department of Energy and which are not held in confidence pursuant to federal or state laws.

<sup>56</sup>  
~~§38-9-3.~~ **Form Of Request.**

3.1. Each request to inspect or copy any public record of the Department of Energy shall be made, in writing, directly to the Commissioner and shall include the following:

(a) The name of the person making the request.

(b) The person's affiliation.

(c) The address and telephone number where the person may be contacted.

(d) A statement describing, with reasonable specificity, the information sought and whether or not the person will be requiring reproductions of the public record. The statement shall include a description of each document sought and if available, the title, date, and author of each such document.

(e) A statement that the person is prepared to pay any fees covering the actual cost to the Department of Energy for making reproductions of the public record.

3.2. Requests may be filed either in person or by mail at the Office of the Commissioner, West Virginia Department of Energy, 1615 Washington Street East, Charleston, West Virginia 25311. Requests made in person shall only be made during the Department's regular business hours.

<sup>56</sup>  
~~§38-9-4.~~ **Responsibilities of the Department.**

4.1. The Department shall, upon receipt of a properly filed request, affix the date of receipt and initiate a search for the requested information.

4.2. The Department shall respond to each request, in writing, as soon as practicable but within a

maximum of five (5) working days of receipt of the request. Such response shall:

(a) Provide the requested information;

(b) Advise the requestor of the time and place at which he may inspect and/or copy the information;

(c) Advise the requestor that the description of the information sought is not sufficient to allow the Department to identify and locate the information and that the request cannot be further processed until additional identification is made available to the Department. Upon receipt by the Department of additional identification, the five (5) day time limit shall begin anew; or

(d) Deny the request stating in writing the reason for such denial and informing the requestor that he may appeal the agency's action in accordance with the provisions of Chapter 29B. The basis for denial shall include, but not be limited to, the following:

(1) The requested record is not known to exist.

(2) The record is not in the Department's possession.

(3) The record is exempt from disclosure under Section 4 of the Act or other provisions of state and federal law.

4.3. The Department may decline to honor requests which require the creation of a record containing a compilation of records, extraction of information from other records, or any statistical analysis records.

4.4. The Department is under no obligation to assure that requests received by offices other than that of the Commissioner will be responded to in a timely manner or that information received from offices other than the Commissioners are accurate or an official representation of the Department's records.

~~§~~  
~~§~~ 9-5. Exemptions.

In addition to the exemptions described in Section 4 of the Act, any information required to be kept confidential under the provisions of Chapter 22, Chapter 22A, and Chapter 22B of the Code shall be exempt.

~~§~~  
~~§~~ 9-6. Fees.

6.1. The Department shall establish fixed rate fees for reproduction of documents, records, and files on the basis of the actual cost of such reproduction and shall document such costs; provided, that where total costs are less than five dollars (\$5.00), no fee shall be charged.

6.2. All fees shall be paid in advance by certified check, cashier's check, or money order made payable to the Department of Energy.