

**TITLE 61
PROCEDURAL RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE**

**SERIES 21
FREEDOM OF INFORMATION REQUEST**

'61-21-1. General.

- 1.1. Scope. -- These rules relate to W. Va. Code '29B-1-1 et seq., 1931.
- 1.2. Authority. -- W. Va. Code '29B-1.
- 1.3. Filing Date. -- September 4, 1990.
- 1.4. Effective Date. -- October 5, 1990.

'61-21-2. Definitions.

- 2.1. For the purpose of these rules:

2.1.a. "Department" means the West Virginia Department of Agriculture.

2.1.b. "Freedom of Information Officer" means the person designated by the Commissioner of Agriculture as having responsibility for all Freedom of Information requests.

'61-21-3. Request Procedure.

3.1. Document request. -- A request to inspect or copy any public record for which the West Virginia Department of Agriculture is the custodian shall be in writing and contain the following information:

3.1.a. A description of each document sought and, if available, the title, date and author of each such document;

3.1.b. The name, address and telephone number of the person or persons requesting to inspect or copy such public records.

3.1.c. A statement that the person requesting information is prepared to pay any fees covering the actual cost to the Department for responding to this request.

3.1.d. The request should be addressed to the Office of the Commissioner, West Virginia Department of Agriculture, State Capitol, Charleston, West Virginia 25305 ATTN: F.O.I. officer and may be filed by mail or in person.

'61-21-4. Exemptions.

4.1. The categories of information set forth in W. Va. Code '29B-1-4 are hereby adopted as exempt from disclosure.

4.2. Any information relating to or in pending litigation at any stage is hereby adopted as exempt from disclosure.

4.3. Any information required to be kept confidential under the provisions of W. Va. Code ' 19 are hereby adopted as exempt from disclosure.

' 61-21-5. Responsibilities of the Department.

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

5.2. The five (5) day time limit for requests for information set forth in W. Va. Code ' 29B-1-3 shall commence upon receipt of the written request.

5.3. The Department's response shall:

5.3.a. Provide the requested information and an invoice for the total amount of fees due; or

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

5.3.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; or

5.3.d. Advise the requestor that the information requested is not known to exist or is not in the Department's possession; or

5.3.e. Advise the requestor that the information is exempt from disclosure under these rules; or

5.3.f. Deny the request giving the reason for the denial and inform the person requesting the information that he has the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

5.4. 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 of records.

5.5. The Department may provide information on computer discs. The information will be provided utilizing the programs and formats in common use in the Department unless the person requesting the information specifies that he or she will be responsible for all costs involved in providing the information in the format that they request.

5.6. The Department will not allow any non-employee to operate the computers of the Department for a search of the records.

5.7. The Department will not furnish any software to any person. The Department will specify the software that generates the data provided. The Department may convert the data to a format requested, if possible, utilizing the software currently available to the Department.

'61-21-6. Partial Disclosure.

6.1. If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed after the exempt material has been deleted.

'61-21-7. Fees.

7.1. The Department shall establish the following fees calculated to reimburse it for its actual cost in searching and reviewing records and making reproductions of records.

7.1.a. Cost per page - The cost for reproducing records shall be twenty cents (\$.20) per page.

7.1.b. Cost for printed information - The cost for providing items that are printed by the Department of Agriculture shall be twenty cents (\$.20) per page. A page is designated as paper of approximately 100 square inches.

7.1.c. Search fee - The cost for searching and reproducing records shall be ten dollars (\$10.00) per hour.

7.1.d. Computer Discs - The cost for the reproduction of records on computer discs shall be one dollar (\$1.00) per disc.

7.1.e. Computer data conversion - The cost for converting computer data into a format requested shall be based on the cost of employee time and materials.

7.1.f. Other fees - The cost for performing other operations requested under the act will be charged at a rate to reimburse the direct costs of the Department.

'61-21-8. Payment of fees.

- 8.1. All fees shall be paid by check or money order to the West Virginia Department of Agriculture.
- 8.2. The fee will be waived for all requests where the total charge is \$5.00 or less.
- 8.3. Any person requesting information who cannot afford to pay the fee(s) established under these rules may file an affidavit with the Department stating that the person is peculiarly unable to pay such fee(s).
- 8.4. The Department may require total or partial prepayment if the Department determines that the unpaid fees attributable to one or more requests by the same person exceeds ten dollars (\$10.00).
- 8.5. The Department may require prepayment of fees for any request exceeding \$20.00.