



# *Harrison County WV Commission FOIA Policy & Fee Schedule*

Effective 1/26/2022

## **1. Purpose**

The purpose of this policy is to standardize the procedures within the Harrison County Commission (Commission) associated with processing Freedom of Information Act (FOIA) requests, except as otherwise directed by the County Administrator.

## **2. Scope**

This policy applies to all employees of the Commission and any individual or organization charged with producing Commission FOIA responses and contracted organizations and individuals as their contracts may require compliance with this policy or Commission policies.

## **3. Applicable W. Va. Code / List of Exemptions**

West Virginia Code, Chapter 29B, "Freedom of Information" (Appendix A)

## **4. Definitions**

The definitions below are applicable unless the context in which the defined words are used clearly requires a different meaning.

- **Addressee:** The person to whom the FOIA Request is addressed. All FOIA Requests should be submitted using the Harrison County WV Commission's Freedom of Information Request form (via email or mail) to the County Administrator.
- **Legal Counsel:** An attorney or law firm designated by the County Commission.
- **Record:** "Public Record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business. "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics.
- **Request:** A request that is submitted to the County Administrator using the Commission's Freedom of Information Request form or in such other format as maybe acceptable to the

County Administrator. A Harrison County Commission Freedom of Information Request form should be completed for every request and kept on file.

- **Requester:** The person requesting a FOIA response.

## **5. Dispositions of a FOIA Request**

The disposition of a FOIA request may be resolved by:

- Notifying the Requester that the Request lacks reasonable specificity for fulfillment;
- Notifying the Requester that the requested Records are not possessed by the Commission;
- Notifying the Requester where the requested Records may be obtained from the Commission's website or other websites if the information is already in existence in a public forum;
- Notifying the Requester of the time and place at which he or she may inspect and request copies of Records. Responses to such Requests will be in accordance with the law and, except where it may be inapplicable, this policy. Consult Legal Counsel if guidance is needed;
- Furnishing copies of the requested Records in accordance with the law and this policy;
- Responding to the Requester, as provided in Section 6 of this policy, when the requested Records are relevant to a suit or grievance against the Commission; or
- Denying the Request, in whole or in part, and providing the Requester with a written statement containing the information in Section 7 of this policy. A copy of the denial shall be maintained in the office of the County Commission for retention for one year, unless law or other policy requires a longer period.

## **6. Time to Respond to a FOIA Request; Request for Extension Time to Respond**

- A response fulfilling or denying a FOIA Request or reasons why the FOIA request may not be provided must be made within five days of receipt of the Request Form by the County Administrator, not including the day of receipt, Saturdays, Sunday, and legal holidays.

### **Request for Extension**

- If the Commission determines that the requested Records cannot be retrieved and copied before the response is due, the County Administrator:
  - Processes the Request in conformance with this policy;
  - Attempts to contact by telephone or email the Requester to:
    - Provide any fee information required by Section 8;
    - Explain why the response cannot be timely prepared;
    - Provide an estimated time when the response will be ready, and
    - If the request for an extension is refused, proceed to provide the response as soon as practicable.
- Sends a letter or email to the Requester documenting any telephone conversation, including any fee information.

- If there was no telephone or email reply, sends a letter to the Requester containing the information and request that would have been provided in the telephone call.

## **7. Processing of Requests Received by the County Administrator**

FOIA Requests should be addressed to the County Administrator, as the sole Addressee:

- If the Request is related to a potentially controversial or sensitive matter, the County Administrator sends a copy of the Request (or forwards the email or voicemail) to Legal Counsel, if the Requester did not address or copy them.
- If it is known that the requested Records relate to a suit or grievance against the Commission, the County Administrator hand-delivers or faxes a copy of the Request (or forwards the email or voicemail) to the attorney defending the Commission and inquires if a FOIA response should be prepared or whether the attorney will respond as part of the suit or grievance.
- If the Request is routine, it may require Legal Counsel to approve the response when it is prepared; and, as appropriate, the County Administrator consults with him or her regarding:
- The drafting of the response letter and any Records that may be exempt from disclosure under the West Virginia FOIA, W. Va. Code 29B-1-4, other provision of law, court orders, or court recognized privileges, such as attorney-client attorney work-product, deliberative process, etc.; and
- If the response will be a denial of the Request, in whole or in part, inclusion of statements that notify the Requester:
  - The reasons for the denial. (The Commission is not required to prepare a Vaughn index, which lists all of the records that the Commission is not producing due to the applicable exemptions. In *Farley v. Worley*, 215 W. Va. 412, 599 S.E.2d 835 (2004), the Supreme Court of Appeals of West Virginia made this distinction clear. “In other words, the Vaughn index is implicated by FOIA litigation – not by a FOIA denial.” ID., at 426, 849.)
  - That the Requester may institute proceedings in the Circuit Court of the jurisdiction where the Records are kept, i.e., the Circuit Court of Harrison County, West Virginia.
- Makes an estimate of the fee to be charged based on the fees established in Section 8 of this policy;
- Takes the following action when the estimated fee is more than \$5.00 and the Requester did not include in his or her Request an agreement to pay an amount equal to or greater than the estimated fee:
- Attempts to telephone or email the Requester to inform him or her:
  - Of the estimated fee and requests agreement of the Requester to pay that fee;
  - That the exact fee will be communicated to him; or
  - That no copies of Records will be released until the fee is paid; and
- Sends a letter or email to the Requester to:

- Confirm any agreement of the Requester to pay the estimated fee; or
  - If the Requester refused to pay the fee, or if there was no telephone conversation or email reply, inform the Requester of the estimated fee and that nothing further will be done regarding the Request until the Agency receives agreement to pay the estimated fee.
- Determines the exact fee in accordance with Section 8 of this policy;
  - Drafts the response letter and obtains the review and approval of the Response by Legal Counsel, unless he or she has stated that such is not necessary.
  - Signs the response letter or requests Legal Counsel to sign it;
  - Telephones or email the Requester (or, if the Requester cannot be reached by telephone, sends a letter) and informs him or her of the fee and that the response to the Request will be held until payment is received by check or money order made payable to Harrison County Commission; and
  - When the fee is received, sends the fee to County Clerk, mails or emails the response to the Requester, and files a complete copy of the response for one year, unless law or other policy requires a longer period.

**8. Fees Copy Fee:**

- Black & White copies - \$1.00 (One Dollar) per page printed on 8.5" x 11" or 8.5" x 14" paper.
- Color copies - \$2.00 (Two Dollars) per page printed on 8.5" x 11" or 8.5" x 14" paper.

**Documents put onto CD:**

- \$5.00 flat fee per produced CD.

**Maps, Large Scale Printing:**

|             |         |
|-------------|---------|
| ☐ 8"x 11"   | \$15.00 |
| ☐ 11"x 17'  | \$30.00 |
| ☐ 24"x 36"  | \$40.00 |
| ☐ 36" x 48" | \$60.00 |

**Video or Audio Reproduction:**

- \$19.95

**Sales Tax:**

- Applicable taxes will be applied to all requests/orders.

**Postage/Shipping/Handling:**

- Will be charged at cost and will be sent according to the instructions of the Request.
- Shipping charges for Videos will be \$15.

**Payment:**

- All fees must be paid prior to receiving requested material. There are no exceptions.
- After information is gathered and compiled, the Commission Office will generate an invoice that is to be paid at the County Clerk's Office located on the 2<sup>nd</sup> floor of the Harrison County Courthouse prior to production, unless otherwise directed by the County Administrator.

**Fee Waiver**

- A request for a fee waiver may be made on the Commission Freedom of Information Request form. An explanation is required for a fee waiver. Any waiver of fees will be at the discretion of the County Administrator.

## Harrison County WV Freedom of Information Request

Requester's Name: \_\_\_\_\_

Requester's Telephone Number: \_\_\_\_\_

Requester's Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

Records sought (be specific). If known, you should include any file designations or descriptions for the records that you might want:-

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Description of Requestor (Required Field):**

☐ Individual seeking information for personal use.

☐ Affiliated with a private corporation and seeking information for use in the company's business.

☐ A representative of the news media (press and this request is made as part of a news gathering and not for commercial use)

☐ Affiliated with a public interest group and this request is not for commercial use. Fee Waiver Requested (if selected, an explanation is required):

\_\_\_\_\_

\_\_\_\_\_

Please submit this form via email or mail to: [CountyAdministrator@harrisoncountywv.gov](mailto:CountyAdministrator@harrisoncountywv.gov)

Harrison County Commission  
Attn: County Administrator  
301 West Main St, Clarksburg, WV 26301

## **APPENDIX A**

### **WEST VIRGINIA CODE**

#### **CHAPTER 29B. FREEDOM OF INFORMATION.**

##### **§ 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" means the elected or appointed official charged with administering a public body.
- (2) "Law-enforcement officer" shall have the same definition as this term is defined in W.Va. Code §30-29-1: Provided, That for purposes of this article, "law-enforcement officer" shall additionally include those individuals defined as "chief executive" in W.Va. Code §30-29-1.
- (3) "Person" includes any natural person, corporation, partnership, firm or association.
- (4) "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.
- (5) "Public record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.
- (6) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.
- (7) "Publicly-administered utility enterprise" includes electric power generation, transmission, and distribution systems; water supply and distribution systems; wastewater including stormwater collection, treatment, and disposal systems of all types; public transportation systems; solid waste collection and disposal systems and facilities; or other public entity providing utility services, excluding airports, which are owned or administered by a governmental entity.

##### **§ 29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act requests registry.**

- (a) 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 [§ 29B-1-4] of this article.

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

(c) 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 or her 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 or her duties. If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make copies available on magnetic or electronic media, if so requested.

(d) 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: (1) Furnish copies of the requested information; (2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or (3) Deny the request stating in writing the reasons for such denial. 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.

(e) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of records. A public body may not charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproduction of records.

(f) The Secretary of State shall maintain an electronic data base of notices of requests as required by section three-a [§ 29B-1-3a] of this article. The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request. The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted under section four of this article to deny the request.

#### **§ 29B-1-3a. Reports to Secretary of State by public bodies.**

(a) Beginning January 1, 2016, each public body that is in receipt of a freedom of information request shall provide information to the Secretary of State relating to, at a minimum, the nature of the request, the nature of the public body's response, the time-frame that was necessary to comply in full with the request; and the amount of reimbursement charged to the requester for the freedom of information request: Provided, That the public body shall not provide to the Secretary of State the public records that were the subject of the FOIA request.

(b) Pursuant to article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, the Secretary of State shall propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publically accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State by the public body; and for other procedures and policies consistent with this section.

#### **§ 29B-1-4. Exemptions.**

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under 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 of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: Provided, That this article does not preclude 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)
  - (A) 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;
  - (B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;
- (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 on usage or the handling of which could irreparably damage the 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;
- (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 of 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 Homeland Security;
- (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;

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

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222;

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;

(20) Information related to applications under §61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: Provided, That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: Provided, however, That information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes;

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, “personal information” means a law-enforcement officer’s Social Security number, health information, home address, personal address, personal telephone numbers, and personal email addresses and those of his or her spouse, parents, and children as well as the names of the law-enforcement officer’s spouse, parents, and children;

(22) Information provided by a person when he or she elects to remain anonymous after winning a draw game prize, pursuant to §29-22-15a of this code; and

(23) Individually identifiable customer information created or maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a publicly-administered utility enterprise, including, but not limited to, customer names, addresses, and billing and usage records. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(A) That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters’ counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the publicly-administered utility enterprise;

(B) That is necessary to assist the city, county, state, or public enterprise to maintain the integrity and quality of services it provides; or

(C) That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

(b) As used in subdivisions (9) through (16), inclusive, 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) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not 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 of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

#### **§ 29B-1-5. Enforcement.**

(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) 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) 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 willfully violates the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail for not more than twenty days, or, in the discretion of the court, by both fine and imprisonment.

#### **§ 29B-1-7. Attorney fees and costs.**

Any person who is denied access to public records requested pursuant to this article and who successfully brings a suit filed pursuant to section five [§ 29B-1-5] of this article shall be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records.