



Berkeley County Sheriff's Office

Freedom of Information Act (FOIA) Policy

The Rights of Requesters and Responsibilities of the Berkeley County Sheriff's Office under the West Virginia Freedom of Information Act

The Freedom of Information Act (FOIA), West Virginia Code § 29B-1-1, guarantees 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 Freedom of Information Act applies to all State, county and municipal officers, governing bodies, agencies, departments, boards and commissions, and any other bodies created or primarily funded by State or local authority, unless their enabling statute specifically exempts them from its provisions. The records covered by the Act include virtually all documents and information retained by a public body, regardless of their form.

Public records are available to every person for inspection or copying when there has been a request made to the custodian, and when they are not specifically exempted from disclosure. There is no statutory requirement that the request be in writing; however whenever possible, a written request is advisable in order to avoid misunderstandings regarding the timing and scope of the request, and to ensure that the information sought is stated "with reasonable specificity," as required by WV Code § 29B-1-3(4). The custodian must respond within five (5) working days by either granting the request or providing written reasons for its denial. Citizens may be charged a reasonable fee for the costs of copying.

A public record is any writing or recording — regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format — that is prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies. The purpose of FOIA is to promote an increased awareness and transparency of government activities and afford residents an opportunity to witness the operations of government.

Requests for Traffic Accident Reports, Criminal Investigation Reports, and Incident Reports

When the Berkeley County Sheriff's Office receives a request for the release of a traffic accident report, criminal investigation report, incident report, or a property report, the Department shall adhere to West Virginia Code § 7-14E-2, which establishes the following associated fees:

- o Accident Report - \$20
- o Criminal Investigation Report - \$20

How to Make a FOIA Records Request

Citizens may submit a records request in several ways:

Email: BCSOrecords@BerkeleyWV.org

U.S. Mail: FOIA Request, Attention: Berkeley County Sheriff's Office, 510 South Raleigh Street Martinsburg, WV 25401

In Person: 510 South Raleigh Street Martinsburg, WV 25401





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Requester's FOIA Rights

- o Citizens have the right to request, to inspect or receive copies of public records, or both.
- o If citizens believe their FOIA rights have been violated, they may file a petition for injunctive or declaratory relief in Circuit Court of the county where the public record is kept.

Fulfilling A FOIA Request

The Berkeley County Sheriff's Office will respond to a request within five (5) working days of receiving the records request. "Day One" is considered the day after the request is received. The five-day period does not include weekends or holidays. FOIA requires that the Sheriff's Office make one of the following responses to your request within the five (5) working days:

- o Provide the records that have been requested in their entirety.
- o Advise the person making the request of the time and place at which they may inspect and copy the materials.
- o Withhold all the records requested since all the records are subject to a specific statutory exemption. If all the records are being withheld, a response in writing will be sent with an explanation of the exemption.
- o Provide some of the records that have been requested, but withhold other records. An entire record will not be withheld if only a portion of it is subject to an exemption. In that instance, the portion of the record that may be withheld will be redacted or removed and the remainder of the record will be provided. A written response stating the specific exemption that allows portions of the requested records to be withheld will be sent.
- o Inform the requester in writing that the requested records cannot be found, are no longer retained, or do not exist within the Berkeley County Sheriff's Office.
- o If the Berkeley County Sheriff's Office cannot provide the requested records within the five (5) working days, the requester will be informed in writing, explaining the ongoing efforts to deliver the records. Some examples include:
 - A request for a very large number of records, and it is determined that it cannot be provided within the established timeframe without disrupting other organizational responsibilities.
 - Establishing contact with the Prosecuting Attorney's Office to learn the status of court proceedings pertaining to the requested records.
 - If needed, the department will submit records to the Berkeley County Commission's Legal Department for final review to ensure the records are required and/or allowed to be exempted, redacted, or withheld. The Legal Department will transmit all allowable records back to the Sheriff's Office for final coordination and transmittal to the requester, unless it is determined that a response from the Legal Department is appropriate.





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Fees For Reports Other Than Traffic Accident Reports, Criminal Investigation Reports, and Incident Reports

A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication, in accordance with West Virginia Code § 29B-1-3(5).

Duplication fees charged for copying and other costs shall be as follows:

- o Copies: \$1.00 per page [based upon West Virginia Code § 59-1-11(b)(2)]
 - A double-sided document counts as two (2) pages
- o Copies larger than 11 x 17 and/or require specialized equipment to reproduce: as determined by responding personnel, based on actual costs
- o Copies provided on a compact disc: \$15
- o USB or other external drive: based on actual costs
- o Actual mail costs will apply if transmitted through the US Postal Service
- o Other/specialty items (including audio/video recordings): as determined by responding personnel, based on actual costs

All costs must be paid in full at the time the materials are produced. In the event that the anticipated production is in excess of two hundred (200) pages, the fee set forth above must be paid in full prior to printing the copies to be produced. The Berkeley County Sheriff's Office may, in its discretion, waive the reimbursement fee in circumstances where it reasonably appears that the requestor is indigent or otherwise cannot afford to pay the reimbursement fee.

General Guidelines

A request must identify the records needed with "reasonable specificity". It does not refer to or limit the volume or number of records requested; instead, it requires that a request be specific enough to identify and locate records.

A request must ask for existing records or documents. FOIA allows for inspection or copying of records; it does not apply to a situation asking general questions about the work of the Sheriff's Office, nor does it require the department to create a record that does not exist.

Exemptions

The Freedom of Information Act allows any public body to withhold or exempt (redact) certain records from public disclosure. The Berkeley County Sheriff's Office commonly withholds or exempts records such as:





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Common Exemptions:

- o 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. The primary purpose of this exemption, found in WV Code § 29B-1-4(a)(4), is to prevent premature disclosure of investigatory materials which might be used in a law-enforcement action.
- o 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 to use undercover or unmarked vehicles, found in WV Code § 29B-1-4(a)(4)(B).
- o Any information that could reasonably lead to the discovery of juvenile identities shall be redacted from the report in order to preserve the confidentiality of juvenile records, found in WV Code §49-5-103.
- o Images/video of a decedent or an individual being provided medical care or assistance by a first responder, without prior written consent of the injured person, the person's next-of-kin if the injured person cannot provide consent, or personal representative under law of a deceased person, found in WV Code §61-8-30.
- o 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 (WV Code § 29B-1-4(2))
- o Internal memoranda or letters received or prepared by any public body (WV Code § 29B-1-4(8))
- o 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 (WV Code § 29B-1-4(9))
- o Portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body (WV Code §31A-2A-2)
- o For a full list of exemptions, see WV Code § 29B-1-4

Policy Regarding the Use of Exemptions

- o It is the Berkeley County Sheriff Office's general policy to exempt any and all records that are allowed to be exempted, redacted, or excluded from production by law.
- o Any record exempt under West Virginia Code, which the custodian of the record has the option of disclosing, shall not be disclosed.

