



MARK A. SORSAIA
CABINET SECRETARY

State of West Virginia
Department of Homeland Security
Division of Administrative Services
Justice and Community Services

1124 Smith Street
Charleston, WV 25301
(304) 558-8814



JOSEPH C. THORNTON
DIRECTOR

December 19, 2023

Sara N. Whitaker
West Virginia Center on Budget & Policy
1610 Washington Street E, Suite 200
Charleston, West Virginia 25311
swhitaker@wvpolicy.org

RE: FOIA Request for employment information for certain employees

Dear Ms. Whitaker:

Please be advised that the West Virginia Department of Homeland Security, Justice and Community Services received your December 5, 2023, Freedom of Information Act request. Pursuant to West Virginia Code § 29B-1-3(a) you have the general right to inspect public records within the custody of a state agency, subject to certain limitations.

This response is being provided to you on behalf of Director Joseph C. Thornton, who is the custodian of records for the West Virginia Department of Homeland Security, Justice and Community Services.

You requested:

“For former Division of Corrections and Rehabilitative (“DCR”) employees **Mark Holdren, Corey Snyder, Johnathan Walters, Chad Lester, Jacob Boothe, Ashley Toney, Andrew Fleshman, and Steven Nicholas Wimmer**, provide the following information for each person in bold:

Start date of employment,
All position titles the employee held within DCR,
End date of employment, and
Reason for termination of employment (i.e., resigned, fired, etc.)”

The records you requested, if they exist, are exempt from disclosure pursuant to W.Va. Code §29B-1-4(a)(2).

Regarding your request for production of a *Vaughn* index, one will not be provided now as such is only appropriate in litigation and there is no error if the index is provided during litigation. In *Farley v. Worley*, 215 W.Va. 412 (2004), it is noted "the *Vaughn* index is implicated by FOIA litigation-not simply by a FOIA denial. See *Natural Resources Def Council v. Nuclear Reg. Comm'n*, 216 F.3d 1180, 1190 (D.C. Cir. 2000) (*Vaughn* index is a 'rule that governs litigation in court and not proceedings before the agency.')." Thus,



"[t]here is no requirement that an agency provide a 'search certificate' or a 'Vaughn' index on an initial request for documents." *Id.*

To the extent you consider any part of this response a denial, the responsibility of the West Virginia Department of Homeland Security, Justice and Community Services to respond to your initial request is at an end. If you feel the information contained in this response is contrary to law you may institute an action for declaratory and/or injunctive relief in the Circuit Court of the county in which you assert the records are kept, subject to all jurisdictional procedural prerequisites, which are specifically not waived.

Sincerely,

A handwritten signature in blue ink, appearing to read "RDS", is written over the word "Sincerely,".

Randall D. Shoemake, M.S.

Attachment