

STATE OF WEST VIRGINIA  
DEPARTMENT OF HOMELAND SECURITY

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Established May 28, 2020



OFFICE OF THE SECRETARY

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February 14, 2025

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Re: Freedom of Information Act request for inspector general reports

The West Virginia Department of Homeland Security is in receipt of your February 7, 2025 Freedom of Information Act request which was addressed to Brandolyn Felton-Ernest who is not the custodian of records for the department. 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 Cabinet Secretary Rob Cunningham, who is the custodian of records for the West Virginia Department of Homeland Security.

You requested: "All public reports produced by the Office of the Inspector General of the West Virginia Department of Homeland Security between July 1, 2023 and the date of this request."

After a search no public records have been identified that are responsive to your request.

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 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.

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