



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

West Virginia

P O Box 3952  
Charleston WV 25339-3952

(304) 345-9246  
www.acluww.org

August 22, 2019

Via U.S. Mail and Email

C.L. Burkhamer  
Chief of Police  
City of Richwood  
6 White Ave.  
Richwood, WV 26261  
police@richwoodwv.gov

Via U.S. Mail and E-mail

Mayor Chris Drennen  
Richwood City Hall  
6 White Ave.  
Richwood, WV 26261  
mayor@richwoodwv.gov

Via U.S. Mail and Email

Richwood City Council  
Richwood City Hall  
6 White Ave.  
Richwood, WV 26261  
recorder@richwoodwv.gov

**Re: August 8, 2019 Letter To Local Businesses Regarding the Service of Alcohol to Certain Named Individuals**

Chief of Police Burkhamer, Mayor Drennen, and the Richwood City Council:

Pursuant to West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.* (“FOIA”), the American Civil Liberties Union of West Virginia Foundation (“ACLU-WV”) requests the following materials and any related records with regards to **the August 8, 2019 letter (hereinafter “the letter”)** signed by Chief of Police C.L. Burkhamer to be distributed to local businesses regarding the service of alcohol to certain named individuals.

This request includes but is not limited to all records or communications preserved in electronic or written form, *including but not limited to* correspondence, data, directives, documents, videotapes, audio tapes, e-mail, **text messages**, faxes, files, guidance, guidelines, evaluations, instructions, **messages sent on social media platforms**, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, or studies. Please note that this request also includes a request for any communications sent using personal phones, email accounts, and social media accounts.<sup>1</sup> The date range for these requests, unless otherwise noted, is from August 22, 2018 to the present.

1. The August 8, 2019 letter, including the list of individuals named.
2. Statutes and any local ordinance referred to in the letter.
3. Papers, forms, and/or correspondence, sent to or distributed to the named individuals in the letter, before, on, or after August 8, 2019. This includes but is not limited to paper, forms, and correspondence sent via U.S. Mail, electronic mail, text messages, or via hand delivery.

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<sup>1</sup> Official records in the personal control of a government official are government records and subject to sunshine laws. *See, e.g., Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (“[A]n agency always acts through its employees and officials. If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door or because he is the head of the agency.”)

4. Letters, papers, forms, and/or correspondence apprising individuals that they are named in the letter and providing an opportunity to appeal that designation.
5. Internal documents, forms, and/or correspondence referring to the letter and/or the policies and procedures relating to the drafting of the letter, the designation of individuals referred to in the letter and the businesses to which the letter was distributed.
6. Papers, forms, correspondence, and/or documents sent to or distributed to businesses before, on, or after August 8, 2019, directing businesses not to serve alcohol to named individuals. This includes but is not limited to paper, forms, and correspondence sent via U.S. Mail, electronic mail, text messages, or via hand delivery.
7. Minutes, agendas, and documents from any meeting of any governmental body (e.g., the city council) that refers to the letter, the creation of the letter, or the drafting, voting, or implementation process regarding any ordinances referred to in the letter.
8. Any and all video and/or audio from any meeting of any governmental body (e.g., the city council) that refers to the letter, the creation of the letter, or the drafting, voting, or implementation process regarding any ordinances referred to in the letter.
9. Names of businesses to which the letter has been distributed.

If you are not technically the custodian of the documents described in this request, I ask that you forward the request to the custodian(s) or advise me of the identity of the custodian(s) so that I can make the request directly to that person or those persons.

Please note that W. Va. Code § 29B-1-3 requires agencies to respond to requests for public records within **five business days**. If you anticipate that it will take longer than five business days, or have questions about the scope of this request, please call me at (304)-345-9246.

Additionally, while W. Va. Code § 29B-1-3(5) permits public agencies to assess fees associated with the reproduction of public records, as a not-for-profit advocacy organization we request a waiver of any fees associated with the furnishing of these documents. To limit costs, electronic production of documents would be preferable. If you do intend to assess fees, however, please contact me for authorization of any fees in excess of \$100.

West Virginia's Freedom of Information Act is "liberally construed with the view of carrying out" a policy of disclosure, while exemptions are to be narrowly construed. W. Va. Code §29B-1-1. Any party claiming that an exemption applies bears the burden of proving its applicability. *See Daily Gazette v. W. Va. Dev. Office*, 482 S.E.2d 180, 187 (W. Va. 1996). Documents regarding policies of public agencies after the policies have been formulated are not subject to the "internal memoranda or letters" exemption to the WV-FOIA provisions. *See id.* at 192. Finally, for any undisclosed or redacted records, we request a *Vaughn* index.

Thank you in advance for your prompt response. Please furnish all records to:

Loree Stark  
ACLU of WV Foundation  
P.O. Box 3952  
Charleston, WV 25339-3952

If you have any questions or concerns, I can be reached at (304) 345-9246 or [lstar1@acluwv.org](mailto:lstar1@acluwv.org).

Regards,

A handwritten signature in blue ink that reads "Loree Stark". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Loree Stark  
Legal Director, ACLU-WV