SANITARIAN TRAINING

August 3, 2020, Charleston, WV

Public Health Legal Issues for Sanitarians: Points of Emphasis and Tying Up Loose Ends
REINFORCING ENFORCEMENT PHILOSOPHY

Important Pointers

▪ You’ve just heard an overview; now we will revisit some important points.
▪ Sanitarians, at the state and at the local levels, deal with PUBLIC health, not private health matters.
▪ Make certain you can distinguish between the two.
Pointers Cont’d

Treat similarly situated people and entities in a similar fashion. It is important to be and to be perceived as being fair and even-handed as you deal with similar situations. Keeping good records will assist you in this regard.
Pointers cont’d

- Use education, persuasion, technical assistance to encourage compliance of the public and the regulated communities.
- Emphasize the positive: you are there to protect and to promote the health and safety of your constituent population.
- Emphasize the beneficial intent of the public health law, standard or rule.
- Acting the role of the evil sheriff, threatening violators with legal action is generally inappropriate; taking legal action is a last resort.
PERFORMANCE EXPECTATIONS

▪ Whether you are performing inspections and dealing with the public at the local level, or providing more guidance activity at the state level, if you are uncertain as to an interpretation of standard or rule, or about what action to take, never wing it.

▪ Check with your supervisory chain before acting when uncertain.
DOCUMENTATION

The Process IS important

- Document what you do as contemporaneously as possible, keep it simple and clear, and keep it objective.
- Follow procedure for each task.
- A note in your report that, “So and so down the road told me this...” or “That snarky SOB told me ....” is unacceptable. Stick to the facts and keep it objective. Verify your facts.
▪ The best letters and reports are ones that clearly state what occurred, when, and what the next step(s) may be. Leave a clear, concise and accurate record that memorializes the story of what has happened. Include expectations going forward if that applies.

▪ Whether writing letters, reports, or e-mails, make it look and read like the business record that it is. Edit your work.
E-mails are business records.

Do not confuse an e-mail with a conversation.

If you don’t know what to call it, how to categorize it, who you are sending it to, don’t write it! Or, at least don’t hit the SEND key.

Know and follow your employer’s document retention and destruction policies.
Enforcement/Compliance Actions

- When all else fails and you’ve taken an adverse action (issued a citation for violation of Code or Rule, a Compliance Order, or you’ve denied, suspended or revoked a permit, certification or license) and called in the lawyer, there sometimes IS another step to take: negotiate/mediate
- Administrative hearing, usually pursuant to procedure set forth in 64CSR1
- Civil Action in Magistrate, Circuit or Federal Court
KNOW YOUR STUFF

- Become very familiar with the WV legal authority associated with what you do. Without it, you have no authority to act.
- Have copies available for those you wish to educate into compliance.
- Code, rules, ordinances, policies, procedures, protocols, standards.
FREEDOM OF INFORMATION ACT (FOIA) WV Code s.29B-1-1 et seq.

- 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 records covered by the Act include virtually all documents and information retained by a public body, regardless of their form.
FOIA

- 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
- A written request is advisable to avoid misunderstandings, but not required. Notes.
FOIA

- Records custodian must respond within 5 working days by either granting the request or giving written reasons for its denial.
- The burden is on the public body to prove to the satisfaction of the court that the records sought are exempt from disclosure.
- Wilfull violation = misdemeanor, and upon conviction may be fined or imprisoned, W. Va. Code § 29B-1-6.
FOIA

▪ (1) Trade secrets;
▪ (2) Personal information that would constitute an unreasonable invasion of privacy if released;
▪ (3) Test questions, scoring keys and other examination data;
▪ (4) A & B/ Records of law-enforcement agencies that deal with the detection and investigation of crime and internal records relating to law enforcement, including those identifying undercover/unmarked motor vehicles and the agencies using them:
(5) Information specifically exempted from disclosure by statute
(6) Records of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or gifts with restrictions on usage or handling;
(7) Information relating to the regulation or supervision of financial institutions; and
▪(8) Internal memoranda or letters received or prepared by a public body.
In 2003, the Legislature added exemptions 9 through 16, which exempt from public disclosure various categories of security, intelligence, communications and infrastructure information regarding the prevention of, preparation for, or response to terrorist acts, the disclosure of which would threaten the public safety or the public health. More recently, additional changes were made relative to underground storage tanks.
In 2007, exemptions added for public utility plants and equipment, and telecommunications customer proprietary network information.

In 2009, records relating to facilities of the Division of Corrections and Regional Jail Authority.

Amended in 2011 to include Division of Juvenile Services facilities.
Further recent amendments include those dealing with applicants or holders of concealed weapons permits; personal information of law-enforcement officers maintained by their employer-agencies; information provided by draw game prize winners (lottery) who elect to remain anonymous.
FOIA
Specific interest

- Of interest re: exemptions:
- (17) Specific engineering plans and descriptions of existing public utility plants and equipment.
- Pre-decisional
- Deliberative process
- What does this mean for you?
- Know your office’s process for FOIA requests.
QUESTIONS
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