



Feb. 23, 2007
Open Letter

To whom it may concern:

For the last year Seneca Technologies has been attempting to obtain electronic copies of the tax map boundaries from the state tax department. We have submitted two freedom of information requests, both of which have been denied. We are now submitting a final request, because our last one was not directed to the proper state officer. It will quite likely also be denied. If it is denied we intend to file for relief with the circuit court in Kanawha county.

After discussing the problem with Mark Morton, the Tax Department's General Council for Revenue Operations, I think I can summarize the problem as follows:

The points where we agree:

1. There is no statute or rule which covers pricing for electronic copies of tax maps. To quote Mr. Morton "The state code is silent with regard to electronic files."
2. State code 189-5-2.3 states that the current price for paper copies of the maps is \$8 per map.

The State's position (quoted from the response to our latest FOIA request):

1. "Given that the information is public information available pursuant to a prescribed statutory mechanism at standardized prices, the tax department is not obligated by the Freedom of Information Act to research, compile, collect, copy or reproduce the information identified in your Freedom of Information Act Request."
2. "The maps sought in your Freedom of Information Act request are documents in the public domain, available at costs substantially prescribed by statute and regulation. These maps are available to anyone who wishes to purchase them."
3. "County assessors currently charge the same for all maps regardless to whether they are on paper or electronic medium."

3. When we requested pricing for the electronic copies, the state's response was as follows:

The costs for tax maps in two types of format are as follows,

1) Cost for entire state maps in electronic format (TIF)
20936 maps x \$8.00 / map = \$167,488.00

2) Cost for all shape files available
7270 maps x \$8.00 / map = \$58,160.00

This is a total of \$225,648.00

Our position:

1. What we are asking for does not involve research, compilation, or collecting of information. The data is already in the form we have requested, and is located on a computer in Ms. Chen's office. We do request a copy of the information and are willing to pay a fee reasonably calculated to reimburse the state for its actual cost in making reproductions of the records. The TIFF files requested will fit on 2 DVDs, and require less than 1 hour to copy. The shape files requested will fit on 1 CD, and require less than 15 minutes to copy.
2. There is no statute prescribing the costs for the files we have requested, only the costs for paper copies. The fact that paper copies may be purchased does not exempt the electronic records from FOIA.
3. The Tax Department's assumption that in the absence of statute, the fees for paper copies (\$8.00 each) should apply to electronic copies is simply ridiculous. The fees for paper copies of maps are calculated based on the time, equipment, and materials required to produce a large format paper copy. Any reasonable person understands that it takes a lot more time, effort, and material to make 28,206 paper copies than to drag and drop a set of files to a CD.
4. The assertion that "County assessors currently charge the same for all maps regardless to whether they are on paper or electronic medium." is incorrect. Monongalia and Cabell counties both provide some form of free downloads from their web sites. Either the state's assertion that they must charge \$8.00 each for these copies is incorrect, or these county assessors are in violation of state law.
5. The West Virginia Freedom of Information Act states:
 - a) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article. (§29B-1-3 (1))

- b) ... If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make such copies available on magnetic or electronic media, if so requested. (§29B-1-3 (3))
 - c) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records. (§29B-1-3 (5))
6. There is nothing in the state code or statutes which exempt the electronic files requested from the freedom of information act. The Freedom of Information Act specifically states that **ANY** records may be requested or copied except those provided for in section four. These records are not provided for in section 4, and are therefore covered by the Freedom of information act.
7. **In fact, there is no provision in the Freedom of Information Act which allows the establishment of ANY FEES GREATER THAN THE ACTUAL COST OF REPRODUCTION FOR ANY REQUESTED INFORMATION, regardless of its format.**

In a related side issue, state code prevents making duplicates of tax maps. The penalty for duplicating tax maps is that the state may decline to sell additional maps to anyone who has made duplicates of the maps. We would like some clarification on the state's position regarding duplication of the electronic files in their original format, and of derivative works, if we are provided with copies of them.

In our ideal world, the state would publish the electronic files on a website for the public to download and use as they wish. (Monongalia and Cabell county assessors have already done this.). Short of that we would like to post the files on our website for free download by the public. We do not intend to sell duplicates of these maps as we have stated, we believe they should be free to the public.

It is our goal to produce software to allow users to generate contour maps, well spot maps, and aerial maps with the tax boundaries overlaid on them. Would duplication of these derivative works prevent us from acquiring updated copies from the state in the future?

We also intend to create software which, combined with assessment data from the tax department, would allow users to do much of their title work from their offices, rather than from county courthouses. Would the use of these maps in that software constitute duplication?

1. The state's council has at various times made the assertion that the documents are “in the public domain.” It is our position that the documents are not truly in the public domain as long as duplication is prohibited.
2. The Tax Department and some county assessors take the stance that the prohibition of duplication is to prevent outdated copies of the maps from being circulated. We contend that it is an attempt to generate revenue for the state. If electronic or physical copies of the maps are stamped with the date of duplication, that should suffice. Copies purchased from the assessors or the state can also become outdated.

3. In a sidebar, attached to our FOIA request, but not actually part of it, the state's council has also made the assertion that the maps are copyrighted material, and therefore covered by federal copyright law. It is our assertion that, as the peoples representatives, the government should not prevent the people from making copies of documents owned by the people's government.
4. Federal copyright law states that it covers “original works” of a creative nature. It is our contention that these maps, as representations of existing property boundaries are neither original nor creative in nature. There have been several court cases covering such works as telephone book pages, which state that such information is not covered by copyright law.

In summary I would like to point out that everyone remotely involved with this case can see how beneficial it would be to the state's citizens if these maps were truly “Freely available”. Even Mr. Morton freely states “I would like to see these maps available on a website somewhere.” It would be a huge benefit not only to those in the oil and gas industry, but to real estate, coal, and timber as well.

To quote from the WV Freedom of Information Act §29B

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of West Virginia 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 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 people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.**

Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.

If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make such copies available on magnetic or electronic media, if so requested.

The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records.

If the state truly intends to be open for business, wouldn't it be a good idea to construe FOIA as its authors intended instead of trying to make almost a quarter million dollars from the sale of 3 DVDs. The law could not be clearer. We are the taxpayers. These records belong to us. We ask for the help and cooperation of all of our friends in the Governor's office, the state government, and the private sector to put a stop to this ridiculous abuse of government authority.

Thank you.

Sincerely,

/signed/

William C. White, II
President, Seneca Technologies, Inc.

Further discussion of this matter is welcomed. Please e-mail: patrick@senecatechnologies.com or will@senecatechnologies.com

Or feel free to call our office at (304)622-7985 or (304)622-8055 and speak to Will White, President or Patrick Lough, Software Engineer.