

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SENECA TECHNOLOGIES, INC.,

Plaintiff,

v.

Civil Action No. 07-C-837  
(Judge Berger)

STATE TAX DEPARTMENT  
OF THE WEST VIRGINIA  
DEPARTMENT OF REVENUE and  
VIRGIL T. HELTON, as  
West Virginia State Tax Commissioner,

Defendants.

ORDER

On August 7, 2007, Plaintiff Seneca Technologies, Inc. ("Plaintiff" or "Seneca Technologies") and Defendants the State Tax Department of the West Virginia Department of Revenue and Virgil T. Helton, West Virginia State Tax Commissioner (collectively, "Defendant" or the "State Tax Department") appeared by their respective counsel for hearing on Plaintiff's Motion for Judgment on the Pleadings. Upon the Court's request, the parties submitted stipulated facts on August 22, 2007. Contemporaneously therewith, Seneca Technologies filed a Motion for Fees and Costs. Upon consideration of the pleadings filed herein, Plaintiff's motion and supporting memorandum of law, Defendant's opposition memorandum, the exhibits submitted by the parties in support of their respective positions, the arguments of counsel at the hearing, and the parties' stipulated facts, the Court is of the opinion that Plaintiff's Motion for Judgment on the Pleadings should be granted. As explained below, there is no genuine issue as to any material fact, and Plaintiff is entitled to judgment in its favor as a matter of law. As such,

Plaintiff's Motion for Judgment on the Pleadings is GRANTED. Additionally, Plaintiff's Motion for Fees and Costs is DENIED.

### FINDINGS OF FACT

1. Seneca Technologies sent three requests pursuant to West Virginia's Freedom of Information Act ("FOIA"), W. Va. Code §§ 29B-1-1, *et seq.*, to the State Tax Department (on March 15, 2006; February 14, 2007; and February 23, 2007) requesting that the State Tax Department provide copies of county tax maps in electronic format in its possession for the reasonable cost of reproduction. (*See generally* Stip. Facts Ex. 1, 2, & 5).

2. The State Tax Department denied each of Seneca's FOIA requests stating that the \$8.00 per map fee prescribed for production of full sheet paper copies of tax maps applied also to production of maps in electronic format. (*See generally* Stip. Facts Ex. 1, 3, & 6).

3. On April 27, 2007, Seneca Technologies filed a Complaint against the State Tax Department alleging that it failed to produce tax maps in its possession in electronic format as requested by Seneca Technologies in accordance with the FOIA.

4. On May 21, 2007, the State Tax Department answered Plaintiff's Complaint claiming that production was not required under FOIA because the fee schedule for tax maps is statutorily defined and applies to electronic versions of the maps as well.

5. On June 18, 2007, Plaintiff filed a Motion for Judgment on the Pleadings, and on August 1, 2007, Defendant filed an opposition memorandum.

6. On August 7, 2007, Plaintiff and Defendant appeared, by their respective counsel, for hearing on Plaintiff's Motion for Judgment on the Pleadings. At that hearing, the Court heard the arguments of the parties and requested that they submit stipulated facts within fifteen (15) days.

7. On August 22, 2007, the parties submitted stipulated facts.

8. On August 22, 2007, Plaintiff filed a Motion for Fees and Costs pursuant to W. Va. Code § 29B-1-7, that it requested to be granted should the Court enter judgment in its favor, wholly or partially, or should its lawsuit otherwise contribute to the provision of requested public records.

9. The State Tax Department possesses county tax maps in electronic format. (See Stip. Facts Ex. 1 at 3, 4; Ex. 3 at 4; Ex. 4; Ex. 6 at 3).

### CONCLUSIONS OF LAW

1. While Defendant originally argued that this Court is without jurisdiction over Plaintiff's Complaint and that venue is not proper in this Court, Defendant's counsel conceded at the August 7, 2007 hearing that this Court has jurisdiction and that venue is proper here, and the Court so concludes.

2. Pursuant to W. Va. R. Civ. P. 12(c), any party may move for motion for judgment on the pleadings. Motions for judgment on the pleadings test the "legal effect of given facts rather than challeng[ing] ... the proof of the facts themselves." *Copley v. Mingo County Bd. of Educ.*, 195 W. Va. 480, 484 466 S.E.2d 139, 143 (1995) (citations omitted). "A Rule 12(c) motion for judgment on the pleadings is appropriate when all material allegations of fact are admitted in the pleadings and only questions of law remain." *Republic Ins. Co. v. Culbertson*, 717 F. Supp. 415, 418 (E.D. Va. 1989) (citing 5 C. Wright & A. Miller, FEDERAL PRACTICE & PROCEDURE § 1367, at 685 (1969)).

3. West Virginia's FOIA states that subject to express exceptions "[e]very person has a right to inspect or copy any public record of a public body in this state." W. Va. Code

§ 29B-1-3(1). It further states that its requirements of disclosure are to be “liberally construed.” *Id.* at §29-1-1.

4. In FOIA cases, full adjudication by trial is not typically warranted. *Farley v. Worley*, 215 W.Va. 412, 418, 599 S.E.2d 835, 841 (2004). Moreover, when a FOIA request has been denied, the burden is upon the public body to “justify the withholding of the materials.” *Id.*

5. The FOIA provides that “[i]f 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.” W. Va. Code § 29B-1-3(3).

6. The FOIA also provides that a public body may charge no more than the reasonable cost of reproduction of requested records. *See* W. Va. Code § 29B-1-3(5) (“The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records.”).

7. The State Tax Department possesses county tax maps in electronic format.

8. The tax maps in electronic format that are in the possession of the State Tax Department are public records. *See* W. Va. Code § 29B-1-2(4).

9. No express exemption of the FOIA applies to the requested tax maps in electronic format.

10. While the State Legislature has provided for specific fees for tax maps in paper format, no such fee has been set for maps in the electronic format.

11. Given the statutory declaration of policy and the liberality with which the FOIA should be construed, the Court concludes that it would be inappropriate for this court to impose a fee which has not otherwise been imposed by the statute.

12. Accordingly, the Court concludes that Plaintiff's Motion for Judgment on the Pleadings should be granted and that the State Tax Department should provide Seneca Technologies with electronic copies of all county tax maps that it admits to having in its possession at no more than its reasonable cost of reproduction. The State Tax Department shall do so within five (5) business days of the receipt of this Order. See W. Va. Code § 29B-1-3(4) (custodian of records must furnish records within five business days).

WHEREFORE, it is ORDERED AND ADJUDGED that Plaintiff's Motion for Judgment on the Pleadings is GRANTED, and Defendant are hereby ORDERED to produce the requested tax maps in electronic format to Plaintiff for no more than the reasonable cost of reproduction within five (5) business days of Defendant's receipt of this Order after entry.

It is further ORDERED AND ADJUDGED that Plaintiff's Motion for Fees and Costs is DENIED.

It is further ORDERED AND ADJUDGED that as this ORDER fully adjudicates this matter and removes it from the Court's docket.

Defendant's objections and exceptions are preserved.

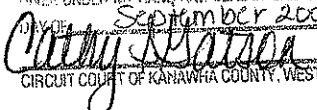
Plaintiff's objections and exceptions are preserved.

The Clerk is directed to transmit certified copies of this Order to all counsel of record and any unrepresented parties.

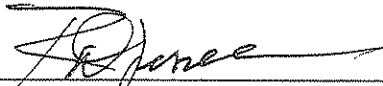
Entered this 20<sup>th</sup> day of Sept 2007.



HONORABLE IRENE BERGER  
JUDGE, CIRCUIT COURT OF KANAWHA COUNTY

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT. 24<sup>th</sup>  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 24<sup>th</sup>  
DAY OF September 2007  
 CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA cu

Presented by:



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