

## **West Virginia Executive Branch Privacy Policy: Consent**

### **Understanding the Consent Policy**

Each Department can easily comply with the West Virginia Executive Branch Consent Policy by:

- (1) obtaining any legally-required consent prior to the collection and use of private information (PI), or
- (2) if consent is not legally-required, using reasonable efforts to address any specific concerns that an individual raises about the collection or use of his or her PI.

Occasionally a law will require us to obtain true consent for the collection and use of PI. For example, the HIPAA Privacy Rule requires health care providers to obtain opt-in consent when PI is used for marketing or fundraising. The CAN SPAM Act requires entities that send commercial text messages to cell phones to obtain opt-in consent as well. When consent is required by a law, this consent must be obtained.

In most cases, however, laws don't require consent. Departments may collect and process PI unless the individual objects. The Consent Policy requires each Department to consider these objections and, if possible, reasonably address the concerns. For example, if an individual objects to providing a home telephone number on an application, it might be reasonable to allow the person to provide a mobile phone number or to leave the space blank.

If the objection cannot be reasonably addressed, the Consent Policy allows the Department either to collect and use the PI despite the objection or to deny the individual the opportunity to participate in the transaction.