

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

577Z0645

SENATE BILL NO. 192

Introduced by: Senators Sutton, Frerichs, Heinert, Kennedy, Killer, Nelson, Nesiba, and Russell and Representatives May, Ahlers, Bartling, Bordeaux, Frye-Mueller, Hawley, Howard, Kaiser, Lesmeister, Livermont, McCleerey, Peterson (Sue), Rasmussen, Ring, Smith, and Wismer

1 FOR AN ACT ENTITLED, An Act to provide for the disclosure of certain documents and
2 records of public officials.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-27-1.5 be amended to read:

5 1-27-1.5. The following records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3:

- 6 (1) Personal information in records regarding any student, prospective student, or former
7 student of any educational institution if such records are maintained by and in the
8 possession of a public entity, other than routine directory information specified and
9 made public consistent with 20 U. S.C. 1232g, as such section existed on January 1,
10 2009;
- 11 (2) Medical records, including all records of drug or alcohol testing, treatment, or
12 counseling, other than records of births and deaths. This ~~law~~ subdivision in no way
13 abrogates or changes existing state and federal law pertaining to birth and death
14 records;



- 1 (3) Trade secrets, the specific details of bona fide research, applied research, or scholarly
2 or creative artistic projects being conducted at a school, postsecondary institution or
3 laboratory funded in whole or in part by the state, and other proprietary or
4 commercial information which if released would infringe intellectual property rights,
5 give advantage to business competitors, or serve no material public purpose;
- 6 (4) Records which consist of attorney work product or which are subject to any privilege
7 recognized in article V of chapter 19-19;
- 8 (5) Records developed or received by law enforcement agencies and other public bodies
9 charged with duties of investigation or examination of persons, institutions, or
10 businesses, if the records constitute a part of the examination, investigation,
11 intelligence information, citizen complaints or inquiries, informant identification, or
12 strategic or tactical information used in law enforcement training. However, this
13 subdivision does not apply to records so developed or received relating to the
14 presence of and amount or concentration of alcohol or drugs in any body fluid of any
15 person, and this subdivision does not apply to a 911 recording or a transcript of a 911
16 recording, if the agency or a court determines that the public interest in disclosure
17 outweighs the interest in nondisclosure. This ~~law~~ subdivision in no way abrogates or
18 changes §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of
19 information from confidential informants;
- 20 (6) Appraisals or appraisal information and negotiation records concerning the purchase
21 or sale, by a public body, of any interest in real or personal property;
- 22 (7) Personnel information other than salaries and routine directory information.
23 However, this subdivision does not apply to the public inspection or copying of any
24 current or prior contract with any public employee and any related document that

- 1 specifies the consideration to be paid to the employee;
- 2 (8) Information solely pertaining to protection of the security of public or private
3 property and persons on or within public or private property, such as specific, unique
4 vulnerability assessments or specific, unique response plans, either of which is
5 intended to prevent or mitigate criminal acts, emergency management or response,
6 or public safety, the public disclosure of which would create a substantial likelihood
7 of endangering public safety or property; computer or communications network
8 schema, passwords, and user identification names; guard schedules; lock
9 combinations; or any blueprints, building plans, or infrastructure records regarding
10 any building or facility that expose or create vulnerability through disclosure of the
11 location, configuration, or security of critical systems;
- 12 (9) The security standards, procedures, policies, plans, specifications, diagrams, access
13 lists, and other security-related records of the Gaming Commission and those persons
14 or entities with which the commission has entered into contractual relationships.
15 Nothing in this subdivision allows the commission to withhold from the public any
16 information relating to amounts paid persons or entities with which the commission
17 has entered into contractual relationships, amounts of prizes paid, the name of the
18 prize winner, and the municipality, or county where the prize winner resides;
- 19 (10) Personally identified private citizen account payment information, credit information
20 on others supplied in confidence, and customer lists;
- 21 (11) Records or portions of records kept by a publicly funded library which, when
22 examined with or without other records, reveal the identity of any library patron
23 using the library's materials or services;
- 24 (12) Correspondence, memoranda, calendars or logs of appointments, working papers, and

1 records of telephone calls of public officials or employees. However, this subdivision
2 does not apply to state agency officials and employees;

3 (13) Records or portions of records kept by public bodies which would reveal the location,
4 character, or ownership of any known archaeological, historical, or paleontological
5 site in South Dakota if necessary to protect the site from a reasonably held fear of
6 theft, vandalism, or trespass. This subdivision does not apply to the release of
7 information for the purpose of scholarly research, examination by other public bodies
8 for the protection of the resource or by recognized tribes, or the federal Native
9 American Graves Protection and Repatriation Act;

10 (14) Records or portions of records kept by public bodies which maintain collections of
11 archeological, historical, or paleontological significance which nongovernmental
12 donors have requested to remain closed or which reveal the names and addresses of
13 donors of such articles of archaeological, historical, or paleontological significance
14 unless the donor approves disclosure, except as the records or portions thereof may
15 be needed to carry out the purposes of the federal Native American Graves Protection
16 and Repatriation Act and the Archeological Resources Protection Act;

17 (15) Employment applications and related materials, except for applications and related
18 materials submitted by individuals hired into executive or policymaking positions of
19 any public body;

20 (16) Social security numbers; credit card, charge card, or debit card numbers and
21 expiration dates; passport numbers, driver license numbers; or other personally
22 identifying numbers or codes; and financial account numbers supplied to state and
23 local governments by citizens or held by state and local governments regarding
24 employees or contractors;

- 1 (17) Any emergency or disaster response plans or protocols, safety or security audits or
2 reviews, or lists of emergency or disaster response personnel or material; any location
3 or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other
4 military or law enforcement equipment or personnel;
- 5 (18) Any test questions, scoring keys, results, or other examination data for any
6 examination to obtain licensure, employment, promotion or reclassification, or
7 academic credit;
- 8 (19) Personal correspondence, memoranda, notes, calendars or appointment logs, or other
9 personal records or documents of any public official or employee. However, this
10 subdivision does not apply to officials and employees of state agencies;
- 11 (20) Any document declared closed or confidential by court order, contract, or stipulation
12 of the parties to any civil or criminal action or proceeding;
- 13 (21) Any list of names or other personally identifying data of occupants of camping or
14 lodging facilities from the Department of Game, Fish and Parks;
- 15 (22) Records which, if disclosed, would constitute an unreasonable release of personal
16 information;
- 17 (23) Records which, if released, could endanger the life or safety of any person;
- 18 (24) ~~Internal agency record or information received by agencies that are not required to~~
19 ~~be filed with such agencies, if the records do not constitute final statistical or factual~~
20 ~~tabulations, final instructions to staff that affect the public, or final agency policy or~~
21 ~~determinations, or any completed state or federal audit and if the information is not~~
22 ~~otherwise public under other state law, including chapter 15-15A and § 1-26-21;~~
- 23 —(25)—Records of individual children regarding commitment to the Department of
24 Corrections pursuant to chapters 26-8B and 26-8C;

1 ~~(26)~~(25) Records regarding inmate disciplinary matters pursuant to § 1-15-20; and

2 ~~(27)~~(26) Any other record made closed or confidential by state or federal statute or rule

3 or as necessary to participate in federal programs and benefits.

4 Section 2. That § 1-27-1.7 be amended to read:

5 1-27-1.7. Drafts, notes, recommendations, and memoranda of political subdivision officials

6 and employees in which opinions are expressed or policies formulated or recommended are

7 exempt from disclosure pursuant to §§ 1-27-1 to 1-27-1.15, inclusive.