State of South Dakota

NINETY-SECOND SESSION LEGISLATIVE ASSEMBLY, 2017

275Y0293

HOUSE BILL NO. 1166

Introduced by: Representatives Jamison, Ahlers, Beal, Goodwin, Greenfield (Lana), Haggar, Kettwig, Latterell, Marty, Otten (Herman), Peterson (Sue), Reed, Schoenfish, Smith, Tulson, Willadsen, and Wismer and Senators Langer, Bolin, and Stalzer

- 1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding open records.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. That chapter 1-27 be amended by adding a NEW SECTION to read:
- 4 The terms of any settlement of any civil or criminal proceeding between the state, any
- 5 county, any municipality, or any school district and any other party may not be made
- 6 confidential by the parties to the settlement without a court order declaring the settlement to be
- 7 confidential.
- 8 Section 2. That § 1-27-1.5 be amended to read:
- 9 1-27-1.5. The following records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3:
- 10 (1) Personal information in records regarding any student, prospective student, or former
- student of any educational institution if such records are maintained by and in the
- possession of a public entity, other than routine directory information specified and
- made public consistent with 20 U. S.C. 1232g, as such section existed on January 1,
- 14 2009;

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(2) Medical records, including all records of drug or alcohol testing, treatment, or counseling, other than records of births and deaths. This law in no way abrogates or changes existing state and federal law pertaining to birth and death records;

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

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(7) Personnel information other than salaries and routine directory information.

However, this subdivision does not apply to the public inspection or copying of any current or prior contract with any public employee and any related document that specifies the consideration to be paid to the employee;

- (8) Information solely pertaining to protection of the security of public or private property and persons on or within public or private property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts, emergency management or response, or public safety, the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or any blueprints, building plans, or infrastructure records regarding any building or facility that expose or create vulnerability through disclosure of the location, configuration, or security of critical systems;
- (9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Gaming Commission and those persons or entities with which the commission has entered into contractual relationships. Nothing in this subdivision allows the commission to withhold from the public any information relating to amounts paid persons or entities with which the commission has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the municipality, or county where the prize winner resides;
- (10) Personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;
- (11) Records or portions of records kept by a publicly funded library which, when

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1		examined with or without other records, reveal the identity of any library patron
2		using the library's materials or services;
3	(12)	Correspondence, memoranda, calendars or logs of appointments, working papers, and
4		records of telephone calls of public officials or employees;
5	(13)	Records or portions of records kept by public bodies which would reveal the location,
6		character, or ownership of any known archaeological, historical, or paleontological
7		site in South Dakota if necessary to protect the site from a reasonably held fear of
8		theft, vandalism, or trespass. This subdivision does not apply to the release of
9		information for the purpose of scholarly research, examination by other public bodies
10		for the protection of the resource or by recognized tribes, or the federal Native
11		American Graves Protection and Repatriation Act;
12	(14)	Records or portions of records kept by public bodies which maintain collections of
13		archeological, historical, or paleontological significance which nongovernmental
14		donors have requested to remain closed or which reveal the names and addresses of
15		donors of such articles of archaeological, historical, or paleontological significance
16		unless the donor approves disclosure, except as the records or portions thereof may
17		be needed to carry out the purposes of the federal Native American Graves Protection
18		and Repatriation Act and the Archeological Resources Protection Act;
19	(15)	Employment applications and related materials, except for applications and related
20		materials submitted by individuals hired into executive or policymaking positions of
21		any public body;
22	(16)	Social security numbers; credit card, charge card, or debit card numbers and
23		expiration dates; passport numbers, driver license numbers; or other personally
24		identifying numbers or codes; and financial account numbers supplied to state and

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

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- 1 Corrections pursuant to chapters 26-8B and 26-8C;
- 2 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; and
- 3 (27) Any other record made closed or confidential by state or federal statute or rule or as
- 4 necessary to participate in federal programs and benefits.