



2021 South Dakota Legislature

Senate Bill 147

Introduced by: **Senator Rusch**

1 **An Act to revise certain provisions regarding records that are not open to inspection**
2 **and copying.**

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

4 **Section 1.** That § 1-27-1.5 be AMENDED.

5 **1-27-1.5. Certain records not open to inspection and copying.**

6 The following records are not subject to §§ 1-27-1, 1-27-1.1, 1-27-1.3, and § 1-
7 27-1.23:

- 8 (1) Personal information in records regarding any student, prospective student, or
9 former student of any educational institution if such records are maintained by and
10 in the possession of a public entity, other than routine directory information
11 specified and made public in accordance with 20 U.S.C. § 1232g as the law existed
12 on January 1, 2009;
- 13 (2) Medical records, including all records of drug or alcohol testing, treatment, or
14 counseling, other than records of births and deaths. This law in no way abrogates
15 or changes existing state and federal law pertaining to birth and death records;
- 16 (3) Trade secrets, the specific details of bona fide research, applied research, or
17 scholarly or creative artistic projects being conducted at a school, postsecondary
18 institution or laboratory funded in whole or in part by the state, and other
19 proprietary or commercial information which if released would infringe intellectual
20 property rights, give advantage to business competitors, or serve no material public
21 purpose;
- 22 (4) Records which consist of attorney work product or which are subject to any privilege
23 recognized in article V of chapter 19-19;
- 24 (5) Records developed or received by law enforcement agencies and other public bodies
25 charged with duties of investigation or examination of persons, institutions, or
26 businesses, if the records constitute a part of the examination, investigation,

1 intelligence information, citizen complaints or inquiries, informant identification, or
2 strategic or tactical information used in law enforcement training. However, this
3 subdivision does not apply to records so developed or received relating to the
4 presence of and amount or concentration of alcohol or drugs in any body fluid of
5 any person, and this subdivision does not apply to a 911 recording or a transcript
6 of a 911 recording, if the agency or a court determines that the public interest in
7 disclosure outweighs the interest in nondisclosure. This subdivision does not apply
8 to records developed or received in an investigation done by the Department of
9 Agriculture. This law in no way abrogates or changes §§ 23-5-7 and 23-5-11 or
10 testimonial privileges applying to the use of information from confidential
11 informants;

- 12 (6) Appraisals or appraisal information and negotiation records concerning the purchase
13 or sale, by a public body, of any interest in real or personal property;
- 14 (7) Personnel information other than salaries and routine directory information.
15 However, this subdivision does not apply to the public inspection or copying of any
16 current or prior contract with any public employee and any related document that
17 specifies the consideration to be paid to the employee;
- 18 (8) Information pertaining to the protection of public or private property and any person
19 on or within public or private property including:
- 20 (a) Any vulnerability assessment or response plan intended to prevent or
21 mitigate criminal acts;
- 22 (b) Emergency management or response;
- 23 (c) Public safety information that would create a substantial likelihood of
24 endangering public safety or property, if disclosed;
- 25 (d) Computer or communications network schema, passwords, or user
26 identification names;
- 27 (e) Guard schedules;
- 28 (f) Lock combinations; and
- 29 (g) Any blueprint, building plan, or infrastructure record regarding any building
30 or facility that would expose or create vulnerability through disclosure of the
31 location, configuration, or security of critical systems of the building or
32 facility;
- 33 (9) The security standards, procedures, policies, plans, specifications, diagrams, access
34 lists, and other security-related records of the Gaming Commission and those
35 persons or entities with which the commission has entered into contractual

- 1 relationships. Nothing in this subdivision allows the commission to withhold from
2 the public any information relating to amounts paid persons or entities with which
3 the commission has entered into contractual relationships, amounts of prizes paid,
4 the name of the prize winner, and the municipality, or county where the prize winner
5 resides;
- 6 (10) Personally identified private citizen account payment information, credit information
7 on others supplied in confidence, and customer lists;
- 8 (11) Records or portions of records kept by a publicly funded library which, when
9 examined with or without other records, reveal the identity of any library patron
10 using the library's materials or services;
- 11 (12) Correspondence, memoranda, calendars or logs of appointments, working papers,
12 and records of telephone calls of public officials or employees;
- 13 (13) Records or portions of records kept by public bodies which would reveal the location,
14 character, or ownership of any known archaeological, historical, or paleontological
15 site in South Dakota if necessary to protect the site from a reasonably held fear of
16 theft, vandalism, or trespass. This subdivision does not apply to the release of
17 information for the purpose of scholarly research, examination by other public
18 bodies for the protection of the resource or by recognized tribes, or the federal
19 Native American Graves Protection and Repatriation Act;
- 20 (14) Records or portions of records kept by public bodies which maintain collections of
21 archeological, historical, or paleontological significance which nongovernmental
22 donors have requested to remain closed or which reveal the names and addresses
23 of donors of such articles of archaeological, historical, or paleontological significance
24 unless the donor approves disclosure, except as the records or portions thereof may
25 be needed to carry out the purposes of the federal Native American Graves
26 Protection and Repatriation Act and the Archeological Resources Protection Act;
- 27 (15) Employment applications and related materials, except for applications and related
28 materials submitted by individuals hired into executive or policymaking positions of
29 any public body;
- 30 (16) Social security numbers; credit card, charge card, or debit card numbers and
31 expiration dates; passport numbers, driver license numbers; or other personally
32 identifying numbers or codes; and financial account numbers supplied to state and
33 local governments by citizens or held by state and local governments regarding
34 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
3 location or listing of weapons or ammunition; nuclear, chemical, or biological
4 agents; or other 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
9 other personal records or documents of any public official or employee;
- 10 (20) Any document declared closed or confidential by court order, contract, or stipulation
11 of the parties to any civil or criminal action or proceeding except as provided under
12 § 1-27-1.23;
- 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;
- 25 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20;
- 26 (27) Any other record made closed or confidential by state or federal statute or rule or
27 as necessary to participate in federal programs and benefits;
- 28 (28) A record of a settlement agreement or litigation regarding investment or bankruptcy
29 and involving the South Dakota Investment Council or the South Dakota Retirement
30 System, or both, unless the settlement or litigation results in a finding of liability
31 against the council or system, or both; and
- 32 (29) A record of a settlement agreement or litigation regarding medical services
33 involving any county hospital established under chapter 34-8 or any municipal
34 hospital established under chapter 34-9.