

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

922B0170

SENATE JUDICIARY ENGROSSED NO. **SB 59** 1/29/2019

Introduced by: Senators Rusch, Jensen (Phil), Nelson, Smith (VJ), Stalzer, Steinhauer, Sutton, and Wismer and Representatives Johnson (David), Latterell, McCleerey, Rasmussen, Reed, Ring, Willadsen, and Zikmund

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public 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 An agency of the state or a political subdivision may not enter into a settlement agreement
5 with a party to any civil action or proceeding involving a claim for monetary damages or
6 equitable relief in which the settlement agreement requires nondisclosure or confidentiality of
7 the terms of the settlement. A settlement agreement under this section is a public record as
8 defined under § 1-27-1.1. For good cause shown, the court may order the redaction of the name
9 of any victim of crime within the settlement agreement under this section. Notwithstanding any
10 other provision of law, an agency of the state or a political subdivision may temporarily
11 maintain the confidentiality of the settlement agreement related to ongoing litigation. The
12 settlement agreement shall become a public record as defined under § 1-27-1.1 upon the final
13 disposition and the exhaustion of any appeal from the related litigation.

14 Section 2. That § 1-27-1.5 be amended to read:



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

2 (1) Personal information in records regarding any student, prospective student, or former
3 student of any educational institution if such records are maintained by and in the
4 possession of a public entity, other than routine directory information specified and
5 made public ~~consistent with 20 U. S.C. 1232g, as such section~~ in accordance with 20
6 U.S.C. § 1232g as the law existed on January 1, 2009;

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

10 (3) Trade secrets, the specific details of bona fide research, applied research, or scholarly
11 or creative artistic projects being conducted at a school, postsecondary institution or
12 laboratory funded in whole or in part by the state, and other proprietary or
13 commercial information which if released would infringe intellectual property rights,
14 give advantage to business competitors, or serve no material public purpose;

15 (4) Records which consist of attorney work product or which are subject to any privilege
16 recognized in article V of chapter 19-19;

17 (5) Records developed or received by law enforcement agencies and other public bodies
18 charged with duties of investigation or examination of persons, institutions, or
19 businesses, if the records constitute a part of the examination, investigation,
20 intelligence information, citizen complaints or inquiries, informant identification, or
21 strategic or tactical information used in law enforcement training. However, this
22 subdivision does not apply to records so developed or received relating to the
23 presence of and amount or concentration of alcohol or drugs in any body fluid of any
24 person, and this subdivision does not apply to a 911 recording or a transcript of a 911

1 recording, if the agency or a court determines that the public interest in disclosure
2 outweighs the interest in nondisclosure. This law in no way abrogates or changes
3 §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information
4 from confidential informants;

5 (6) Appraisals or appraisal information and negotiation records concerning the purchase
6 or sale, by a public body, of any interest in real or personal property;

7 (7) Personnel information other than salaries and routine directory information.
8 However, this subdivision does not apply to the public inspection or copying of any
9 current or prior contract with any public employee and any related document that
10 specifies the consideration to be paid to the employee;

11 (8) Information ~~solely~~ pertaining to the protection of ~~the security of~~ public or private
12 property and ~~persons~~ any person on or within public or private property, ~~such as~~
13 ~~specific, unique vulnerability assessments~~ including:

14 (a) Any vulnerability assessment or ~~specific, unique~~ response plans, ~~either of~~
15 ~~which is~~ plan intended to prevent or mitigate criminal acts, ~~emergency;~~

16 (b) Emergency management or response, ~~or public;~~

17 (c) Public safety, ~~the public disclosure of which~~ information that would create a
18 substantial likelihood of endangering public safety or property, if disclosed;
19 ~~computer~~

20 (d) Computer or communications network schema, passwords, ~~and~~ or user
21 identification names; ~~guard~~

22 (e) Guard schedules; ~~lock~~

23 (f) Lock combinations; ~~or any blueprints, building plans, or infrastructure records~~
24 and

1 (g) Any blueprint, building plan, or infrastructure record regarding any building
2 or facility that would expose or create vulnerability through disclosure of the
3 location, configuration, or security of critical systems of the building or
4 facility;

5 (9) The security standards, procedures, policies, plans, specifications, diagrams, access
6 lists, and other security-related records of the Gaming Commission and those persons
7 or entities with which the commission has entered into contractual relationships.
8 Nothing in this subdivision allows the commission to withhold from the public any
9 information relating to amounts paid persons or entities with which the commission
10 has entered into contractual relationships, amounts of prizes paid, the name of the
11 prize winner, and the municipality, or county where the prize winner resides;

12 (10) Personally identified private citizen account payment information, credit information
13 on others supplied in confidence, and customer lists;

14 (11) Records or portions of records kept by a publicly funded library which, when
15 examined with or without other records, reveal the identity of any library patron
16 using the library's materials or services;

17 (12) Correspondence, memoranda, calendars or logs of appointments, working papers, and
18 records of telephone calls of public officials or employees;

19 (13) Records or portions of records kept by public bodies which would reveal the location,
20 character, or ownership of any known archaeological, historical, or paleontological
21 site in South Dakota if necessary to protect the site from a reasonably held fear of
22 theft, vandalism, or trespass. This subdivision does not apply to the release of
23 information for the purpose of scholarly research, examination by other public bodies
24 for the protection of the resource or by recognized tribes, or the federal Native

- 1 American Graves Protection and Repatriation Act;
- 2 (14) Records or portions of records kept by public bodies which maintain collections of
3 archeological, historical, or paleontological significance which nongovernmental
4 donors have requested to remain closed or which reveal the names and addresses of
5 donors of such articles of archaeological, historical, or paleontological significance
6 unless the donor approves disclosure, except as the records or portions thereof may
7 be needed to carry out the purposes of the federal Native American Graves Protection
8 and Repatriation Act and the Archeological Resources Protection Act;
- 9 (15) Employment applications and related materials, except for applications and related
10 materials submitted by individuals hired into executive or policymaking positions of
11 any public body;
- 12 (16) Social security numbers; credit card, charge card, or debit card numbers and
13 expiration dates; passport numbers, driver license numbers; or other personally
14 identifying numbers or codes; and financial account numbers supplied to state and
15 local governments by citizens or held by state and local governments regarding
16 employees or contractors;
- 17 (17) Any emergency or disaster response plans or protocols, safety or security audits or
18 reviews, or lists of emergency or disaster response personnel or material; any location
19 or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other
20 military or law enforcement equipment or personnel;
- 21 (18) Any test questions, scoring keys, results, or other examination data for any
22 examination to obtain licensure, employment, promotion or reclassification, or
23 academic credit;
- 24 (19) Personal correspondence, memoranda, notes, calendars or appointment logs, or other

- 1 personal records or documents of any public official or employee;
- 2 (20) Any document declared closed or confidential by court order, contract, or stipulation
- 3 of the parties to any civil or criminal action or proceeding except as provided under
- 4 section 1 of this Act;
- 5 (21) Any list of names or other personally identifying data of occupants of camping or
- 6 lodging facilities from the Department of Game, Fish and Parks;
- 7 (22) Records which, if disclosed, would constitute an unreasonable release of personal
- 8 information;
- 9 (23) Records which, if released, could endanger the life or safety of any person;
- 10 (24) Internal agency record or information received by agencies that are not required to
- 11 be filed with such agencies, if the records do not constitute final statistical or factual
- 12 tabulations, final instructions to staff that affect the public, or final agency policy or
- 13 determinations, or any completed state or federal audit and if the information is not
- 14 otherwise public under other state law, including chapter 15-15A and § 1-26-21;
- 15 (25) Records of individual children regarding commitment to the Department of
- 16 Corrections pursuant to chapters 26-8B and 26-8C;
- 17 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; ~~and~~
- 18 (27) Any other record made closed or confidential by state or federal statute or rule or as
- 19 necessary to participate in federal programs and benefits; and
- 20 (28) A record of a settlement agreement or litigation regarding investment or bankruptcy
- 21 and involving the South Dakota Investment Council or the South Dakota Retirement
- 22 System, or both, unless the settlement or litigation results in a finding of liability
- 23 against the council or system, or both.