

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

309P0663

HOUSE BILL NO. 1246

Introduced by: Representative Rave and Senator Dempster

1 FOR AN ACT ENTITLED, An Act to provide for a public records dispute resolution procedure.

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

3 Section 1. That § 1-26D-4 be amended to read as follows:

4 1-26D-4. Hearing examiners have all powers delineated in §§ 1-26-19.1 and 1-26-19.2 and
5 shall hear all contested cases that arise under Titles 10 and 58 and all public records disputes
6 arising under the provisions of chapter 1-27.

7 Section 2. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The Unified Judicial System and Public Utilities Commission are excluded from the
10 procedure set forth in this Act for the determination of requests for public records.

11 Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The procedure set forth in this Act is not exclusive but is alternative to the formal procedure
14 for actions begun by summons.

15 Section 4. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 Any informal request for public records shall be made to the custodian of the record. The
3 custodian of the record may then provide the requestor with the public record, upon payment
4 of the actual costs of mailing or transmittal, and a fee not to exceed one dollar per page, or other
5 fee established by statute or administrative rule, or the actual cost of reproduction if greater than
6 one dollar per page. Any requestor who makes an informal request requiring the dedication of
7 staff time in excess of one hour may be required to pay the cost of the staff time necessary for
8 the location, assembly, or reproduction of the public record.

9 For any informal request reasonably likely to involve a fee in excess of fifty dollars, the
10 custodian shall provide an estimate of cost to the requestor before assembling the public records,
11 and the requestor shall confirm in writing the requestor's acceptance of the cost estimate and his
12 or her agreement to pay. The custodian may waive or reduce any fee required under this section
13 if the waiver or reduction of the fee would be in the public interest.

14 Section 5. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 If an informal request is denied by the custodian of the record in whole or in part, a written
17 request may be made by the requestor pursuant to the following procedure:

- 18 (1) If an informal request is denied by the custodian of the record in whole or in part, a
19 written request may be made by the requestor to the public record officer of the
20 public entity involved. The public record officer shall promptly respond to the written
21 request for the public record, but in no event later than ten business days from receipt
22 of the written request. The public record officer shall respond to the written request
23 by:

- 24 (a) Providing the record in whole or in part to the requestor upon payment of the

1 actual costs of mailing or transmittal, and a fee not to exceed one dollar per
2 page, or other fee established by statute or administrative rule, or the actual
3 cost of reproduction if greater than one dollar per page. A requestor who
4 makes a written request requiring the dedication of staff time in excess of one
5 hour may be required to pay the cost of the staff time necessary for the
6 location, assembly, or reproduction of the requested record.

7 For any written request reasonably likely to involve a fee in excess of fifty
8 dollars, the public record officer shall provide an estimate of cost to the
9 requestor before assembling the requested records and the requestor shall
10 confirm in writing the requestor's acceptance of the cost estimate and his or
11 her agreement to pay. The public record officer may exercise discretion to
12 waive or reduce any fee required under this section if the waiver or reduction
13 of the fee would be in the public interest; or

14 (b) Denying the request for the record; or

15 (c) Acknowledging that the public record officer has received the written request
16 and providing an estimate of the time reasonably required to further respond
17 to the written request;

18 (2) Additional time to respond to the written request under subdivision (1)(c) of this
19 section, may be based upon the need to clarify the nature of the written request, to
20 locate and assemble the information requested, to notify any third persons or
21 governmental agencies affected by the written request, or to determine whether any
22 of the information requested is exempt and whether a denial should be made as to all
23 or part of the written request;

24 (3) If a written request is unclear, the public record officer may require the requestor to

1 clarify which records are being sought. If the requestor fails to provide a written
2 response to the public record officer's request for clarification within ten business
3 days, the request is deemed withdrawn;

4 (4) If the public record officer denies a written request in whole or in part, the denial
5 shall be accompanied by a written statement of the reasons for the denial;

6 (5) If the public record officer fails to respond to a written request within ten business
7 days, or fails to comply with the estimate provided under subdivision (1)(c) of this
8 section, the request is deemed denied.

9 Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 If a public record officer denies the written request in whole or in part, or if the requestor
12 objects to the public record officer's estimate of fees or time to respond to the written request
13 under subdivision (1)(a) or (1)(c) of section 5 of this Act, a requestor may file a written notice
14 of review with the Office of Hearing Examiners. The notice of review shall be mailed, via
15 registered or certified mail, return receipt, by the requestor to the Office of Hearing Examiners
16 and shall contain the following information: the name, address, and telephone number of the
17 requestor; the name and business address of the public record officer denying the request; the
18 name and business address of the agency, political subdivision, municipal corporation, or other
19 entity from which the request has been denied; a copy of the written request; a copy of any
20 denial or response from the public record officer; and any other information relevant to the
21 request that the requestor desires to be considered.

22 Upon the Office of Hearing Examiners' receipt of the written notice of review, the Office
23 of Hearing Examiners shall promptly mail a copy of the notice of review and all information
24 submitted by the requestor to the public record officer for the agency, political subdivision,

1 municipal corporation, or other entity denying the request. The entity denying the written
2 request may then file a written response to the Office of Hearing Examiners within ten business
3 days. If the entity does not file a written response within ten business days, the Office of Hearing
4 Examiners shall act on the information provided.

5 Section 7. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The Office of Hearing Examiners, after receiving the information from the requestor and
8 public record officer, shall make findings of fact and conclusions of law, and a decision as to
9 the issue presented pursuant this chapter. Before issuing a decision, the Office of Hearing
10 Examiners may hold a hearing if good cause is shown.

11 Section 8. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 After a final determination has been made by the Office of Hearing Examiners, the
14 aggrieved party may appeal the determination to the circuit court following the appeal procedure
15 in chapter 1-26.

16 Section 9. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The public record officer for the agencies, departments, and institutions of the State of South
19 Dakota is the secretary, constitutional officer, elected official, or commissioner of that agency,
20 department, and institution. The public record officer for each county is the county auditor or
21 the custodian of the record for law enforcement records. The public record officer for each first
22 or second class municipality is the finance officer or the clerk or the custodian of the record for
23 law enforcement records. The public record officer for each third class municipality is the
24 president of the board of trustees or the custodian of the record for law enforcement records. The

1 public record officer for each organized township is the township clerk. The public record
2 officer for each school district is the district superintendent. The public record officer for each
3 special district is the chairperson of the board of directors. The public record officer for any
4 other entity not otherwise designated is the person who acts in the capacity of the chief financial
5 officer or individual as designated by the entity.

6 Section 10. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The attorney general shall promulgate rules pursuant to chapter 1-26 to prescribe forms to
9 be used in implementing the provisions of this Act.