

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0529

HOUSE BILL NO. 1114

Introduced by: The Committee on State Affairs at the request of the Office of the Governor
and the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to repeal the confidentiality status of certain derogatory
2 materials and to create an exception to certain open records provisions for certain
3 defamatory information.

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

5 Section 1. That § 1-26-2 be amended to read as follows:

6 1-26-2. Each agency shall make available for public inspection all rules, final orders,
7 decisions, opinions, intra-agency memoranda, together with all other materials, written
8 statements of policy or interpretations formulated, adopted, or used by the agency in the
9 discharge of its functions. ~~An agency shall hold confidential materials derogatory to a person~~
10 ~~but such information shall be made available to the person to whom it relates, except as required~~
11 to be held confidential pursuant to the provisions of chapter 1-27.

12 Section 2. That § 1-27-1.5 be amended to read as follows:

13 1-27-1.5. The following records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3:

14 (1) Personal information in records regarding any student, prospective student, or former
15 student of any educational institution if such records are maintained by and in the



1 possession of a public entity, other than routine directory information specified and
2 made public consistent with 20 U. S.C. 1232g, as such section existed on January 1,
3 2009;

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

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

12 (4) Records which consist of attorney work product or which are subject to any privilege
13 recognized in chapter 19-13;

14 (5) Records developed or received by law enforcement agencies and other public bodies
15 charged with duties of investigation or examination of persons, institutions, or
16 businesses, if the records constitute a part of the examination, investigation,
17 intelligence information, citizen complaints or inquiries, informant identification, or
18 strategic or tactical information used in law enforcement training. However, this
19 subdivision does not apply to records so developed or received relating to the
20 presence of and amount or concentration of alcohol or drugs in any body fluid of any
21 person, and this subdivision does not apply to a 911 recording or a transcript of a 911
22 recording, if the agency or a court determines that the public interest in disclosure
23 outweighs the interest in nondisclosure. This law in no way abrogates or changes
24 §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information

1 from confidential informants;

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

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

8 (8) Information solely pertaining to protection of the security of public or private
9 property and persons on or within public or private property, such as specific, unique
10 vulnerability assessments or specific, unique response plans, either of which is
11 intended to prevent or mitigate criminal acts, emergency management or response,
12 or public safety, the public disclosure of which would create a substantial likelihood
13 of endangering public safety or property; computer or communications network
14 schema, passwords, and user identification names; guard schedules; lock
15 combinations; or any blueprints, building plans, or infrastructure records regarding
16 any building or facility that expose or create vulnerability through disclosure of the
17 location, configuration, or security of critical systems;

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

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

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

- 1 determinations, or any completed state or federal audit and if the information is not
2 otherwise public under other state law, including chapter 15-15A and § 1-26-21;
- 3 (25) Records of individual children regarding commitment to the Department of
4 Corrections pursuant to chapters 26-8B and 26-8C;
- 5 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; ~~and~~
- 6 (27) Any other record made closed or confidential by state or federal statute or rule or as
7 necessary to participate in federal programs and benefits; and
- 8 (28) Any defamatory information submitted about a person applying for or holding a
9 license, permit, registration, or certification, a person seeking employment or
10 currently employed by a public body, or a person seeking or receiving benefits or
11 assistance from a public body, until such time that the information is substantiated.
12 Any legal pleading, brief, motion, and exhibit presented to any public body or
13 hearing officer in a contested case pursuant to the provisions of chapter 1-26 or any
14 quasi-judicial proceeding which is not otherwise confidential is not made confidential
15 by this subdivision.