



## 2026 South Dakota Legislature

# House Bill 1092

Introduced by: **Representative** Fitzgerald

1 **An Act to update provisions pertaining to open records.**

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

3 **Section 1. That § 1-27-1.5 be AMENDED:**

4 **1-27-1.5.** The following records are not subject to §§ 1-27-1, 1-27-1.1, 1-27-1.3,  
5 and § 1-27-1.23:

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

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

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

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

23 (5) Records developed or received by law enforcement agencies and other public bodies  
24 charged with duties of investigation or examination of persons, institutions, or  
25 businesses, if the records constitute a part of the examination, investigation,  
26 intelligence information, citizen complaint or inquiry, informant identification, or

- 1 strategic or tactical information used in law enforcement training. This subdivision  
2 does not apply to records so developed or received relating to the presence of and  
3 amount or concentration of alcohol or drugs in any body fluid of any person, and  
4 this subdivision does not apply to a 911 recording or a transcript of a 911 recording  
5 if the agency or a court determines that the public interest in disclosure outweighs  
6 the interest in nondisclosure. This law in no way abrogates or changes §§ 23-5-7  
7 and 23-5-11 or testimonial privileges applying to the use of information from  
8 confidential informants;
- 9 (6) Appraisals or appraisal information and negotiation records concerning the purchase  
10 or sale, by a public body, of any interest in real or personal property;
- 11 (7) Personnel information other than salaries and routine directory information. This  
12 subdivision does not apply to the public inspection or copying of any current or  
13 prior contract with any public employee and any related document that specifies  
14 the consideration to be paid to the employee;
- 15 (8) Information pertaining to the protection of public or private property and any person  
16 on or within public or private property including specific to:
- 17 (a) Any vulnerability assessment or response plan intended to prevent or  
18 mitigate criminal acts;
- 19 (b) Emergency management or response;
- 20 (c) Public safety information that would create a substantial likelihood of  
21 endangering public safety or property, if disclosed;
- 22 (d) Cyber security plans, computer or communications network schema,  
23 passwords, or user identification names;
- 24 (e) Guard schedules;
- 25 (f) Lock combinations; and
- 26 (g) Any blueprint, building plan, or infrastructure record regarding any building  
27 or facility that would expose or create vulnerability through disclosure of  
28 the location, configuration, or security of critical systems of the building or  
29 facility;
- 30 (9) The security standards, procedures, policies, plans, specifications, diagrams, access  
31 lists, and other security-related records of the ~~Gaming~~ South Dakota Commission  
32 on Gaming and those persons or entities with which the commission has entered  
33 into contractual relationships. Nothing in this subdivision allows the commission to  
34 withhold from the public any information relating to amounts paid to persons or  
35 entities with which the commission has entered into contractual relationships,

- 1 amounts of prizes paid, the name of the prize winner, and the municipality, or  
2 county where the prize winner resides;
- 3 (10) Personally identified private citizen account payment information, credit information  
4 on others supplied in confidence, and customer lists;
- 5 (11) Records or portions of records kept by a publicly funded library which, when  
6 examined with or without other records, reveal the identity of any library patron  
7 using the library's materials or services;
- 8 (12) Correspondence, memoranda, calendars or logs of appointments, working papers,  
9 and records of telephone calls of public officials or employees;
- 10 (13) Records or portions of records kept by public bodies, which would reveal the  
11 location, character, or ownership of any known archaeological, historical, or  
12 paleontological site in South Dakota, if necessary to protect the site from a  
13 reasonably held fear of theft, vandalism, or trespass. This subdivision does not  
14 apply to the release of information for the purpose of scholarly research,  
15 examination by other public bodies for the protection of the resource or by  
16 recognized tribes, or the ~~federal~~ Native American Graves Protection and  
17 Repatriation Act, 25 U.S.C. §§ 3001 to 3013, inclusive (January 1, 2026);
- 18 (14) Records or portions of records kept by public bodies ~~which that~~ maintain collections  
19 of archeological, historical, or paleontological significance, which nongovernmental  
20 donors have requested to remain closed or which reveal the names and addresses  
21 of donors of ~~such the~~ articles of archaeological, historical, or paleontological  
22 significance, unless the donor approves disclosure, ~~except as the~~ provided this  
23 subdivision does not apply to records or portions thereof that may be needed to  
24 carry out the purposes of ~~the federal~~;
- 25 (a) The Native American Graves Protection and Repatriation Act, 25 U.S.C. §§  
26 3001 to 3013, inclusive (January 1, 2026); and the  
27 §(b) The Archeological Resources Protection Act of 1979, 16 U.S.C. § 470aa, et  
28 seq., (January 1, 2026);
- 29 (15) Employment applications and related materials, except for applications and related  
30 materials submitted by individuals hired into executive or policymaking positions  
31 of any public body;
- 32 (16) Social security numbers; credit card, charge card, or debit card numbers and  
33 expiration dates; passport numbers; driver license numbers; or other personally  
34 identifying numbers or codes; and financial account numbers supplied to state and

- 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  
5 location or listing of weapons or ammunition; nuclear, chemical, or biological  
6 agents; or other 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  
11 other 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 any civil or criminal action or proceeding, except as provided under  
14 § 1-27-1.23;
- 15 (21) Any list of names or other personally identifying data of occupants of camping or  
16 lodging facilities from the Department of Game, Fish and Parks;
- 17 (22) Records ~~which that~~, if disclosed, would constitute an unreasonable release of  
18 personal information;
- 19 (23) Records ~~which that~~, if released, could endanger the life or safety of any person;
- 20 (24) Internal agency ~~record~~ records or information received by agencies ~~that are, which~~  
21 are not required to be filed with ~~such the~~ agencies, if the ~~records do not constitute~~  
22 ~~final statistical or factual tabulations, final instructions to staff that affect the public,~~  
23 ~~or final agency policy or determinations, or any completed state or federal audit~~  
24 ~~and if the information is not otherwise public under other state law, including~~  
25 ~~chapter 15-15A and § 1-26-21~~ information is not otherwise public under state law,  
26 including chapter 15-15A and § 1-26-21, and if the records do not constitute:
- 27 (a) Final statistical or factual tabulations;  
28 (b) Final instructions to staff, which affect the public;  
29 (c) Final agency policy or determinations; or  
30 (d) Any completed state or federal audit;
- 31 (25) Records of individual children regarding commitment to the Department of  
32 Corrections pursuant to chapters 26-8B and 26-8C;
- 33 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20, and records  
34 regarding jail inmate disciplinary matters pursuant to § 24-11-23;

- 1       (27) Any other record made closed or confidential by state or federal statute or rule or
- 2           as necessary to participate in federal programs and benefits;
- 3       (28) A record of a settlement agreement or litigation regarding investment or bankruptcy
- 4           and involving the South Dakota Investment Council or the South Dakota
- 5           Retirement System, or both, unless the settlement or litigation results in a finding
- 6           of liability against the council or system, or both; and
- 7       (29) A record of a settlement agreement or litigation regarding medical services
- 8           involving any county hospital established under chapter 34-8 or any municipal
- 9           hospital established under chapter 34-9.