

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

275Y0293

## HOUSE BILL NO. 1166

Introduced by: Representatives Jamison, Ahlers, Beal, Goodwin, Greenfield (Lana), Haggar, Kettwig, Latterell, Marty, Otten (Herman), Peterson (Sue), Reed, Schoenfish, Smith, Tulson, Willadsen, and Wismer and Senators Langer, Bolin, and Stalzer

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding open 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 The terms of any settlement of any civil or criminal proceeding between the state, any  
5 county, any municipality, or any school district and any other party may not be made  
6 confidential by the parties to the settlement without a court order declaring the settlement to be  
7 confidential.

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

9 1-27-1.5. The following records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3:

- 10 (1) Personal information in records regarding any student, prospective student, or former  
11 student of any educational institution if such records are maintained by and in the  
12 possession of a public entity, other than routine directory information specified and  
13 made public consistent with 20 U. S.C. 1232g, as such section existed on January 1,  
14 2009;



- 1       (2)    Medical records, including all records of drug or alcohol testing, treatment, or  
2            counseling, other than records of births and deaths. This law in no way abrogates or  
3            changes existing state and federal law pertaining to birth and death records;
- 4       (3)    Trade secrets, the specific details of bona fide research, applied research, or scholarly  
5            or creative artistic projects being conducted at a school, postsecondary institution or  
6            laboratory funded in whole or in part by the state, and other proprietary or  
7            commercial information which if released would infringe intellectual property rights,  
8            give advantage to business competitors, or serve no material public purpose;
- 9       (4)    Records which consist of attorney work product or which are subject to any privilege  
10            recognized in article V of chapter 19-19;
- 11      (5)    Records developed or received by law enforcement agencies and other public bodies  
12            charged with duties of investigation or examination of persons, institutions, or  
13            businesses, if the records constitute a part of the examination, investigation,  
14            intelligence information, citizen complaints or inquiries, informant identification, or  
15            strategic or tactical information used in law enforcement training. However, this  
16            subdivision does not apply to records so developed or received relating to the  
17            presence of and amount or concentration of alcohol or drugs in any body fluid of any  
18            person, and this subdivision does not apply to a 911 recording or a transcript of a 911  
19            recording, if the agency or a court determines that the public interest in disclosure  
20            outweighs the interest in nondisclosure. This law in no way abrogates or changes  
21            §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information  
22            from confidential informants;
- 23      (6)    Appraisals or appraisal information and negotiation records concerning the purchase  
24            or sale, by a public body, of any interest in real or personal property;

- 1 (7) Personnel information other than salaries and routine directory information.  
2 However, this subdivision does not apply to the public inspection or copying of any  
3 current or prior contract with any public employee and any related document that  
4 specifies the consideration to be paid to the employee;
- 5 (8) Information solely pertaining to protection of the security of public or private  
6 property and persons on or within public or private property, such as specific, unique  
7 vulnerability assessments or specific, unique response plans, either of which is  
8 intended to prevent or mitigate criminal acts, emergency management or response,  
9 or public safety, the public disclosure of which would create a substantial likelihood  
10 of endangering public safety or property; computer or communications network  
11 schema, passwords, and user identification names; guard schedules; lock  
12 combinations; or any blueprints, building plans, or infrastructure records regarding  
13 any building or facility that expose or create vulnerability through disclosure of the  
14 location, configuration, or security of critical systems;
- 15 (9) The security standards, procedures, policies, plans, specifications, diagrams, access  
16 lists, and other security-related records of the Gaming Commission and those persons  
17 or entities with which the commission has entered into contractual relationships.  
18 Nothing in this subdivision allows the commission to withhold from the public any  
19 information relating to amounts paid persons or entities with which the commission  
20 has entered into contractual relationships, amounts of prizes paid, the name of the  
21 prize winner, and the municipality, or county where the prize winner resides;
- 22 (10) Personally identified private citizen account payment information, credit information  
23 on others supplied in confidence, and customer lists;
- 24 (11) Records or portions of records kept by a publicly funded library which, when

- 1 examined with or without other records, reveal the identity of any library patron  
2 using the library's materials or services;
- 3 (12) Correspondence, memoranda, calendars or logs of appointments, working papers, and  
4 records of telephone calls of public officials or employees;
- 5 (13) Records or portions of records kept by public bodies which would reveal the location,  
6 character, or ownership of any known archaeological, historical, or paleontological  
7 site in South Dakota if necessary to protect the site from a reasonably held fear of  
8 theft, vandalism, or trespass. This subdivision does not apply to the release of  
9 information for the purpose of scholarly research, examination by other public bodies  
10 for the protection of the resource or by recognized tribes, or the federal Native  
11 American Graves Protection and Repatriation Act;
- 12 (14) Records or portions of records kept by public bodies which maintain collections of  
13 archeological, historical, or paleontological significance which nongovernmental  
14 donors have requested to remain closed or which reveal the names and addresses of  
15 donors of such articles of archaeological, historical, or paleontological significance  
16 unless the donor approves disclosure, except as the records or portions thereof may  
17 be needed to carry out the purposes of the federal Native American Graves Protection  
18 and Repatriation Act and the Archeological Resources Protection Act;
- 19 (15) Employment applications and related materials, except for applications and related  
20 materials submitted by individuals hired into executive or policymaking positions of  
21 any public body;
- 22 (16) Social security numbers; credit card, charge card, or debit card numbers and  
23 expiration dates; passport numbers, driver license numbers; or other personally  
24 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 location  
5 or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other  
6 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 other  
11 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~~ regarding any civil or criminal action or proceeding;
- 14 (21) Any list of names or other personally identifying data of occupants of camping or  
15 lodging facilities from the Department of Game, Fish and Parks;
- 16 (22) Records which, if disclosed, would constitute an unreasonable release of personal  
17 information;
- 18 (23) Records which, if released, could endanger the life or safety of any person;
- 19 (24) Internal agency record or information received by agencies that are not required to  
20 be filed with such agencies, if the records do not constitute final statistical or factual  
21 tabulations, final instructions to staff that affect the public, or final agency policy or  
22 determinations, or any completed state or federal audit and if the information is not  
23 otherwise public under other state law, including chapter 15-15A and § 1-26-21;
- 24 (25) Records of individual children regarding commitment to the Department of

- 1 Corrections pursuant to chapters 26-8B and 26-8C;
- 2 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; and
- 3 (27) Any other record made closed or confidential by state or federal statute or rule or as
- 4 necessary to participate in federal programs and benefits.