

2022 South Dakota Legislature

House Bill 1087**AMENDMENT 1087C FOR THE INTRODUCED BILL**

1 **An Act to revise certain provisions regarding records that are not open to inspection**
2 **and copying and deliberations in an executive or closed meeting.**

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

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

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

- 7 (1) Personal information in records regarding any student, prospective student, or
8 former student of any educational institution if such records are maintained by and
9 in the possession of a public entity, other than routine directory information
10 specified and made public in accordance with 20 U.S.C. § 1232g as the law existed
11 on January 1, 2009;
- 12 (2) Medical records, including all records of drug or alcohol testing, treatment, or
13 counseling, other than records of births and deaths. This law in no way abrogates
14 or changes existing state and federal law pertaining to birth and death 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 if released would infringe intellectual
19 property rights, give advantage to business competitors, or serve no material
20 public purpose;
- 21 (4) Records which consist of attorney work product or which are subject to any privilege
22 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 complaints or inquiries, informant identification, or

- 1 strategic or tactical information used in law enforcement training. However, this
2 subdivision does not apply to records so developed or received relating to the
3 presence of and amount or concentration of alcohol or drugs in any body fluid of
4 any person, and this subdivision does not apply to a 911 recording or a transcript
5 of a 911 recording, if the agency or a court determines that the public interest in
6 disclosure outweighs the interest in nondisclosure. This law in no way abrogates or
7 changes §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of
8 information from 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.
12 However, this subdivision does not apply to the public inspection or copying of any
13 current or prior contract with any public employee and any related document that
14 specifies 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~~ including:
- 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) ~~Computer~~ Cyber security plans, computer or communications network
23 schema, 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 Commission and those
32 persons or entities with which the commission has entered into contractual
33 relationships. Nothing in this subdivision allows the commission to withhold from
34 the public any information relating to amounts paid persons or entities with which
35 the commission has entered into contractual relationships, amounts of prizes paid,

- 1 the name of the prize winner, and the municipality, or county where the prize
2 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 location,
11 character, or ownership of any known archaeological, historical, or paleontological
12 site in South Dakota if necessary to protect the site from a reasonably held fear of
13 theft, vandalism, or trespass. This subdivision does not apply to the release of
14 information for the purpose of scholarly research, examination by other public
15 bodies for the protection of the resource or by recognized tribes, or the federal
16 Native American Graves Protection and Repatriation Act;
- 17 (14) Records or portions of records kept by public bodies which maintain collections of
18 archeological, historical, or paleontological significance which nongovernmental
19 donors have requested to remain closed or which reveal the names and addresses
20 of donors of such articles of archaeological, historical, or paleontological
21 significance unless the donor approves disclosure, except as the records or portions
22 thereof may be needed to carry out the purposes of the federal Native American
23 Graves Protection and Repatriation Act and the Archeological Resources Protection
24 Act;
- 25 (15) Employment applications and related materials, except for applications and related
26 materials submitted by individuals hired into executive or policymaking positions
27 of any public body;
- 28 (16) Social security numbers; credit card, charge card, or debit card numbers and
29 expiration dates; passport numbers, driver license numbers; or other personally
30 identifying numbers or codes; and financial account numbers supplied to state and
31 local governments by citizens or held by state and local governments regarding
32 employees or contractors;
- 33 (17) Any emergency or disaster response plans or protocols, safety or security audits or
34 reviews, or lists of emergency or disaster response personnel or material; any

- 1 location or listing of weapons or ammunition; nuclear, chemical, or biological
2 agents; or other military or law enforcement equipment or personnel;
- 3 (18) Any test questions, scoring keys, results, or other examination data for any
4 examination to obtain licensure, employment, promotion or reclassification, or
5 academic credit;
- 6 (19) Personal correspondence, memoranda, notes, calendars or appointment logs, or
7 other personal records or documents of any public official or employee;
- 8 (20) Any document declared closed or confidential by court order, contract, or stipulation
9 of the parties to any civil or criminal action or proceeding except as provided under
10 § 1-27-1.23;
- 11 (21) Any list of names or other personally identifying data of occupants of camping or
12 lodging facilities from the Department of Game, Fish and Parks;
- 13 (22) Records which, if disclosed, would constitute an unreasonable release of personal
14 information;
- 15 (23) Records which, if released, could endanger the life or safety of any person;
- 16 (24) Internal agency record or information received by agencies that are not required to
17 be filed with such agencies, if the records do not constitute final statistical or factual
18 tabulations, final instructions to staff that affect the public, or final agency policy
19 or determinations, or any completed state or federal audit and if the information is
20 not otherwise public under other state law, including chapter 15-15A and § 1-26-
21 21;
- 22 (25) Records of individual children regarding commitment to the Department of
23 Corrections pursuant to chapters 26-8B and 26-8C;
- 24 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20;
- 25 (27) Any other record made closed or confidential by state or federal statute or rule or
26 as necessary to participate in federal programs and benefits;
- 27 (28) A record of a settlement agreement or litigation regarding investment or bankruptcy
28 and involving the South Dakota Investment Council or the South Dakota
29 Retirement System, or both, unless the settlement or litigation results in a finding
30 of liability against the council or system, or both; and
- 31 (29) A record of a settlement agreement or litigation regarding medical services
32 involving any county hospital established under chapter 34-8 or any municipal
33 hospital established under chapter 34-9.

34 **Section 2. That § 1-25-2 be AMENDED:**

- 1 **1-25-2.** Executive or closed meetings may be held for the sole purposes of:
- 2 (1) Discussing the qualifications, competence, performance, character or fitness of any
- 3 public officer or employee or prospective public officer or employee. The term,
- 4 employee, does not include any independent contractor;
- 5 (2) Discussing the expulsion, suspension, discipline, assignment of or the educational
- 6 program of a student or the eligibility of a student to participate in interscholastic
- 7 activities provided by the South Dakota High School Activities Association;
- 8 (3) Consulting with legal counsel or reviewing communications from legal counsel about
- 9 proposed or pending litigation or contractual matters;
- 10 (4) Preparing for contract negotiations or negotiating with employees or employee
- 11 representatives;
- 12 (5) Discussing marketing or pricing strategies by a board or commission of a business
- 13 owned by the state or any of its political subdivisions, when public discussion may
- 14 be harmful to the competitive position of the business; or
- 15 (6) Discussing information ~~listed in subdivisions 1-27-1.5(8) and 1-27-1.5(17)~~
- 16 pertaining to the protection of public or private property and any person on or
- 17 within public or private property specific to:
- 18 (a) Any vulnerability assessment or response plan intended to prevent or
- 19 mitigate criminal acts;
- 20 (b) Emergency management or response;
- 21 (c) Public safety information that would create a substantial likelihood of
- 22 endangering public safety or property, if disclosed;
- 23 (d) Cyber security plans, computer, communications network schema,
- 24 passwords, or user identification names;
- 25 (e) Guard schedules;
- 26 (f) Lock combinations; ~~and~~
- 27 (g) Any blueprint, building plan, or infrastructure record regarding any building
- 28 or facility that would expose or create vulnerability through disclosure of
- 29 the location, configuration, or security of critical systems of the building or
- 30 facility; and
- 31 (h) Any emergency or disaster response plans or protocols, safety or security
- 32 audits or reviews, or lists of emergency or disaster response personnel or
- 33 material; any location or listing of weapons or ammunition; nuclear,
- 34 chemical, or biological agents; or other military or law enforcement
- 35 equipment or personnel.

1 However, any official action concerning ~~such~~the matters pursuant to this section
2 shall be made at an open official meeting. An executive or closed meeting ~~shall~~must be
3 held only upon a majority vote of the members of the public body present and voting, and
4 discussion during the closed meeting is restricted to the purpose specified in the closure
5 motion. Nothing in § 1-25-1 or this section prevents an executive or closed meeting if the
6 federal or state Constitution or the federal or state statutes require or permit it. A violation
7 of this section is a Class 2 misdemeanor.