

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

391Z0427

SENATE JUDICIARY ENGROSSED NO. **SB 84**- 1/23/2018

Introduced by: Senators Rusch, Cronin, Frerichs, Heinert, Kennedy, Monroe, Nelson, Nesiba, Novstrup, Stalzer, and Youngberg and Representatives Johnson, Bartling, Frye-Mueller, Heinemann, Jensen (Kevin), Kaiser, Lesmeister, McCleerey, Rasmussen, Ring, Smith, Steinhauer, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public 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 No agency of the State of South Dakota or any political subdivision of the state may enter
5 into a settlement agreement with any third party involving claims for monetary damages or
6 equitable relief in which the settlement agreement requires nondisclosure or confidentiality as
7 to the terms of the settlement. Any settlement agreement under this section shall be a public
8 record as defined under § 1-27-1.1. Nothing in this section may be interpreted to prohibit a
9 judge from sealing any part of the record of a legal proceeding other than the summary or
10 settlement agreement under this section.

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

12 1-27-1.5. The following records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3:

13 (1) Personal information in records regarding any student, prospective student, or former



1 student of any educational institution if such records are maintained by and in the
2 possession of a public entity, other than routine directory information specified and
3 made public consistent with 20 U. S.C. 1232g, as such section existed on January 1,
4 2009;

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

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

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

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

1 §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information
2 from confidential informants;

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

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

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

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

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

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

- 1 be filed with such agencies, if the records do not constitute final statistical or factual
2 tabulations, final instructions to staff that affect the public, or final agency policy or
3 determinations, or any completed state or federal audit and if the information is not
4 otherwise public under other state law, including chapter 15-15A and § 1-26-21;
- 5 (25) Records of individual children regarding commitment to the Department of
6 Corrections pursuant to chapters 26-8B and 26-8C;
- 7 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; ~~and~~
- 8 (27) Any other record made closed or confidential by state or federal statute or rule or as
9 necessary to participate in federal programs and benefits; and
- 10 (28) Records of investment or bankruptcy-related litigation involving the South Dakota
11 Investment Council unless the litigation involves a finding of liability on the part of
12 the South Dakota Investment Council.