

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

913N0758

## SENATE BILL NO. 217

Introduced by: Senators Turbak, Bartling, Hanson (Gary), Heidepriem, Hoerth, Hundstad, Jerstad, Katus, Kloucek, Koetzle, Maher, Nesselhuf, Peterson (Jim), Sutton, and Two Bulls and Representatives Van Norman, Ahlers, Bradford, Burg, Dennert, Elliott, Gassman, Gillespie, Halverson, Hargens, Lucas, Miles, Sigdestad, Street, and Thompson

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding records that are open  
2 for inspection.

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

4 Section 1. Terms used in this Act mean:

- 5 (1) "Closed record," all or part of an exempt record that a public entity in its discretion  
6 has not opened to the public;
- 7 (2) "Confidential record," all or part of a record that is either expressly declared  
8 confidential or is prohibited from being open to the public;
- 9 (3) "Exempt record," all or part of a record that is neither required by law to be open to  
10 the public, nor is confidential, but may be open in the discretion of the public entity;
- 11 (4) "Governing body," the multimember body responsible for making a collective  
12 decision on behalf of a public entity. The term, governing body, also includes any  
13 group of persons, regardless of membership, acting collectively pursuant to authority  
14 delegated to that group by the governing body;



- 1 (5) "Law," any federal statute, regulations, or any state statute or rule;
- 2 (6) "Public business," any matter that relates or may foreseeably relate in any way to:
  - 3 (a) The performance of the public entity's governmental functions, including any
  - 4 matter over which the public entity has supervision, control, jurisdiction, or
  - 5 advisory power; or
  - 6 (b) The public entity's use of public funds.
- 7 (7) "Public funds," cash and other assets with more than minimal value received from
- 8 the state or any political subdivision of the state;
- 9 (8) "Record," recorded information of any kind, regardless of the physical form or
- 10 characteristic by which the information is stored, recorded, or reproduced, which is
- 11 in the possession or custody of a public entity or its agent and which has been
- 12 received or prepared for use in connection with public business or contains
- 13 information relating to public business. The term, record, does not include
- 14 unrecorded thought processes or mental impressions, but does include preliminary
- 15 drafts and working papers. The term, record, also does not include records in the
- 16 possession of a court of this state.
- 17 (9) "Task force or working group," a group of persons who have been formally appointed
- 18 and delegated to meet as a group to assist, advise, or act on behalf of the individual
- 19 in charge of a state agency or institution when a majority of the members of the group
- 20 are not employees of the agency or institution.

21 Section 2. For the purposes of this Act, a public entity is any of the following:

- 22 (1) Any public or governmental body, board, bureau, commission, or agency of the state,
- 23 including any entity created or recognized by the Constitution of South Dakota, state
- 24 statute, or executive order of the Governor or any task force or working group created

1 by the person in charge of a state agency or institution, to exercise public authority  
2 or perform a governmental function; or

3 (2) Any public or governmental body, board, bureau, commission, or agency of any  
4 political subdivision of the state and any entity created or recognized by the  
5 Constitution of South Dakota, state statute, executive order of the Governor,  
6 resolution, ordinance, rule, bylaw, or executive order of the chief executive authority  
7 of a political subdivision of the state to exercise public authority or perform a  
8 governmental function.

9 Section 3. Except as otherwise specifically provided by law, any records of a public entity  
10 is a public record, open and accessible for inspection during reasonable office hours. As used  
11 in this section, reasonable office hours includes all regular office hours of a public entity. If a  
12 public entity does not have regular office hours, the name and telephone number of a contact  
13 person authorized to provide access to the public entity's records shall be posted on the door of  
14 the office of the public entity, if any. Otherwise, the information regarding the contact person  
15 shall be filed with the secretary of state for any state-level entity, the city auditor or designee of  
16 the city for any city-level entity, or the county auditor or designee of the county for any other  
17 entity.

18 Section 4. Upon request for a copy of a specific public record, any entity subject to section  
19 3 of this Act shall furnish the requester one copy of the public records requested. A request need  
20 not be made in person or in writing, and the copy shall be mailed upon request. A public entity  
21 may charge up to twenty-five cents per impression of a paper copy. As used in this section,  
22 paper copy means a one-sided or two-sided duplicated copy of a size not more than eight and  
23 one-half by fourteen inches. For any copy of a record that is not a paper copy as defined in this  
24 section, the public entity may charge a reasonable fee for making the copy. As used in this

1 section, reasonable fee means the actual cost to the public entity of making the copy, including  
2 labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a  
3 copy of a record. An entity may require payment before making or mailing the copy, or both.  
4 An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding  
5 the initial hour, for locating records if locating the records requires more than one hour. An  
6 entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the  
7 initial hour, for excising confidential or closed material under section 29 of this Act. If the entity  
8 is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or  
9 if a copy machine is not readily available, the entity may make arrangements for the copy to be  
10 provided or mailed, or both, by another entity, public or private, and the requester shall pay the  
11 fee to that other entity. This section does not apply to copies of public records for which a  
12 different fee is specifically provided by law.

13 Access to electronically stored records is free if the records are recoverable without the use  
14 of a computer backup. If a request is made for access to a record on a backup, or for a copy of  
15 an electronically stored record, in addition to the charge in this section, the public entity may  
16 charge a reasonable fee for providing the copies, including costs attributable to the use of  
17 information technology resources.

18 Section 5. Except as provided in this section, a public entity is not required to create or  
19 compile a record that does not exist. Access to an electronically stored record, or a copy thereof,  
20 shall be provided at the requester's option in either a printed document or through any other  
21 available medium. A computer file is not an available medium if no means exist to separate or  
22 prevent the disclosure of any closed or confidential information contained in that file. Except  
23 as reasonably necessary to reveal the organization of data contained in an electronically stored  
24 record, a public entity is not required to provide an electronically stored record in a different

1 structure, format, or organization. A public entity is not required to provide a requester with  
2 access to a computer terminal.

3 Section 6. A state-level public entity may establish procedures for providing access from an  
4 outside location to any computer data base or electronically filed or stored information  
5 maintained by that entity. The procedures shall address the measures that are necessary to  
6 maintain the confidentiality of information protected by federal or state law. Except for access  
7 provided to another state-level public entity, the entity may charge a reasonable fee for  
8 providing that outside access. If the original information is keyed, entered, provided, compiled,  
9 or submitted by any political subdivision, the fees shall be shared by the state and the political  
10 subdivision based on their proportional costs to make the data available.

11 Section 7. Any request for records in the possession of a public entity by a party to a  
12 criminal or civil action or adversarial administrative proceeding in which the public entity is a  
13 party, or by an agent of the party, shall comply with applicable discovery rules and be made to  
14 the attorney representing that entity in the criminal or civil action or adversarial administrative  
15 proceeding. The public entity may deny a request from a party or an agent of a party if the  
16 request seeks records that are privileged under applicable discovery rules.

17 Section 8. Any denial of a request for records shall describe the legal authority for the denial  
18 and shall be reduced to writing if requested.

19 Section 9. A violation of section 4 of this Act occurs if a person's right to review or receive  
20 a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when  
21 a fee is charged in excess of the amount authorized. It is not an unreasonable delay or a denial  
22 of access under this section to withhold from the public a record that is prepared at the express  
23 direction of, and for presentation to, a governing body until the record is mailed or otherwise  
24 provided to a member of the body or until the next meeting of the body, whichever occurs first.

1 It also is not an unreasonable delay or a denial of access to withhold from the public a working  
2 paper or preliminary draft until a final draft is completed, the record is distributed to a member  
3 of a governing body or discussed by the body at an open meeting, or work is discontinued on  
4 the draft but no final version has been prepared, whichever occurs first.

5 For public entities headed by a single person, it is not an unreasonable delay or a denial of  
6 access to withhold from the public a working paper or preliminary draft until a final draft is  
7 completed, or work is discontinued on the draft but no final version has been prepared,  
8 whichever occurs first. A working paper or preliminary draft is deemed completed if it can  
9 reasonably be concluded, upon a good-faith review, that all substantive work on it has been  
10 completed.

11 Section 10. A disclosure of a requested record is not a waiver of any copyright held by the  
12 public entity in the requested record or of any applicable evidentiary privilege.

13 Section 11. Any record of a public employee's medical treatment or use of an employee  
14 assistance program is not to become part of that employee's personnel record and is confidential  
15 and, except as otherwise authorized by law, may not be used or disclosed without the written  
16 authorization of the employee. As used in this section, the term, public employee, includes any  
17 person who has applied for employment, is employed, or has been employed by a public entity.

18 Except as otherwise specifically provided by law, personal information regarding a public  
19 employee contained in an employee's personnel record or given to the state or a political  
20 subdivision by the employee in the course of employment is exempt. As used in this section,  
21 personal information means a person's home address; home telephone number; photograph;  
22 medical information; motor vehicle operator's identification number; payroll deduction  
23 information; the name, address, telephone number, and date of birth of any dependent or  
24 emergency contact; any credit, debit, or electronic fund transfer card number; and any account

1 number at a bank or other financial institution.

2 Except as otherwise specifically provided by law, personal information regarding a licensee  
3 maintained by an occupational or professional board, association, state agency, or commission  
4 created by law is exempt. As used in this section, licensee means any person who has applied  
5 for, holds, or has held in the past an occupational or professional license, certificate, credential,  
6 permit, or registration issued by a state occupational or professional board, association, agency,  
7 or commission.

8 Section 12. Any telephone number and the home address of a juvenile court supervisor or  
9 probation officer, an employee of a law enforcement agency, employee of a state or local  
10 correctional facility, and an employee of the Department of Corrections are confidential. A  
11 record containing information relating to an employee of the Department of Corrections may  
12 be disclosed to an appropriate authority under policy established by the Department of  
13 Corrections.

14 Section 13. Any record or other information that would reveal the identity, or endanger the  
15 life or physical well-being, of an undercover law enforcement officer is confidential. For  
16 purposes of this section, an undercover law enforcement officer means a full-time, salaried  
17 employee of a local or state law enforcement agency who acts surreptitiously or poses as  
18 someone other than a law enforcement officer while engaging in the investigation of a violation  
19 of law.

20 Section 14. A law enforcement officer or prosecutor, within the scope of the employment  
21 of the officer or prosecutor, may provide assurances of confidentiality to a person providing  
22 information regarding violations of the law. Any information that would identify or provide a  
23 means of identifying a confidential informant, if the identity of the informant is not otherwise  
24 publicly known, is confidential and may be disclosed only as permitted by law.

1 Section 15. Trade secret, proprietary, commercial, and financial information is confidential  
2 if it is of a privileged nature and it has not been previously publicly disclosed.

3 For the purposes of this section, trade secret includes:

4 (1) A computer software program and components of a computer software program  
5 which are subject to a copyright or a patent, and any formula, pattern, compilation,  
6 program, device, method, technique, or process supplied to any state agency,  
7 institution, department, or board which is the subject of efforts by the supplying  
8 person or organization to maintain its secrecy and that may derive independent  
9 economic value, actual or potential, from not being generally known to, and not being  
10 readily ascertainable by proper means by, other persons or organizations that might  
11 obtain economic value from its disclosure or use; and

12 (2) A discovery or innovation which is subject to a patent or a copyright, and any  
13 formula, pattern, compilation, program, device, method, technique, or process  
14 supplied to or prepared by any public entity which is the subject of efforts by the  
15 supplying or preparing entity, person, business, or industry to maintain its secrecy  
16 and that may derive independent economic value, actual or potential, from not being  
17 generally known to, and not being readily ascertainable by proper means by, any  
18 person who might obtain economic value from its disclosure or use.

19 For the purposes of this section, proprietary information includes information received from  
20 a sponsor of research conducted by a public entity, as well as any discovery or innovation  
21 generated by that research, technical, financial, and marketing information and other documents  
22 related to the commercialization, and any other discovery or innovation produced by the public  
23 entity which an employee or the entity intends to commercialize.

24 This section does not limit or otherwise affect any record pertaining to the application for

1 a permit or license necessary to do business or to expand business operations within this state,  
2 except as otherwise provided by law.

3 Section 16. Unless made confidential under section 15 of this Act, the following economic  
4 development records and information are exempt:

5 (1) Records and information pertaining to a prospective location of a business or  
6 industry, including the identity, nature, and location of the business or industry, when  
7 no previous public disclosure has been made by the business or industry of the  
8 interest or intent of the business or industry to locate in, relocate within, or expand  
9 within this state. This exemption does not include records pertaining to the  
10 application for permits or licenses necessary to do business or to expand business  
11 operations within this state, except as otherwise provided by law; and

12 (2) Trade secrets and commercial or financial information received from a person,  
13 business, or industry that is interested in or is applying for or receiving financing or  
14 technical assistance, or other forms of business assistance.

15 Section 17. Unless made confidential under section 15 of this Act or made exempt under  
16 section 16 of this Act, bids or proposals received by a public entity in response to a request for  
17 proposals by the public entity are exempt until such time all of the proposals have been received  
18 and opened by the public entity or until such time that all oral presentations regarding the  
19 proposals, if any, have been heard by the public entity. Any record included with any bid or  
20 proposal naming and generally describing the entity submitting the proposal is open.

21 Section 18. Any computer software program or component of a computer software program  
22 contracted, developed, or acquired by a public entity or state agency, institution, department, or  
23 board and for which the public entity or state agency, institution, department, or board acquires  
24 a license, copyright, or patent is exempt from sections 3 to 10, inclusive, of this Act. After

1 receiving written approval from the Governor, a state agency, institution, department, or board  
2 may enter into agreements for the sale, licensing, and distribution of its contracted, licensed,  
3 patented, or copyrighted computer software programs. A state agency, institution, department,  
4 or board may take any needed action, including legal action, to protect the state's interest in the  
5 computer software against improper or unlawful use or infringement and may collect and  
6 enforce the collection of any sums due for the licensing or sale of the computer software. A  
7 public entity may enter into agreements for the sale, licensing, and distribution of its licensed,  
8 patented, or copyrighted computer software programs.

9 Section 19. The following records, regardless of form or characteristic, of or relating to the  
10 Legislative Research Council, the Legislature, the House of Representatives, the Senate, or a  
11 member of the Legislature are not subject to sections 3 to 10, inclusive, of this Act: a record of  
12 a purely personal or private nature, a record that is attorney work product or is attorney-client  
13 communication, a record that reveals the content of private communications between a member  
14 of the Legislature and any person, and, except with respect to a governmental entity determining  
15 the proper use of telephone service, a record of telephone usage which identifies the parties or  
16 lists the telephone numbers of the parties involved.

17 Section 20. Active criminal intelligence information and active criminal investigative  
18 information are not subject to sections 3 to 10, inclusive, of this Act. A criminal justice agency  
19 shall maintain a list of all files containing active criminal intelligence and investigative  
20 information which have been in existence for more than one year. With respect to each file, the  
21 list shall contain the file's number or other identifying characteristic and the date the file was  
22 established. The list required under this section is subject to sections 3 to 10, inclusive, of this  
23 Act. Criminal intelligence and investigative information that is not considered active is not  
24 subject to sections 3 to 10, inclusive, of this Act, to the extent that the information is personal

1 information.

2 Section 21. For the purposes of section 20 of this Act, criminal intelligence information  
3 means information with respect to an identifiable person or group of persons collected by a  
4 criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.  
5 Criminal intelligence information shall be considered active as long as it is related to  
6 intelligence gathering conducted with a reasonable good faith belief that it will lead to detection  
7 of ongoing or reasonably anticipated criminal activities.

8 Section 22. For the purposes of section 20 of this Act, criminal investigative information  
9 means information with respect to an identifiable person or group of persons compiled by a  
10 criminal justice agency in the course of conducting a criminal investigation of a specific act or  
11 omission, including information derived from laboratory tests, reports of investigators or  
12 informants, or any type of surveillance. Criminal investigative information shall be considered  
13 active as long as it is related to an ongoing investigation that is continuing with a reasonable  
14 good faith anticipation of securing an arrest or prosecution in the foreseeable future.

15 Section 23. For the purposes of section 20 of this Act, criminal justice agency means any  
16 law enforcement agency or prosecutor. The term also includes any other unit of government  
17 charged by law with criminal law enforcement duties or having custody of criminal intelligence  
18 or investigative information for the purpose of assisting law enforcement agencies in the  
19 conduct of active criminal investigations or prosecutions.

20 Section 24. For the purposes of section 20 of this Act, criminal intelligence and investigative  
21 information does not include:

- 22 (1) Arrestee description, including name, date of birth, address, race, sex, physical  
23 description, and occupation of arrestee;
- 24 (2) Facts concerning the arrest, including the cause of arrest and the name of the

1           arresting officer;

2       (3)   Conviction information, including the name of any person convicted of a criminal  
3           offense;

4       (4)   Disposition of all warrants, including orders signed by a judge of any court  
5           commanding a law enforcement officer to arrest a particular person;

6       (5)   A chronological list of incidents, including initial offense report information showing  
7           the offense, date, time, general location, officer, and a brief summary of what  
8           occurred;

9       (6)   A crime summary, including a departmental summary of crimes reported and public  
10          calls for service by classification, nature, and number;

11       (7)   Radio log, including a chronological listing of the calls dispatched;

12       (8)   General registers, including jail booking information;

13       (9)   Arrestee photograph, if release will not adversely affect a criminal investigation.

14       Section 25. For the purposes of section 20 of this Act, personal information means a person's  
15       medical information; motor vehicle operator's identification number; social security number;  
16       and any credit, debit, or electronic fund transfer card number.

17       Section 26. A computerized index created by a criminal justice agency of names included  
18       in criminal files, whether active or inactive, is an exempt record.

19       Section 27. The following records are not subject to sections 3 to 10, inclusive, of this Act:  
20       examination or test questions, scoring keys, and other data used to administer any licensing,  
21       employment, academic, or certification examination or test, if the examination or test is to be  
22       used again in whole or in part; and records establishing examination or test procedures and  
23       instructions regarding the administration, grading, or evaluation of any examination or test, if  
24       disclosure may affect scoring outcomes.

1 Section 28. Any credit, debit, or electronic fund transfer card or account number and any  
2 financial institution account number that a public entity, elected official, or appointed official  
3 uses or has available for making electronic or other deposits, transfers, or payments is not an  
4 open record.

5 Section 29. No public entity may deny a request for an open record on the ground that the  
6 record also contains confidential or closed information. Subject to section 4 of this Act with  
7 regard to electronically stored records, if confidential or closed information is contained in an  
8 open record, a public entity shall permit inspection and receipt of copies of the information  
9 contained in the record that is not confidential or closed, but shall delete, excise, or otherwise  
10 withhold the confidential or closed information.

11 Section 30. An officer or employee of a public entity may disclose or comment on the  
12 substance of an open record. Any agreement prohibiting disclosure or comment is void and  
13 against public policy.

14 Section 31. Unless otherwise prohibited by federal law, records of a public entity which are  
15 otherwise closed or confidential may be disclosed to any public entity for the purpose of law  
16 enforcement or collection of debts owed to a public entity. However, the records may not be  
17 used for other purposes and the closed or confidential nature of the records shall otherwise be  
18 maintained.

19 Section 32. Confidential records that are authorized by law to be disclosed to another entity  
20 continue to be confidential in the possession of the receiving entity, except as otherwise  
21 provided by law.

22 Section 33. Unless disclosure under a court order is otherwise prohibited or limited by law,  
23 closed records shall be disclosed pursuant to a subpoena issued by a court, administrative law  
24 judge, or administrative hearing officer, or other court order. Unless disclosure under a court

1 order is otherwise prohibited or limited by law, confidential records shall be disclosed pursuant  
2 to a court order. Upon request of the public entity ordered to make the disclosure, the court  
3 ordering the disclosure shall issue a protective order to protect the confidential nature of the  
4 records. Any person who discloses confidential records of a public entity under this section is  
5 immune from civil liability arising from such disclosure.

6 Section 34. A record acquired by the Office of the Attorney General from a governmental  
7 agency or a nonpublic entity is exempt if the attorney general determines:

- 8 (1) The record is necessary to monitor or enforce compliance with a law or order or to  
9 further a civil investigation or litigation by the state;
- 10 (2) The record is treated as confidential or privileged by the provider of the records; and
- 11 (3) The provider of the records has not agreed to waive the privilege relating to or  
12 confidentiality of the record.

13 Section 35. Any record of a public entity that is a compilation of children's names,  
14 addresses, phone numbers, or any combination thereof, is exempt.

15 Section 36. Any donor or prospective donor name, address, telephone number, tax or  
16 financial record, or other personal information received or retained by a board of higher  
17 education or university system officer or employee is exempt.

18 Section 37. Any patient record of a patient at a state college or university student health  
19 service, University of South Dakota medical center or family practice center, or other university  
20 system medical center or clinic is confidential.

21 Section 38. Personal and financial information submitted to a state agency as part of a  
22 consumer complaint, or gathered pursuant to an investigation of a consumer complaint, is  
23 exempt. For purposes of this section, personal and financial information means the home  
24 address, home telephone number, social security number, consumer report, and credit, debit, or

1 electronic fund transfer card number of the complainant and any person on whose behalf the  
2 complaint is made, and any account number of a business or individual at a bank, brokerage, or  
3 other financial institution. Personal and financial information does not include the nature of the  
4 complaint, name of the complainant or any person on whose behalf the complaint was  
5 submitted, or the address or telephone number of the business that is the subject of the  
6 complaint.

7 Section 39. An autopsy photograph or other visual image or a video or audio recording of  
8 an autopsy is confidential. However, a criminal justice agency may use or disclose these  
9 materials for purposes of an investigation or prosecution. After redacting all information  
10 identifying the decedent, including name, address, and social security number, and anonymizing  
11 facial recognition, a medical examiner, coroner, or physician may use an autopsy photograph,  
12 image, or recording for:

- 13 (1) Medical or scientific teaching or training purposes;
- 14 (2) Teaching or training of law enforcement personnel;
- 15 (3) Teaching or training of attorneys or others with a bona fide professional need to use  
16 or understand forensic science;
- 17 (4) Conferring with medical or scientific experts; or
- 18 (5) Publication in a scientific or medical journal or textbook.

19 A medical examiner, coroner, or physician who has in good faith complied with this section  
20 is not subject to any penalty or liability for using an autopsy photograph, image, or recording.

21 The decedent's spouse, child, parent, or sibling, upon proof of the relationship, may view  
22 an autopsy photograph, image, or recording in the business office of a medical examiner,  
23 coroner, or physician who has possession of the materials, if there is not an active criminal  
24 investigation or prosecution. Disclosure of any autopsy photograph, image, or recording may

1 be obtained under section 33 of this Act.

2 Section 40. Records concerning individual applicants or recipients of economic assistance  
3 or support administered under the Department of Social Services or a community action agency,  
4 including benefits or services, are exempt. These exempt records include applications, income  
5 or eligibility verification, assessments, or other personal, medical, or financial data.

6 Section 41. Attorney work product is exempt from sections 3 to 10, inclusive, of this Act.  
7 Attorney work product and copies thereof are not open to public inspection, examination, or  
8 copying unless specifically made public by the public entity receiving such work product. Active  
9 investigatory work product is exempt.

10 Section 42. For the purposes of section 41 of this Act, attorney work product means any  
11 document or record that:

- 12 (1) Was prepared by an attorney representing a public entity or prepared at such an  
13 attorney's express direction;
- 14 (2) Reflects a mental impression, conclusion, litigation strategy, or legal theory of that  
15 attorney or the entity; and
- 16 (3) Was prepared exclusively for civil or criminal litigation, for adversarial  
17 administrative proceedings, or in anticipation of reasonably predictable civil or  
18 criminal litigation or adversarial administrative proceedings.

19 Section 43. For the purposes of section 41 of this Act, investigatory work product means  
20 records obtained, compiled, or prepared by a public entity in an effort to monitor and enforce  
21 compliance with the law or an order. Investigatory work product shall be considered active as  
22 long as it is related to monitoring or enforcement activity conducted with a reasonable good-  
23 faith belief that it will lead to enforcement of the law or an order.

24 Section 44. For the purposes of section 41 of this Act, adversarial administrative

1 proceedings include only those administrative proceedings where the administrative agency or  
2 institution of higher education acts as a complainant, respondent, or decision maker in an  
3 adverse administrative proceeding. This term does not refer to those instances where the  
4 administrative agency or institution acts in its own rule-making capacity.

5 Section 45. Following the final completion of the civil or criminal litigation or the  
6 adversarial administrative proceeding, including the exhaustion of all appellate remedies,  
7 attorney work product shall be made available for public disclosure by the public entity, unless  
8 another exception to sections 3 to 10, inclusive, of this Act, applies or if disclosure would have  
9 an adverse fiscal effect on the conduct or settlement of other pending or reasonably predictable  
10 civil or criminal litigation or adversarial administrative proceedings, or the attorney work  
11 product reflects mental impressions, opinions, conclusions, or legal theories regarding potential  
12 liability of a public entity.

13 Section 46. Nothing in sections 41 to 45, inclusive, of this Act, may be construed to waive  
14 any attorney-client privilege of a public entity regarding matters that do not pertain to public  
15 business.

16 Section 47. Any interested person may request an attorney general's opinion to review a  
17 written denial of a request for records or any other alleged violation of sections 3 to 10,  
18 inclusive, of this Act, by any public entity other than the Legislature or any committee thereof.  
19 A request made under this section shall be made within thirty days of the alleged violation. The  
20 attorney general may request and obtain information claimed to be exempt or confidential for  
21 the purpose of determining whether the information is exempt or confidential. No such  
22 information may be released by the attorney general and may be returned to the provider of the  
23 information. The attorney general shall issue to the public entity involved an opinion on the  
24 alleged violation unless the request is withdrawn by the person requesting the opinion or a civil

1 action has been filed involving the possible violation. In any opinion issued under this section,  
2 the attorney general shall base the opinion on the facts given by the public entity.

3 Section 48. If the attorney general issues a written opinion concluding that a violation has  
4 occurred, the public entity has seven days after the opinion is issued, regardless of whether a  
5 civil action is filed, to disclose the record, to issue a notice of a meeting that will be held within  
6 a reasonable time to correct the violation, or to take steps to correct any other violation. If the  
7 public entity fails to take the required action within the seven-day period and the person  
8 requesting the opinion prevails in a civil action brought, the person shall be awarded costs,  
9 disbursements, and reasonable attorney's fees in the action and on appeal. The consequences for  
10 failing to comply with an attorney general's opinion issued under this section are the same as  
11 for other attorney general's opinions, including potential personal liability for any person or  
12 persons responsible for the noncompliance.

13 Section 49. If a state-level public entity as defined in subdivision (1) of section 2 of this Act  
14 does not comply in full with the attorney general's opinion, and a civil action is brought or is  
15 reasonably predictable, the entity, at its sole cost and expense, shall retain separate counsel who  
16 has been approved and appointed by the attorney general as a special assistant attorney general  
17 to represent the entity in that action.

18 Section 50. A violation of sections 3 to 10, inclusive, of this Act, may be the subject of a  
19 civil action brought by an interested person or entity. The complaint shall be accompanied by  
20 a dated, written request for the requested record. If a court finds that any of these sections have  
21 been violated by a public entity, the court may award declaratory relief, an injunction, a writ of  
22 prohibition or mandamus, costs, disbursements, and reasonable attorney's fees against the entity.  
23 For an intentional or knowing violation of sections 3 to 10, inclusive, of this Act, the court may  
24 also award damages in an amount equal to one thousand dollars or actual damages caused by

1 the violation, whichever is greater. An action under this section shall be commenced within  
2 sixty days of the date the person knew or should have known of the violation or within thirty  
3 days of issuance of an attorney general's opinion on the alleged violation, whichever is later.  
4 Venue for an action is in the county where the entity has its principal office or, if the entity does  
5 not have a principal office within the state, in Hughes County.

6 The remedies provided in this section are not available if a violation of sections 3 to 10,  
7 inclusive, of this Act, has been corrected before a civil action is filed and if no person has been  
8 prejudiced or harmed by the delay. No interested person or entity may file a civil action under  
9 this section seeking attorney's fees or damages, or both, until at least three working days after  
10 providing notice of the alleged violation to the chief administrative officer for the public entity.

11 This exception does not apply if the attorney general has found, on a prior occasion, that the  
12 public entity has violated sections 3 to 10, inclusive, of this Act.

13 Section 51. A person acting in a legislative or quasi-legislative or judicial or quasi-judicial  
14 capacity for a political subdivision of the state who has a direct and substantial personal or  
15 pecuniary interest in a matter before that board, council, commission, or other body, shall  
16 disclose the fact to the body of which that person is a member, and may not participate in or  
17 vote on that particular matter without the consent of a majority of the rest of the body.

18 Section 52. Any security system plan kept by a public entity is exempt from the provisions  
19 of sections 3 to 10, inclusive, of this Act. For the purposes of this section, a security system plan  
20 includes all records, information, photographs, audio and visual presentations, schematic  
21 diagrams, surveys, recommendations, communications, or consultations or portions of any such  
22 plan relating directly to the physical or electronic security of a public facility, or any critical  
23 infrastructure, whether owned by or leased to the state or any of its political subdivisions, or any  
24 privately owned or leased critical infrastructure if the plan or a portion of the plan is in the

1 possession of a public entity; threat assessments; vulnerability and capability assessments  
2 conducted by a public entity, or any private entity; threat response plans; and emergency  
3 evacuation plans. For the purposes of this section, critical infrastructure means public buildings,  
4 systems, including telecommunications centers and computers, power generation plants, dams,  
5 bridges, and similar key resources, whether physical or virtual, so vital to the state that the  
6 incapacity or destruction of these systems would have a debilitating impact on security, state  
7 economic security, state public health or safety, or any combination of those matters. Nothing  
8 in this section may be construed to limit disclosure required for necessary construction,  
9 renovation, or remodeling work on a public building. Such disclosure does not constitute public  
10 disclosure.

11 Section 53. Any plans and only those portions of the records, information, surveys,  
12 communications, and consultations used to produce the plans relating to protection of the public  
13 or public officials against threats of violence or other harm are exempt from the provisions of  
14 sections 3 to 10, inclusive, of this Act.

15 Section 54. Security codes, passwords, combinations, or security-related plans used to  
16 protect electronic information or to prevent access to computers, computer systems, or computer  
17 or telecommunications networks of a public entity are confidential.

18 Section 55. Social security numbers in the possession of a public entity are confidential.  
19 However, social security numbers may be released as authorized in this section or by other state  
20 or federal law. A social security number may be released:

- 21 (1) For purposes of participation in retirement or other employment benefits programs;  
22 or  
23 (2) As authorized by the person to whom the social security number is assigned, that  
24 person's lawful agent or guardian, or by order of a court.

1 Section 56. Information in the files of private clients receiving legal services through the  
2 clinical education program of the University of South Dakota school of law is confidential  
3 unless the information has been requested and is properly obtainable through applicable  
4 discovery rules.

5 Section 57. An investigation record of a fire department or a rural fire protection district is  
6 confidential until the investigation:

- 7 (1) Is closed and not referred for further criminal investigation or prosecution; or
- 8 (2) The criminal investigation is no longer active.

9 Standard operating procedures written for emergency response, prefire action plans, plans  
10 of a building, pipeline, electrical system, or any other infrastructure plan in the hands of a fire  
11 department or rural fire protection district are exempt from sections 3 to 10, inclusive, of this  
12 Act. Individually identifiable health information obtained by a fire department or rural fire  
13 protection district is confidential.

14 Section 58. As used in this section, business associate has the meaning set forth in title 45,  
15 Code of Federal Regulations, part 160, section 103. If a public entity is acting as a business  
16 associate of another public entity, the entity acting as a business associate shall comply with all  
17 the requirements applicable to a business associate under title 45, Code of Federal Regulations,  
18 part 164, section 504, subsection e, paragraph 2.

19 Section 59. That § 1-27-1 be repealed.

20 ~~1-27-1. If the keeping of a record, or the preservation of a document or other instrument is~~  
21 ~~required of an officer or public servant under any statute of this state, the officer or public~~  
22 ~~servant shall keep the record, document, or other instrument available and open to inspection~~  
23 ~~by any person during normal business hours. Any employment examination or performance~~  
24 ~~appraisal record maintained by the Bureau of Personnel is excluded from this requirement.~~

1 ~~Any subscription or license holder list maintained by the Department of Game, Fish and~~  
2 ~~Parks may be made available to the public for a reasonable fee. State agencies are exempt from~~  
3 ~~payment of this fee for approved state use. The Game, Fish and Parks Commission may~~  
4 ~~promulgate rules pursuant to chapter 1-26 to establish criteria for the sale and to establish the~~  
5 ~~fee for the sale of such lists.~~

6 ~~Any automobile liability insurer licensed in the state, or its certified authorized agent, may~~  
7 ~~have access to the name and address of any person licensed or permitted to drive a motor vehicle~~  
8 ~~solely for the purpose of verifying insurance applicant and policyholder information. An insurer~~  
9 ~~requesting any such name and address shall pay a reasonable fee to cover the costs of producing~~  
10 ~~such name and address. The Department of Public Safety shall set such fee by rules promulgated~~  
11 ~~pursuant to chapter 1-26.~~

12 ~~Any list released or distributed under this section may not be resold or redistributed.~~  
13 ~~Violation of this section by the resale or redistribution of any such list is a Class 2 misdemeanor.~~

14 Section 60. That § 1-27-3 be repealed.

15 ~~1-27-3. Section 1-27-1 shall not apply to such records as are specifically enjoined to be held~~  
16 ~~confidential or secret by the laws requiring them to be so kept.~~