



PUBLIC RECORDS

Public records law, found in Title 1, Chapter 27, of South Dakota Codified Law, contains provisions for non-disclosure of certain public records and for records that are specifically exempt from disclosure. In addition, Title 1, Chapter 27, of South Dakota Codified Law contains procedures for response to public records requests.

This issue brief outlines public records law, as it applies to school districts.

(ASBSD Note: This issue brief contains a factual review of the law, but does not constitute legal advice. If you have specific legal questions that apply to your district, consult your legal counsel.)

DEFINITION OF PUBLIC RECORDS

Effective July 1, 2009, public records are based on a “presumption of openness.” Generally speaking, “presumption of openness” means that public records are available for public inspection unless deemed private by statute.

RECORDS THAT MAY NOT BE DISCLOSED

According to public records law, the following records are not subject to the new law. (Note: List edited for relevance to school districts.)

1. Student records other than routine directory information, as required by FERPA.
2. Medical records.
3. Any records that would, if released, impair present or pending contracts or collective bargaining negotiations.
4. Trade secrets and other proprietary or commercial information that if released would infringe on intellectual property rights, give advantage to business competitors, or serve no public service.
5. Anything that falls under attorney-client privilege.
6. Records received or created during an investigation conducted by law enforcement or a public body (applicable to district investigation of student and staff misconduct).
7. Appraisal information prior to the completion of the purchase or sale of real or personal property by a public body.
8. Personnel information other than salaries or routine directory information (personnel evaluations, for example).
9. Security information that, if released, would endanger public safety or public property.
10. Account information that identifies private citizens.
11. Public library records that identify an individual.
12. Correspondence, memoranda, calendars or logs of appointments, working papers and records of telephone calls of public officials or employees, including personal records of the same nature.
13. Documents, records or communications used to make decisions arising from any public official's duties.
14. Employment applications and related materials, except for those submitted by those *hired into* executive or policy making positions (emphasis added).
15. Social Security, credit or debit card, passport, and driver license numbers, including expiration dates.
16. Emergency response plans.
17. Any test questions, scoring keys, results, or other examination data for any examination to obtain licensure, employment, promotion or reclassification, or academic credit.

18. Documents declared closed by court order.
19. Records that would amount to an unreasonable release of personal information.
20. Information that, if released, would endanger the life or safety of any person.
21. Records not required to be filed if not otherwise public under state law.
22. Any record required to be closed by law.

RECORDS SPECIFICALLY EXEMPTED

In addition to records that may not be disclosed, the law creates specific exemptions for financial, commercial and proprietary information. (Note: List edited for relevance to school districts).

1. Information that would produce a private gain or public loss.
2. Financial information supplied to qualify for a construction bid.
3. Business information for loans or services.
4. Proprietary information.
5. Business and proprietary information in conjunction with applications for funded research projects.
6. Production records from a holder of an interest in real property.
7. Memoranda of opinions unless cited in a public legal action, including records an action that are not available through discovery.

HANDLING DISPUTES OVER THE CLASSIFICATION OF A RECORD AS PUBLIC

Though the law contains a presumption of openness, it also recognizes that not all records are in the public interest. In addition to the exemptions provided in law, public entities are allowed time to determine whether a record is public. And, in the event a request is denied, a legal process is available to review the public entity's determination.

The specific facts of any situation will likely determine the classification of a record as public or private. If a public entity is unable to determine whether a record is a public record, consult legal counsel.

STYLE AND FORM OF PUBLIC RECORDS

Public records law makes the following statements regarding the style and form of public records.

1. A public entity is not required to provide records in any other format than the record is originally stored.
2. A public entity, with cause, may redact any part of a document before disclosure (Note: a redaction is considered a partial denial of the request for records; see procedures for denial of request).

FEES FOR REPRODUCTION AND TRANSMISSION

State law allows public entities to charge for the reproduction or transmission of public records. In instances where no rate information is prescribed, public entities will defer to rules promulgated by the Bureau of Administration.

APPLICABLE FEES

Public entities may require payment for:

1. The actual cost of mailing or transmittal.
2. The actual cost of reproduction, or other fee established by statute or administrative rule.
3. Staff time needed to locate, assemble and reproduce a public record, if the request requires the dedication of more than one hour of staff time.
4. The electronic transmission of records, including a reasonable, proportionate representation of the amortization of any computer equipment, including software, needed to provide the record electronically.

FEES ESTIMATED IN EXCESS OF \$50

If the fee is estimated to be in excess of \$50:

1. The public entity must provide written notification of the estimate to the individual requesting the record;
2. In order to proceed with the delivery of the record, the requestor must agree, in writing, to pay the fee.
3. The fee may be waived by the public entity.

APPEAL OF FEES

If a person requesting the record disagrees with the estimated fees, the individual may appeal the estimate via civil action or to the Board of Hearing Examiners.

PROCEDURE FOR PUBLIC RECORD REQUESTS

Informal requests for public records may be processed at the discretion of the public entity, provided any applicable fees have been paid by the person requesting the record.

RESPONDING TO WRITTEN REQUESTS

If a public entity denies an informal request, in whole or in part, the request may enter a formal, written process. If a written request is made, the public entity must respond within 10 days by:

1. Providing the record, in whole or in part, to the requestor upon payment of any applicable fees;
2. Denying the request for the record; or
3. Acknowledging that the public entity has received the request and providing an estimate of the time reasonably required to respond.

REQUESTING MORE TIME TO COMPLY WITH THE REQUEST

According to law, public entities may only request more time to deliver the record for the following reasons:

1. The need to clarify the nature and scope of the written request;
2. To locate and assemble the information requested;
3. To notify any third persons or government agencies affected by the written request; or
4. To determine whether any of the information requested is not subject to disclosure and whether a denial should be made as to all or part of the written request.

ASKING FOR CLARIFICATION

If a written request is unclear, the public entity may ask the person requesting the record for clarification. If the requestor fails to respond to the request for clarification within 10 business days, the request is no longer valid.

DENYING REQUESTS

If a request is denied in whole or in part, the denial must be accompanied by a written statement of the reasons for a denial. A public entity must keep a record of all denied requests.

REQUESTS CONSIDERED DENIED

A request shall be considered denied if:

1. A public entity does not respond to a request within 10 business days; or
2. The public entity fails to comply with the time estimates needed to comply with the request without providing a revised estimate.

APPEAL OF REQUEST DENIAL

If a person requesting the record disagrees with a request's denial, the individual may appeal the decision, within 90 days of the denial, via civil action or to the Board of Hearing Examiners.

PUBLIC RECORDS OFFICER

According to South Dakota law, the public records officer for school districts is the district superintendent. The public records officer is charged with the duties and responsibilities of maintaining public records and complying with all public record requests.