

A Guide to South Dakota's FOI Appeals Process

How to file an open meetings law complaint. How to file a government records denial appeal.



Laws pertaining to public access to government meetings and government information are called freedom of information laws. In South Dakota, there also are laws setting out procedures for how citizens may make an appeal or file a complaint if they believe these FOI laws have been violated. This guide lists those laws governing the FOI appeals process in South Dakota.

Open Records Law

SDCL 1-27-1 is first of several South Dakota laws found in Chapter 1-27 of South Dakota codified laws dealing with public access to government records and information. See Chapter 1-27 for more information.

1-27-1. Public records open to inspection and copying. Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in § 1-27-1.1, are hereby fully empowered and authorized to examine such public record, and make memoranda and abstracts therefrom during the hours the respective offices are open for the ordinary transaction of business and, unless federal copyright law otherwise provides, obtain copies of public records in accordance with this chapter.

Each government entity or elected or appointed government official shall, during normal business hours, make available to the public for inspection and copying in the manner set forth in this chapter all public records held by that entity or official.

The following laws explain the process a citizen may use to appeal a denial by a government official to government records and information in South Dakota:

1-27-35. Informal requests for disclosure of records--Costs of retrieval or reproduction. Any informal request for disclosure of documents or records shall be made to the custodian of the record. The custodian of the record may then provide the requestor with the document or record upon payment of the actual cost of mailing or transmittal, the actual cost of reproduction, or other fee established by statute or administrative rule. A requestor that makes an informal request requiring the dedication of staff time in excess of one hour may be required to pay the cost of the

staff time necessary for the location, assembly, or reproduction of the public record. If any records are required or permitted to be made public upon request and no other rate is prescribed for reproduction or retrieval of such records, the Bureau of Administration shall establish, by rules promulgated pursuant to chapter 1-26, the maximum rate, or the formula for calculating rates, for reproduction and retrieval.

1-27-36. Estimate of retrieval and reproduction cost--Waiver or reduction of fee. For any informal request reasonably likely to involve a fee in excess of fifty dollars, the custodian shall provide an estimate of cost to the requestor prior to assembling the documents or records and the requestor shall confirm in writing his or her acceptance of the cost estimate and agreement to pay. The custodian may exercise discretion to waive or reduce any fee required under this section if the waiver or reduction of the fee would be in the public interest.

1-27-37. Written request for disclosure of records. If an informal request is denied in whole or in part by the custodian of a document or record, a written request may be made by the requestor pursuant to this section:

(1) A written request may be made to the public record officer of the public entity involved. The public record officer shall promptly respond to the written request but in no event later than ten business days from receipt of the request. The public record officer shall respond to the request by:

(a) Providing the record in whole or in part to the requestor upon payment of any applicable fees pursuant to §§ 1-27-35 and 1-27-36;

(b) Denying the request for the record; or

(c) Acknowledging that the public record officer has received the request and providing an estimate of the time reasonably required to further respond thereto;

(2) Additional time to respond to the written request under subsection (1)(c) of this section may be based upon the need to clarify the nature and scope of the written request, to locate and assemble the information requested, to notify any third persons or government agencies affected by the written request, or 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;

(3) If a written request is unclear, the public record officer may require the requestor to clarify which records are being sought. If the

requestor fails to provide a written response to the public record officer's request for clarification within ten business days, the request shall be deemed withdrawn and no further action by the public records officer is required;

(4) If the public record officer denies a written request in whole or in part, the denial shall be accompanied by a written statement of the reasons for the denial;

(5) If the public record officer fails to respond to a written request within ten business days, or fails to comply with the estimate provided under subsection (1)(3) of this section without provision of a revised estimate, the request shall be deemed denied.

1-27-38. Civil action or administrative review of denial of written request or estimate of fees. If a public record officer denies a written request in whole or in part, or if the requestor objects to the public record officer's estimate of fees or time to respond to the request, a requestor may within ninety days of the denial commence a civil action by summons or, in the alternative, file a written notice of review with the Office of Hearing Examiners. The notice of review shall be mailed, via registered or certified mail, to the Office of Hearing Examiners and shall contain:

- (1) The name, address, and telephone number of the requestor;
- (2) The name and business address of the public record officer denying the request;
- (3) The name and business address of the agency, political subdivision, municipal corporation, or other entity from which the request has been denied;
- (4) A copy of the written request;
- (5) A copy of any denial or response from the public record officer; and
- (6) Any other information relevant to the request that the requestor desires to be considered.

1-27-39. Response to notice of review. Upon receipt, the Office of Hearing Examiners shall promptly mail a copy of the notice of review filed pursuant to § 1-27-38 and all information submitted by the requestor to the public record officer named in the notice of review. The entity denying the written request may then file a written response to the Office of Hearing Examiners within ten business days. If the entity does not

file a written response within ten business days, the Office of Hearing Examiners shall act on the information provided. The Office of Hearing Examiners shall provide a reasonable extension of time to file a written response upon written request or agreement of parties.

1-27-40. Findings and decision of Office of Hearing Examiners. Upon receipt and review of the submissions of the parties, the Office of Hearing Examiners shall make written findings of fact and conclusions of law, and a decision as to the issue presented. Before issuing a decision, the Office of Hearing Examiners may hold a hearing pursuant to chapter 1-26 if good cause is shown.

1-27-40.1. Time for compliance with decision or appeal. If the office of hearing examiners enters a decision pursuant to § 1-27-40 concluding that certain records shall be released or that the fee charged pursuant to §§ 1-27-35 and 1-27-36 was excessive, the public entity has thirty days after the opinion is issued to comply with the order or to file an appeal pursuant to § 1-27-41.

1-27-40.2. Costs, disbursements, and civil penalty for unreasonable, bad faith denial of access. In a civil action filed pursuant to § 1-27-38 or upon an appeal filed pursuant to § 1-27-41, if the court determines that the public entity acted unreasonably and in bad faith the court may award costs, disbursements, and a civil penalty not to exceed fifty dollars for each day that the record or records were delayed through the fault of the public entity. Any civil penalty collected pursuant to this section shall be deposited into the state general fund.

1-27-41. Appeal. The aggrieved party may appeal the decision of the Office of Hearing Examiners to the circuit court pursuant to chapter 1-26. In any action or proceeding under §§ 1-27-35 to 1-27-43, inclusive, no document or record may be publicly released until a final decision or judgment is entered ordering its release.

1-27-42. Public record officer for the state, county, municipality, township, school district, special district, or other entity. The public record officer for the state is the secretary, constitutional officer, elected official, or commissioner of the department, office, or other division to which a request is directed. The public record officer for a county is

the county auditor or the custodian of the record for law enforcement records. The public record officer for a first or second class municipality is the finance officer or the clerk or the custodian of the record for law enforcement records. The public record officer for a third class municipality is the president of the board of trustees or the custodian of the record for law enforcement records. The public record officer for an organized township is the township clerk. The public record officer for a school district is the district superintendent or CEO. The public record officer for a special district is the chairperson of the board of directors. The public record officer for any other entity not otherwise designated is the person who acts in the capacity of the chief financial officer or individual as designated by the entity.

1-27-43. Form of notice of review--Office of Hearing Examiners' notice. The following forms are prescribed for use in the procedures provided for in §§ 1-27-35 to 1-27-42, inclusive, but failure to use or fill out completely or accurately any of the forms does not void acts done pursuant to those sections provided compliance with the information required by those sections is provided in writing.

NOTICE OF REVIEW

REQUEST FOR DISCLOSURE OF PUBLIC RECORDS

Date of Request: _____

Name of Requestor: _____

Address of Requestor: _____

Telephone Number of Requestor: _____

Type of Review Being Sought:

_____ Request for Specific Record

_____ Estimate of Fees

_____ Estimate of Time to Respond

Short Explanation of Review Being Sought Including Specific Records Requested:

Name of Public Record Officer: _____

Address of Public Record Officer: _____

Name of Governmental Entity: _____

Address of Governmental Entity: _____

You must include with the submission of this Notice of Review--Request for Disclosure of Public Records form the following information: (1) A copy of your written request to the public record officer; (2) A copy of the public record officer's denial or response to your written request, if any; and (3) Any other information relevant to the request that you desire to be considered.

I hereby certify that the above information is true and correct to the best of my knowledge.

Signature of Requestor: _____

The Notice of Review--Request for Disclosure of Public Records form shall be completed and submitted, via registered or certified mail, return receipt, to the following address:

Office of Hearing Examiners

500 E. Capitol Avenue

Pierre, South Dakota 57501

605-773-6811

**SOUTH DAKOTA OFFICE OF HEARING EXAMINERS
NOTICE OF REQUEST FOR DISCLOSURE**

OF PUBLIC RECORDS

TO: (Public Record Officer & Governmental Entity) _____
has filed a Notice of Review--Request for Disclosure of Public Records.
A copy of the Notice of Review--Request for Disclosure of Public
Records is attached for your review.

You may file a written response to the Notice of Review--Request for
Disclosure of Public Records within ten (10) business days of receiving
this notice, exclusive of the day of service, at the following address:

Office of Hearing Examiners

500 E. Capitol Avenue
Pierre, South Dakota 57501
605-773-6811

The Office of Hearing Examiners may issue its written decision on the
information provided and will only hold a hearing if it deems a hearing
necessary.

If you have any questions, please contact the Office of Hearing
Examiners.

Dated this ____ day of _____, 20____.

Office of Hearing Examiners

Open Meetings Law

*SDCL 1-25-1 is the first of several South Dakota laws found in Chapter
1-25 of South Dakota codified laws regarding public access to meetings
of government boards and commissions. See Chapter 1-25 for more
information.*

1-25-1. Official meetings open to the public--Exceptions--
Teleconferences--Violation as misdemeanor. The official meetings of
the state, its political subdivisions, and any public body of the state or
its political subdivisions are open to the public unless a specific law is

cited by the state, the political subdivision, or the public body to close
the official meeting to the public. For the purposes of this section, a
political subdivision or a public body of a political subdivision means any
association, authority, board, commission, committee, council, task force,
school district, county, city, town, township, or other agency of the state,
which is created or appointed by statute, ordinance, or resolution and is
vested with the authority to exercise any sovereign power derived from
state law.

It is not an official meeting of one political subdivision or public
body if its members provide information or attend the official meeting
of another political subdivision or public body for which the notice
requirements of § 1-25-1.1 have been met.

Any official meeting may be conducted by teleconference as defined
in § 1-25-1.2. A teleconference may be used to conduct a hearing or take
final disposition regarding an administrative rule pursuant to § 1-26-4. A
member is deemed present if the member answers present to the roll call
conducted by teleconference for the purpose of determining a quorum.
Each vote at an official meeting held by teleconference shall be taken by
roll call.

If the state, a political subdivision, or a public body conducts an
official meeting by teleconference, the state, the political subdivision, or
public body shall provide one or more places at which the public may
listen to and participate in the teleconference meeting. For any official
meeting held by teleconference, which has less than a quorum of the
members of the public body participating in the meeting who are present
at the location open to the public, arrangements shall be provided for the
public to listen to the meeting via telephone or internet. The requirement
to provide one or more places for the public to listen to the teleconference
does not apply to an executive or closed meeting.

If a quorum of township supervisors, road district trustees, or
trustees for a municipality of the third class meet solely for purposes of
implementing previously publicly-adopted policy, carrying out ministerial
functions of that township, district, or municipality, or undertaking a
factual investigation of conditions related to public safety, the meeting is
not subject to the provisions of this chapter.

A violation of this section is a Class 2 misdemeanor.

The following laws explain the process for filing a complaint alleging a violation of South Dakota's open meetings laws:

23A-2-1. (Rule 3) Complaint as statement of offense--Signature under oath--Traffic ticket issued by law enforcement officer. A complaint is a written statement of the essential facts constituting an offense charged. It must be signed under oath before a person authorized to administer oaths in the State of South Dakota. It is sufficient if a law enforcement officer, in lieu of signing a complaint for a Class 2 misdemeanor under oath, signs the following statement printed or written on a complaint or summons on a uniform traffic ticket: "I declare and affirm under the penalties of perjury that this complaint or summons has been examined by me, and to the best of my knowledge and belief, is in all things true and correct." Any person who signs this statement as provided for in this section, knowing the statement to be false or untrue, in whole or in part, is guilty of perjury.

1-25-6. Duty of state's attorney on receipt of complaint alleging chapter violation. If a complaint alleging a violation of this chapter is made pursuant to § 23A-2-1, the state's attorney shall take one of the following actions:

- (1) Prosecute the case pursuant to Title 23A;
- (2) Determine that there is no merit to prosecuting the case.

Upon doing so, the state's attorney shall send a copy of the complaint and any investigation file to the attorney general. The attorney general shall use the information for statistical purposes and may publish abstracts of such information, including the name of the government body involved for purposes of public education; or

(3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action.

1-25-6.1. Duty of state's attorney on receipt of complaint alleging violation by board of county commissioners. If a complaint alleges a violation of this chapter by a board of county commissioners, the state's attorney shall take one of the following actions:

- (1) Prosecute the case pursuant to Title 23A;
- (2) Determine that there is no merit to prosecuting the case. The attorney general shall use the information for statistical purposes and may publish abstracts of the information as provided by § 1-25-6;
- (3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action; or
- (4) Refer the complaint to another state's attorney or to the

attorney general for action pursuant to § 1-25-6.

1-25-7. Consideration by commission of complaint or written submissions alleging chapter violation--Findings--Public censure. Upon receiving a referral from a state's attorney or the attorney general, the South Dakota Open Meetings Commission shall examine the complaint and investigatory file submitted by the state's attorney or the attorney general and shall also consider signed written submissions by the persons or entities that are directly involved. Based on the investigatory file submitted by the state's attorney or the attorney general and any written responses, the commission shall issue a written determination on whether the conduct violates this chapter, including a statement of the reasons therefor and findings of fact on each issue and conclusions of law necessary for the proposed decision. The final decision shall be made by a majority of the commission members, with each member's vote set forth in the written decision. The final decision shall be filed with the attorney general and shall be provided to the public entity and or public officer involved, the state's attorney, and any person that has made a written request for such determinations. If the commission finds a violation of this chapter, the commission shall issue a public reprimand to the offending official or governmental entity. However, no violation found by the commission may be subsequently prosecuted by the state's attorney or the attorney general. All findings and public censures of the commission shall be public records pursuant to § 1-27-1. Sections 1-25-6 to 1-25-9, inclusive, are not subject to the provisions of chapter 1-26.

1-25-8. Open Meeting Commission--Appointment of members--Chair. The South Dakota Open Meeting Commission shall be comprised of five state's attorneys appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney general. A chair of the commission shall be chosen annually from the membership of the commission by a majority of its members.

1-25-9. Limitations on participation by commission members. No member of the commission may participate as part of the commission or vote on any action regarding a violation of this chapter if that member reported or was involved in the initial investigation, is an attorney for anyone who reported or was involved in the initial investigation, or represents or serves as a member of the governmental entity about whom the referral is made. The provisions of this section do not preclude a commission member from otherwise serving on the commission for other matters referred to the commission.

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