

BLACK HILLS STATE UNIVERSITY
Policy and Procedures Manual

SUBJECT: Open Records Request-Fulfillment Policy
NUMBER: 1.2

Office: Office of the President

Source: [South Dakota Codified Laws, Chapter 1-27](#) (Public Records and Files)

1. Purpose

The following constitutes the policy of Black Hills State University (“BHSU” or “university”) regarding response to requests for inspection and copies of “public records” as that term is defined under the South Dakota Open Records Law (“SDORL”), S.D. Codified Laws Ann. §§1-27-1 to -19. Section 2: “all records and documents, regardless of physical form, of or belonging to this state, any county, municipality, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing.”

The provisions of this policy set forth the university’s rules for the inspection of public records in the custody or control of BHSU. These rules are reasonably necessary for the protection of such records, and the prevention of unnecessary interference with the regular discharge of the duties of the university’s SDORL Records Officer.

2. Policy

This policy applies to all requests pursuant to S.D. Codified Laws Ann. §§1-27-1 to -19, to inspect and/or request public records in the custody or control of the university. Please be advised that BHSU is not obligated to act upon a SDORL request unless and until the request meets the requirements of this policy.

The university is not required by SDORL to construct or create a record that does not exist. Additionally, the university is not required to reformat or analyze information in a new way in order to respond to a request.

Requestors should understand that Section 6 of the SDORL provides the following exemptions from open records:

- a. Personal Information
 - i. Student records
 - ii. Medical records, drug/alcohol treatment records (not birth/death records)
 - iii. Personnel except salaries and “routine directory” information
 - iv. Employment applications except for individuals hired into “executive or policymaking positions”
 - v. Numbers for account payment, credit, social security number, PIN’s, driver’s license, credit card, passport, etc.
 - vi. Library records which would identify patron
 - vii. GFP camping records
 - viii. “Records which, if disclosed, would constitute an unreasonable release of personal information
- b. Security Information
 - i. Law enforcement investigations
 - ii. Criminal history and DOC procedures
 - iii. “[S]olely pertaining to protection of security of public or private property and persons....”
 - iv. Security standards for gaming commission
 - v. Emergency or disaster response, weapons, lists of emergency personnel or material
 - vi. “Records which, if released, could endanger the life of safety of any person;”
 - vii. Inmate discipline and individual juveniles w/DOC
- c. Proprietary Information
 - i. Trade secrets, research or scholarly work
 - ii. Appraisals and negotiations on real estate
 - iii. Archeological, paleontological, historical
 - iv. Section 7: specifically designated data
 - v. Valuable formulae and designs, financial data
 - vi. Proprietary data and trade secrets

- vii. SDCL 1-27-28 et seq, still apply
- viii. Economic development rules in Ch. 1-16
- d. Government Operation Information
 - i. Attorney/client and attorney work product
 - ii. Closed by court order, contract, or stipulation
 - iii. Correspondence, memos, calendars and appointment logs, working papers, telephone records
 - iv. Internal information not final statistical tabulations, policy direction, or staff direction
 - v. Section 8: drafts, notes, etc. expressing opinions or policy recommendation
 - vi. Section 9: records relevant to a dispute but not subject to discovery rules
 - vii. Section 15: records used in deliberative process
- e. Information Covered by Other Specific Statutes or Rules
 - i. FERPA protected items except university defined ‘directory information’
 - ii. SDCL 23-6-9: Limited release of criminal history information
 - iii. SDCL 1-21-17 State Fair contract terms
 - iv. 18 U.S.C. 2725 Driver’s license information
 - v. SDCL 1-33-19.2 and 1-16G-11: GOED received data and financials

3. Procedures

- a. Requests to Inspect Public Records in the Custody or Control of Black Hills State University
 - i. All requests must be submitted in writing to BHSU’s Office of the President, which will direct requests to the appropriate custodian of the relevant records. Each BOR University has an SDORL Records Officer, BHSU’s is Michael Isaacson. It is the responsibility of the BHSU SDORL Records Officer to review and act upon SDORL record requests.
 - ii. In addition to any requirements under this policy and SDORL, a request must include the requesting party’s name, and mailing and e-mail addresses, and must be sent to the following:

Office of the President
212 Woodburn Hall
Black Hills State University
Spearfish, SD 57799
Email: Laurie.Nichols@bhsu.edu

- iii. Requests may be delivered via mail, courier or facsimile. Requests sent via electronic mail will not automatically be accepted. Due to spam filters and similar computer software, the university cannot guarantee that an e-mail request has been received by the custodian. Should BHSU accept an e-mail request, the statutory time for response will begin when BHSU provides confirmation to the requesting party.
- iv. All requests for records must be specific as to the records sought and the relevant dates. Requests for correspondence must identify the parties to the correspondence. For any request that is vague or broadly stated, the custodian may require the requesting party to provide a more specific request.
- v. Time for response to SDORL requests that comply with this policy shall be as follows:
 - 1. The standard maximum time for production shall be ten (10) working days, beginning on the first business day after the request is received by BHSU.
 - 2. Such periods may be extended upon determination by BHSU that extenuating circumstances exist. The requesting party shall be notified of the extension within the original twenty-day period.
 - 3. These time periods for responding to requests shall not apply to (a) requests that do not comply with this policy, (b) requests that are so broad or burdensome they interfere with university employees' regular work duties, or (c) requests for which the requesting party has failed to pay the appropriate charges.
 - 4. Requests to inspect records shall not take priority over the regular work activities of university employees.

5. If a requesting party wishes to inspect available records in advance or in lieu of receiving copies, such inspection shall be by appointment only during normal working hours. Such inspection shall occur on-site and may be supervised by a university representative.

b. Charges for Copies of Requested Records

- i. The normal cost for requested documents shall be \$.25 per page or, for documents in non-standard formats, the actual duplication costs.
- ii. At BHSU's prerogative, the requesting party may also be charged a reasonable research, computer output, retrieval and review fee based on the actual cost of responding to the request.
- iii. While not required, BHSU may choose to reformat or analyze information in a new way in order to respond to a request. Where the record is a result of such reformatting or analysis, the requesting party will be charged, unless waived or reduced by BHSU.
- iv. Unless waived by BHSU, the requesting party will be charged the cost of transmitting the records to the requesting party by United States mail or other delivery service. If records are transmitted by e-mail, no fee will be charged for such transmission.
- v. BHSU will not transmit any records to the requesting party until full payment for the appropriate fees has been received.
- vi. If charges are expected to exceed \$25, BHSU will provide the requesting party with an estimate of the cost of responding prior to responding and may require a deposit. If the requesting party wishes to proceed once receiving an estimate, he or she must confirm this in writing. By providing this written confirmation to proceed, the requesting party agrees to pay all fees associated with responding to the request. The time between the date of BHSU's cost estimate and the date BHSU receives a written confirmation to proceed will not be counted against the time period set forth above.

4. Responsible Administrator

The SDORL Records Officer, or designee, is responsible for the ad hoc and annual review of this policy and its procedures. The University President is responsible for approval of this policy.

SOURCE: Approved by President Laurie Nichols on 8/31/2020.