

STATE	DPP ?	CASELAW	STATUTES	NOTES	Limited: Balance	Limited: People	Limited: Records	Limited: Procedure
Alabama	NO							
Alaska	YES	<p><u>Capital Information Group v. Office of the Governor [CIG]</u>, 923 P.2d 29 (Alaska 1996) (adopting a qualified deliberative process privilege; communication at issue must be (1) "pre-decisional" to be protected; and (2) "deliberative" in nature, reflecting the give and take of the deliberative process and containing opinions, recommendations or advice about agency policies) ("We consider cases dealing with the Freedom on Information Act, 5 U.S.C. § 552, and its 'exemption 5' instructive as they relate to the deliberative process privilege.")</p> <p><u>Gwich'in Steering Committee v. Officer of the Governor</u>, 10 P.3d 572 (Alaska 2000) (once the government meets the threshold to show deliberative and pre-decisional, the burden shifts to the party seeking records to overcome the presumption of confidentiality) ("generally, it is difficult for a requester to override the presumptive privilege" but relevant factors to consider include "the degree of confidentiality and sensitivity of the communication; the time elapsed after deliberation concluded and after communications were made; and whether deliberation is ongoing")</p>			Y			
Arizona	NO	<u>Rigel Corp. v. Arizona</u> , 225 Ariz. 65, 234 P.3d 633 (Ct. App. 2010) (finding no statutory deliberative process privilege and declining to create such a privilege under the common law)						

Arkansas	YES	<p><u>Laman v. McCord</u>, 245 Ark. 401, 432 S.W.2d 753 (1968) (Only the State legislature can exempt records from the FOIA; the courts are not free to fashion their own exemptions via the common law)</p>	<p>A.C.A. § 25-19-105(b)(7): Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General</p>			Y		
California	YES	<p><u>Times Mirror Co. v. Superior Court</u>, 53 Cal. 3d 1325, 283 Cal. Rptr. 893, 813 P.2d 240 (1991).</p> <p><u>ACLU v. Superior Court</u>, 3 Cal. 5th 1032, 1043, 221 Cal. Rptr. 3d 832, 400 P.3d 432 (2017) (Burden of proof is on the proponent of non-disclosure to "demonstrate clear overbalance on the side of confidentiality.")</p>	<p>Cal. Gov't Code § 6254: Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records:</p> <p>(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.</p> <p>Cal. Gov't Code § 6255</p> <p>(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.</p>		Y		Y	

Colorado	YES	<p><u>City of Colo. Springs v. White</u>, 967 P.2d 1042, 1054 (Colo. 1998) (expressly recognizing the existence of a "deliberative process" privilege where the government bears the initial burden of proof in asserting the privilege, and if the government meets this initial burden, the burden shifts to the requester. The privilege may be overcome if the requester can show an interest in disclosure greater than the government's interest in confidentiality.)</p>	<p>C.R.S. § 24-72-204(3)(a): The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):</p> <p>(XIII): Records protected under the common law governmental or "deliberative process" privilege, if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived. The general assembly hereby finds and declares that in some circumstances, public disclosure of such records may cause substantial injury to the public interest. If any public record is withheld pursuant to this subparagraph (XIII), the custodian shall provide the applicant with a sworn statement specifically describing each document withheld, explaining why each such document is privileged, and why disclosure would cause substantial injury to the public interest. If the applicant so requests, the custodian shall apply to the district court for an order permitting him or her to restrict disclosure. The application shall be subject to the procedures and burden of proof provided for in subsection (6) of this section. All persons entitled to claim the privilege with respect to the records in issue shall be given notice of the proceedings and shall have the right to appear and be heard. In determining</p>		Y		Y	Y
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Connecticut	NO	<u>Van Norstrand v. Freedom of Info. Comm'n</u> , 559 A.2d 200, 204 (Conn. 1989)	<p>Conn. Gen. Stat. §1-210(b): Nothing in the Freedom of Information Act shall be construed to require disclosure of:</p> <p>(1) Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;</p> <p>Conn. Gen. Stat. §1-210(e): Notwithstanding the provisions of subdivisions (1) and (16) of subsection (b) of this section, disclosure shall be required of:</p> <p>(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency;</p>					
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DC	YES		<p>D.C. Code Ann. § 2-534(a)(4): Inter-agency or intra-agency memorandums or letters, including memorandums or letters generated or received by the staff or members of the Council, which would not be available by law to a party other than a public body in litigation with the public body.</p> <p>D.C. Code Ann. § 2-534(e): All exemptions available under this section shall apply to the Council as well as agencies of the District government. The deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege are incorporated under the inter-agency memoranda exemption listed in subsection (a)(4) of this section, and these privileges, among other privileges that may be found by the court, shall extend to any public body that is subject to this subchapter.</p>					
Delaware	NO	<p><u>State v. Figg Bridge Eng'rs, Inc.</u>, 79 A.3d 259 (Del. Super. Ct. 2013)</p>					Y	

Florida	YES	<p><u>Shevin v. Byron, Harless, Schaffer, Reid & Associates Inc.</u>, 379 So. 2d 633, 640 (1980) (public records do not “constitute mere precursors of governmental ‘records’ and are not, in themselves, intended as final evidence of the knowledge to be recorded”) (declining to find a blanket exception to the public records law for any document labeled as a “draft” or “notes” or otherwise designated as other than a final copy - if the purpose of the document is to perpetuate, communicate, or formalize knowledge, it is a public record notwithstanding that it is not in final form or the ultimate product of the public official or agency.)</p>					Y	
Georgia	NO	<p><u>Hardaway Co. v. Rives</u>, 422 S.E.2d 854 (Ga. 1992)</p>						
Idaho	NO	<p><u>Idaho Press Club, Inc. v. Ada County</u>, No. CV 01-19-16277 (Idaho Dist. Ct. 2019)</p>						

<p>Illinois</p>	<p>YES</p>	<p><u>Fisher v. Office of the Illinois Attorney General</u>, 2021 IL App (1st) 200225</p> <p><u>Chicago Tribune Co. v. Cook County Assessor's Office</u>, 2018 IL App (1st) 170455</p> <p><u>Harwood v. McDonough</u>, 344 Ill. App. 3d 242 (2003) (finding that the State exemption is equivalent to the "deliberative process" exemption found in section 552(b)(5) of the federal Freedom of Information Act)</p>	<p>5 ILCS 140/7 (1): When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:</p> <p>(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.</p>					
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Indiana	YES	<u>Ind. Newspapers v. Ind. Univ.</u> , 787 N.E.2d 893 (Ind. App. 2003)	Ind. Code §§ 5-14-3-4(b): Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency: (6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.					
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Iowa	YES		<p>Iowa Code § 22.7: The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:</p> <p>(65) Tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended and in a form prior to the form in which it is submitted for use or used in the actual formulation, recommendation, adoption, or execution of any official policy or action by a public official authorized to make such decisions for the governmental body or the government body. This subsection shall not apply to public records that are actually submitted for use or are used in the formulation, recommendation, adoption, or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body.</p>				Y	
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Kansas	YES		<p>K.S.A. 45-221(a): Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:</p> <p>(20): Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.</p>					
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<p>Kentucky</p>	<p>YES</p>	<p><u>City of Louisville v. Courier-Journal & Louisville Times Co.</u>, 637 S.W.2d 658 (Ky. Ct. App. 1982)</p> <p><u>Kentucky State Bd. of Medical Licensure v. Courier-Journal & Louisville Times Co.</u>, 663 S.W.2d 953, 956 (Ky. Ct. App. 1983) ("The public has a right to know what complaints have been made to a public agency once final action is taken. Once notes or recommendations are adopted by the public agency as part of its action the preliminary characterization of those notes or recommendations is lost. Such records would lose their exemption . . . and would become releasable")</p> <p><u>University of Kentucky v. Courier-Journal</u>, 830 S.W.2d 373, 378 (Ky. 1992) ("[I]nvestigative materials that were once preliminary in nature lose their exempt status once they are adopted by the agency as part of its action.").</p>	<p>Ky. Rev. Stat. 61.878(1)(i): Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency</p> <p>Ky. Rev. Stat. 61.878(1)(j): Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended</p>					
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Louisiana	NO	<u>Bartels v. Roussel</u> , 303 So. 2d 833 (La. App. 1974)		DPP added in 2009, then abused and removed in 2015 (LA R.S. § 44:5). Testimony about abuse of privilege by Governor and agencies (ref. to problems with federal privilege), https://senate.la.gov/s_video/videoarchive.asp?v=senate/2015/04/042915S~G_0 (Senate committee); https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2015/may/0520_15_HG (House committee); Public Affairs Research Group report referenced in testimony (https://parlouisiana.				
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Maine	YES		<p>1 M.R.S.A. § 402(3): The term “public records” means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:</p> <p>(C) Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;</p> <p>(J) Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by</p>	<p>Subsection 2, paragraph F references "any advisory organization, including any authority, board, commission, council, task force, or similar organization of an advisory nature, established, authorized or organized by law or resolve or Executive order issued by the Governor [barring an exception]"</p>		Y		
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<p>Maryland</p>	<p>YES</p>	<p><u>Off. of the Governor v. Wash. Post Co.</u>, 360 Md. 520 (2000).</p> <p><u>Maryland Bd. of Physicians v. Geier</u>, 225 Md. App. 114 (2015) (Generally, there is a presumptive privilege when the government claims the deliberative process exemption, with a burden on the party seeking to compel disclosure)</p>	<p>Md. Code § 4-344: A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.</p>	<p>The Maryland Attorney's General Office has suggested that the presumption should be in favor of disclosure "unless the responsible agency official can demonstrate specific reasons why agency decision-making may be compromised if the questioned records are released." Maryland Public Information Act Manual 3-37 (Sept. 2021).</p>				
<p>Massachusetts</p>	<p>YES</p>	<p><u>Babets v. Sec'y of the Exec. Office of Human Servs.</u>, 403 Mass. 230 (1988) (finding privilege extends only to ongoing deliberative processes) ("The Legislature has thus chosen to insulate the deliberative process from scrutiny only until it is completed, at which time the documents thereby generated become publicly available.")</p>	<p>Mass. Gen. Laws ch. 4, § 7(26)(d): inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based</p>				<p>Y</p>	

Michigan	YES	<p><u>Herald v. Univ. Bd. of Regents</u>, 719 N.W.2d 19 (Mich. 2006)</p> <p><u>See Truel v. City of Dearborn</u>, 804 N.W.2d 744, 751 (Mich. App. 2010)</p>	<p>Mich. Comp. Laws Ann. § 15.243(1)(m): Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.</p>		Y			
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Minnesota	YES		<p>Minn. Stat. § 13.64(1) (a) Notes and preliminary drafts of reports created, collected, or maintained by the Management Analysis Division, Department of Management and Budget, and prepared during management studies, audits, reviews, consultations, or investigations are classified as confidential or protected nonpublic data until the final report has been published or preparation of the report is no longer being actively pursued. (b) Data that support the conclusions of the report and that the commissioner of management and budget reasonably believes will result in litigation are confidential or protected nonpublic until the litigation has been completed or until the litigation is no longer being actively pursued. (c) Data on individuals that could reasonably be used to determine the identity of an individual supplying data for a report are private if: (1) the data supplied by the individual were needed for a report; and (2) the data would not have been provided to the Management Analysis Division without an assurance to the individual that the individual's identity would remain private, or the Management Analysis Division reasonably believes that the individual would not have provided the data.</p> <p>Minn. Stat. § 13.82(25): Data that reflect deliberative processes or investigative techniques of law enforcement agencies are confidential data on</p>			Y	Y	
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Mississippi	NO	<u>Buford v. Holladay</u> , 133 F.R.D. 487 (S.D. Miss. 1990)						
Missouri	YES	<p><u>Missouri Prot. & Advocacy Servs. v. Allan</u>, 787 S.W.2d 291, 293-94 (Mo. Ct. App. 1990)</p> <p><u>State ex rel. Moore v. Brewster</u>, 116 S.W.3d 630 (Mo. App. 2003)</p>	<p>Mo. Rev. Stat. § 610.010(6): The term 'public record' shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record.</p>				Y	

Montana	NO			Montana's state constitution provides for a "Right to Know" - "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure." Mont. Const. Art. II, Sec. 9				
Nebraska	NO							
Nevada	YES	<p><u>DR Partners v. Bd. of Cnty. Comm'rs</u>, 116 Nev. 616 (2000).</p> <p><u>Clark Cnty. Sch. Dist. v. Las Vegas Rev. J.</u>, 134 Nev. 700 (2018).</p>	<p>Nev. Rev. Stat. § 239.010: "<u>unless otherwise declared by law to be confidential</u>, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person."</p>		Y			

<p>New Hampshire</p>	<p>YES</p>	<p><u>ATV Watch v. New Hampshire Dep't of Transp.</u>, 20 A.3d 919 (N.H. 2011) (The words "available to a quorum of a majority of the members of a public body" mark "a point at which documents become subject to agency deliberation and action," and this is "the point at which the legislature intended to make agency documents subject to disclosure.")</p>	<p>N.H. Rev. Stat. Ann. § 91-A:5: (VIII) Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding. (IX) Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.</p>					
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New Jersey	YES	<p><u>In re Liquidation of Integrity Ins. Co.</u>, 754 A.2d 1177, 1182 (N.J. 2000)</p> <p><u>Educ. L. Ctr. v. New Jersey Dept. of Educ.</u>, 966 A.2d 1054, 1061 (N.J. 2009) (Once the government demonstrates that the relevant materials meet these threshold requirements, the burden shifts to the requesting party, and privilege applies unless that party can demonstrate "that the need for the materials overrides the government's interest in confidentiality.")</p>	<p>N.J. Stat. Ann. § 47:1A-1.1: "Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.</p>		Y			
New Mexico	NO	<p><u>Edenburn v. New Mexico Dept. of Health</u>, 299 P.3d 424, 429 (N.M. App. 2012)</p>						

New York	YES	<p><u>Xerox v. Town of Webster</u>, 65 N.Y.2d 131, 133 (1985)</p> <p><u>Ingram v. Axelrod</u>, 456 N.Y.S.2d 146, 146 (N.Y. App. Div. 1982)</p> <p><u>Russo v. Nassau Cty. Cmty. Coll.</u>, 81 N.Y.2d 690, 699 (Ct. App. 1993)</p> <p><u>Gould v. New York City Police Dep't</u>, 89 N.Y.2d 267, 276 (1996) (Even if a record falls within the exemption, an agency must review the record for the purpose of disclosing any portions which are accessible)</p>	<p>N.Y. Pub. Off. § 87 (McKinney): [A]gency may deny access to records or portions thereof that:</p> <p>(g) are inter-agency or intra-agency materials which are not:</p> <ul style="list-style-type: none"> i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; iv. external audits, including but not limited to audits performed by the comptroller and the federal government 					
North Carolina	NO	<p><u>News & Observer Pub. Co., Inc. v. Poole</u>, 330 N.C. 465 (1992)</p>						

North Dakota	YES		<p>N.D.C.C. § 44-04-17.1(16): "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.</p> <p>N.D.C.C. § 44-04-18(9): It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.</p>				Y	
Ohio	NO	<p><u>State ex rel. Calvary v. Upper Arlington</u>, 729 N.E.2d 1182 (Ohio 2000)</p> <p><u>State ex rel. Carr v. London Corr. Inst.</u>, 41 N.E.3d 1203, 1211 (Ohio 2015)</p>						
Oklahoma	NO							

Oregon	YES	<p><u>Coos County v. Oregon Dep't of Fish & Wildlife</u>, 739 P.2d 47 (Or. 1987) ("Any 'chilling effect' that disclosure may have on future communications within the agency, because of potential embarrassment to the agency or its employes [sic], is not sufficient, in and of itself, to overcome the presumption favoring disclosure.")</p> <p><u>Kluge v. Oregon State Bar</u>, 19 P.3d 938 (Or. App. 2001)</p> <p><u>Bay Area Health Dist. v. Griffin</u>, 698 P.2d 977, 980 (Or. Ct. App. 1985)</p>	<p>ORS ST § 192.355 (previously codified at ORS ST § 192.502): The following public records are exempt from disclosure under ORS 192.311 to 192.478: (1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.</p>		Y			
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<p>Pennsylvania</p>	<p>YES</p>	<p><u>Joe v. Prison Health Servs., Inc.</u>, 782 A.2d 24, 33 (Pa. Commw. 2001)</p> <p><u>Carey v. Pennsylvania Dep't of Corr.</u>, 61 A.3d 367, 379 (Pa. Commw. 2013) (To qualify for the exemption, an agency must: (1) show that the communication preceded a deliberative decision and (2) provide evidence of specific facts demonstrating how that information relates to a particular deliberative decision)</p> <p><u>Township of Worcester v. Off. of Open Recs.</u>, 129 A.3d 44, 61 (Pa. Commw. 2016)</p>	<p>PA ST 65 P.S. § 67.708(10):</p> <p>(i) A record that reflects:</p> <p>(A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.</p> <p>(B) The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.</p> <p>(ii) Subparagraph (i)(A) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.</p>					
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Rhode Island	YES		<p>R.I. Gen. Laws § 38-2-2(4)(K): Preliminary drafts, notes, impressions, memoranda, working papers, and work products, including those involving research at state institutions of higher education on commercial, scientific, artistic, technical, or scholarly issues, whether in electronic or other format; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.</p>					
South Carolina	NO	<p><u>Tobacoville USA, Inc. v. McMaster</u>, 692 S.E.2d 526, 530 (S.C. 2010)</p>						

South Dakota	YES		<p>S.D. Codified Laws § 1-27-1.5(12): Correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees;</p> <p>S.D. Codified Laws § 1-27-1.7: Drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended are exempt from disclosure pursuant to §§ 1-27-1 to 1-27-1.15, inclusive.</p> <p>S.D. Codified Laws § 1-27-1.9: No elected or appointed official or employee of the state or any political subdivision may be compelled to provide documents, records, or communications used for the purpose of the decisional or deliberative process relating to any decision arising from that person's official duties. Any document that is otherwise already public is not made confidential by reason of having been used in deliberations.</p>					
Tennessee	YES	<p><u>Davidson v. Bredesen</u>, No. M2012-2374 (Tenn. App. 2013) (recognizing a common law deliberative process privilege that applies to non-factual "communications between high government officials and those who advise and assist them in the performance of their official duties"</p>				Y		

Texas	YES	<p><u>City of Garland v. Dallas Morning News</u>, 22 S.W.3d 351 (Tex. 2000).</p>	<p>Tex. Gov't Code Ann. § 552.111: An interagency or intraagency memorandum or letters that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021.</p>					
Utah	YES	<p><u>S. Utah Wilderness Alliance v. Automated Geographic Reference Ctr.</u>, 200 P.3d 643, 656 (Utah 2008)</p>	<p>Utah Code Ann. § 63G-2-103(22)(b): "Record" does not mean:</p> <ul style="list-style-type: none"> (ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working; (xi) a note or internal memorandum prepared as part of the deliberative process by: <ul style="list-style-type: none"> (A) a member of the judiciary; (B) an administrative law judge; (C) a member of the Board of Pardons and Parole; or (D) a member of any other body, other than an association or appeals panel as defined in Section 53G-7-1101, charged by law with performing a quasi-judicial function; <p>Utah Code Ann. § 63G-2-301(3): The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:</p> <ul style="list-style-type: none"> (i) empirical data contained in drafts if: <ul style="list-style-type: none"> (i) the empirical data is not reasonably available to the requester elsewhere in similar form; and (ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release; (j) drafts that are circulated to anyone other than: <ul style="list-style-type: none"> (i) a governmental entity; (ii) a political subdivision; 			Y	Y	

Vermont	YES		<p>1 V.S.A. § 317(c): The following public records are exempt from public inspection and copying:</p> <p>(4) Records that, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the General Assembly and the Executive Branch agencies of the State of Vermont.</p> <p>(17) Records of interdepartmental and intradepartmental communications in any county, city, town, village, town school district, incorporated school district, union school district, consolidated water district, fire district, or any other political subdivision of the State to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with section 312 of this title.</p>			Y		
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Virginia	YES		<p>Va. Code Ann. § 2.2-3705.7(2): Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in the Commonwealth. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.</p>			Y	Y	
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Washington	YES	<p><u>Progressive Animal Welfare Soc. v. U. of Washington</u>, 884 P.2d 592, 599 (Wash. 1994) (An agency asserting the exemption "must show that the records contain predecisional opinions or recommendations of subordinates expressed as part of a deliberative process; that disclosure would be injurious to the deliberative or consultative function of the process; that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally, that the materials covered by the exemption reflect policy recommendations and opinions and not the raw factual data on which a decision is based.")</p>	<p>RCW 42.56.280: Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action.</p>				Y	
West Virginia	YES	<p><u>Daily Gazette Co. v. W. Va. Dev. Office</u>, 482 S.E.2d 180 (W. Va. 1996) (The government bears the burden of showing the exception applies and must specifically assert the deliberative process privilege for each document it asserts is covered by the exemption.)</p>	<p>W. Va. Code § 29B-1-4(a): There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under this article: (8) Internal memoranda or letters received or prepared by any public body</p>					
Wisconsin	NO	<p><u>Sands v. Whitnall Sch. Dist.</u>, 754 N.W.2d 439, 456-58 (Wis. 2008)</p>						

<p>Wyoming</p>	<p>YES</p>	<p><u>Aland v. Mead</u>, 327 P.3d 752, 766 (Wyo. 2014) (To assert the deliberative process, an agency must show that the record being withheld "1) is an interagency or intraagency communication, 2) the communication is pre-decisional and deliberative, and 3) disclosure is not in the public interest.") (Under the third prong, the agency must weigh the government interest in nondisclosure against the public's interest in transparency; the burden of proof is on the agency to overcome the presumption in favor of disclosure.)</p>	<p>Wyo. Stat. Ann. § 16-4-203(b): The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest: (v) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the agency</p>		<p>Y</p>			
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