

# Cost Rules for Public Information

Thursday, January 31, 2019  
9:30–10:30 a.m.

*Ms. Jahmma Ward*  
*Assistant Attorney General*  
*Office of the Attorney General*

Discussion on the cost rules associated with the production of information under the Public Information Act. The topics will include, among other things, a discussion of the general rules, proper cost estimates, and how to respond to cost complaints..

2019 County  
and District Clerks'  
Association of Texas  
Winter Education  
Conference

**January 28-31, 2019**


Embassy Suites by  
Hilton Hotel  
Conference Center & Spa,  
San Marcos

**Piece of the  
Puzzle, Part of  
the Whole**



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THE ATTORNEY GENERAL OF TEXAS  
**KEN PAXTON**



## Cost Rules

Jahna Ward  
Assistant Attorney General  
Open Records Division

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### Before You Calculate Costs

- ▶ Copies or Inspection
  - This choice is left up to the requestor
- ▶ Paper records, electronic records, or both

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### General Rule—Copies

- ▶ Section 552.261
  - The charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead.

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### Exceptions

- ▶ Less than 50 pages of paper records
  - Then only the cost of the copies
  - No labor or overhead
    - UNLESS records are kept in two or more separate buildings or a remote storage facility

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### Charge for Paper Copy Provided by District or County Clerk

- ▶ Section 552.265 of the Government Code
  - The charge for providing a paper copy made by a district or county clerk's office shall be the charge provided by Chapter 51 of this code, Chapter 118, Local Government Code, or other applicable law.
- ▶ Section 118.011(a)(4) of the Local Government Code
  - \$1.00 for each page or part of a page for non-certified copies

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### What are the other allowable charges for copies?

- ▶ \$1.00 per CD
- ▶ \$3.00 per DVD
- ▶ Actual Costs for a USB drive or hard drive
- ▶ \$15.00 per hour for labor
- ▶ Twenty percent of the labor as overhead

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### Labor Charges (Slide 1 of 3)

- ▶ 1 Texas Administrative Code 70.3(d)
- ▶ \$15.00 per hour for the time spent to:
  - Locate
  - Compile
  - Manipulate data
  - Reproduce information

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### Labor Charges (Slide 2 of 3)

- ▶ Locate
  - Time spent finding the records that are responsive to the request
- ▶ Compile
  - Time spent gathering and pulling together the responsive information
- ▶ Manipulate data
  - Section 552.003(4) of the Government Code
  - Time spent modifying, reordering, or decoding information with human intervention
  - Example: Redacting information
- ▶ Reproduce information
  - Time spent copying the responsive records

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### Labor Charges (Slide 3 of 3)

- ▶ 1 Texas Administrative Code 70.3(d)(3)
  - May not charge labor for the time spent to:
    - Determine whether exceptions apply
    - Research or prepare a request for ruling
- ▶ Note: You cannot charge for the time spent looking for responsive information if none is found.
- ▶ Remember: You do not need to create any new information, conduct legal research, or answer questions.
  - Open Records Decision Nos. 563, 555

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## Cost Estimates Section 552.2615

- ▶ ≤ \$40.00
  - Invoice or bill the requestor upon completion of work.
- ▶ > \$40.00 and ≤ \$100.00
  - Must provide a cost estimate prior to the work being completed
- ▶ > \$100.00
  - May request a deposit.

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## What needs to be in a cost estimate? (Slide 1 of 2)

- ▶ Section 552.2615(a) of the Government Code, the statement of estimated charges must contain certain notices
  - You must inform the requestor that inspection is available if it is a less costly option (it almost always is).
  - You must inform a requestor that they must respond within 10 business days and the manners in which they may respond.
- ▶ Note: You cannot withdraw a request by operation of law unless the written itemized statement contains the proper notices.

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## What needs to be in a cost estimate? (Slide 2 of 2)

- ▶ Section 552.2615(b)
  - Ways in which the requestor may properly respond
    - Accept the estimated charges
    - Modify the request in response to the itemized statement
    - Notify you that a complaint has been sent to the Attorney General's Office alleging the requestor has been overcharged

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### Add labor costs?

- ▶ Yes
- ▶ Request includes electronic information.
- ▶ The county clerk determines it will require 30 minutes to locate the files and download them to a CD
- ▶ \$7.50
  - .5 hours x \$15.00

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### Did the requestor ask for copies of nonstandard documents?

- ▶ Yes
- ▶ Electronic copies
  - \$1.00 for a CD
- ▶ Note: This can cover everything from a diskette to microfilm to maps.

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### Are overhead charges applicable?

- ▶ Yes
  - Because there was a labor charge
- ▶ \$1.50
  - 20% of \$7.50

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## Overhead

- ▶ Section 70.3(e)
- ▶ Whenever a labor charge is applicable to a request for copies, a governmental body may include overhead.
- ▶ Overhead is computed at 20% of the labor charge

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## Are computer resource charges applicable?

- ▶ No
  - This was a simple search completed in a matter of seconds
- ▶ When might they apply?
  - When the computer is processing a request for a measurable amount of time
  - Never charged for the same time a labor charge is already being charged to a requestor.

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## Computer Resource Charge

- ▶ Section 70.3(h)
- ▶ Based on the type of computer being used:
  - \$10.00 per CPU minute for a mainframe
  - \$1.50 per CPU minute for a midsized
  - \$2.20 per clock hour for a client/server
  - \$1.00 per clock hour for a PC/LAN
- ▶ Actual time required by a computer to execute a program

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### Are remote document retrieval charges applicable?

- ▶ No
  - All of this information was located at the county clerk's office.
- ▶ When might they apply?
  - If the requested information was stored off-site
  - For example, because it's older and out of use

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### Remote Document Retrieval

- ▶ Section 70.3(g)
- ▶ If documents are stored off-site, it is permissible to recover costs if a request otherwise qualifies for labor.
- ▶ A governmental body may charge the fee a private company charges the governmental body to locate, retrieve, deliver, and return to storage.
  - No other labor costs may be added for these tasks.

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### Will there be charges for miscellaneous supplies?

- ▶ Yes
  - ▶ \$2.00 for a padded envelope to send the CD
- ▶ Section 70.3(i)
  - Actual cost of miscellaneous supplies

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### Will there be postage?

- ▶ Yes
- ▶ \$3.00 for postage
- ▶ Section 70.3(j)
  - Actual cost necessary to transmit the information
  - May not charge for certified mail

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### Final Costs

#### Itemized List of Charges:

Description	Qty x Price	Total
CD	1 x \$1.00	\$1.00
Labor minutes (\$15/hour)	30 x \$0.25	\$7.50
Overhead charges	20% of \$7.50	\$1.50
Postage cost		\$3.00
Miscellaneous supplies	Padded envelope	\$2.00
<b>Total cost</b>		<b>\$15.00</b>

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### Bulk request

- ▶ I would like all real property images and indices maintained in digital from January 1, 1901 to present day.

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- ▶ Responsive Information:
  - There are 20,000 responsive documents.
  - The clerk's office estimates it will be able to fit them onto a 1TB hard drive.
  - It will take a total of 30 minutes to locate and copy.

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**Add labor costs?**

- ▶ Yes
- ▶ Request includes electronic information.
- ▶ The county clerk determines it will required 15 minutes to locate the files and download them to a CD
- ▶ \$7.50
  - .5 hours x \$15.00

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**Did the requestor ask for copies of nonstandard documents?**

- ▶ Yes
- ▶ Electronic copies
  - \$65.00 for a 1TB hard drive
- ▶ Note: This is the actual cost the clerk's office paid.
- ▶ Can the requestor provide a hard drive?

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### Are overhead charges applicable?

- ▶ Yes
  - Because there was a labor charge
- ▶ \$1.50
  - 20% of \$7.50

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### Are computer resource charges applicable?

- ▶ Yes
  - Although telling the computer which files to copy only took 30 minutes. It took the computer 4 hours to actually copy the files.
- ▶ What type of computer was used?
  - One of the deputy clerk's used her desk top which is connected to a cloud based drive.
- ▶ \$8.80
  - 4 hours x \$2.20 per hour

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### Are remote document retrieval charges applicable?

- ▶ No
  - All of this information was located on the computer system at the clerk's office.

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### Will there be charges for miscellaneous supplies?

- ▶ Yes
- ▶ \$2.00 for a padded envelope to send the hard drive
- ▶ Section 70.3(i)
  - Actual cost of miscellaneous supplies

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### Will there be postage?

- ▶ Yes
- ▶ \$10.00 for postage

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### Final Costs

#### Itemized List of Charges:

Description	Qty x Price	Total
Hard Drive	1 x \$65.00	\$65.00
Labor minutes (\$15/hour)	30 x \$0.25	\$7.50
Overhead charges	20% of \$7.50	\$1.50
Computer Resource Charge	4 x \$2.20	\$8.80
Postage cost		\$10.00
Miscellaneous supplies	Padded envelope	\$2.00

**Total cost** **\$94.80**

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## Inspection of Electronic Records

- ▶ Section 552.272 of the Government Code
  - You may not impose a charge for records that exist in an electronic medium unless complying with the request will require programming or manipulation of data.

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## Deposits and Bonds

- ▶ Section 552.263(a) of the Government Code
  - Governmental body may require a deposit or bond if:
    - You have provided a proper written itemized statement as required by section 552.2615, and
    - The charge for providing the requested information exceeds
      - \$100 if you have more than 15 full-time employees, or
      - \$50 if you have fewer than 16 full-time employees

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## Do the ruling deadlines change?

- ▶ Section 552.2615(g) of the Government Code
  - Sending a cost estimate does not affect a governmental body's deadlines to request a ruling.
- ▶ Section 552.263 of the Government Code
  - A governmental body is considered to receive a request on the date it receives the deposit or bond.
  - If a requestor modifies, a governmental body is considered to receive a request on the date it receives the modification.

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### When are charges different? (Slide 1 of 3)

- ▶ Pursuant to section 552.262(a), a non-state agency may charge up to 25% more than these established rules.
- ▶ A governmental body may request an exemption pursuant to section 552.262(c).
- ▶ If more specific rules govern
  - For example: Charges for a CR-3 are governed by section 550.065 of the Transportation Code and are \$6.00 each.

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### When are charges different? (Slide 2 of 3)

- ▶ Section 552.275
  - Governmental body may adopt a monthly or yearly time limit
  - Requires timely notices to requestor
  - Once requestor reaches limit, labor charges may apply when they normally would not

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### When are charges different? (Slide 3 of 3)

- ▶ Section 552.261(e)
  - Governmental body may combine requests received in one calendar day for cost purposes

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## Cost Complaints

- ▶ Section 552.269(a) of the Government Code
  - A requestor may file a written complaint with the Office of the Attorney General if the requestor believes that he/she has been overcharged.
  
- ▶ Generally, as part of its investigation the OAG will send written questions in order to determine if the charges are appropriate.
  - Note: Governmental body must respond to these questions within 10 business days of receiving them.
  - The burden is on the governmental body to explain how it determined the charges.

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## Questions we may ask?

- ▶ Was a certain step necessary?
- ▶ What is the technological capability of the governmental body?
- ▶ If the estimate includes programming: Who is performing the programming and what tasks does it involve?

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## Additional Resources

- ▶ Cost Rules: 2018 Public Information Handbook at:
  - <https://www.texasattorneygeneral.gov/open-government>
- ▶ Public Information Cost Estimate Model Letter
  - <https://www2.texasattorneygeneral.gov/og/public-information-cost-estimate-model>
- ▶ Open Government Hotline: (877) OPEN TEX
- ▶ Cost Hotline: (888) OR COSTS

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