Cost Rules for Public Information

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

Ms. Jahnna 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.
Jahnna Ward is an assistant attorney general in the Open Records Division of the Office of the Attorney General of Texas. She has been with the division for two years. Prior to working at the Office of the Attorney General, she worked as an appellate attorney at the Texas Department of Criminal Justice. Ward graduated from Texas State University with a bachelor’s degree and received her Juris Doctor from Thurgood Marshall School of Law.
Cost Rules

Jahna Ward
Assistant Attorney General
Open Records Division

Before You Calculate Costs

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

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.
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

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

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
1 Texas Administrative Code 70.3(d)

$15.00 per hour for the time spent to:

- Locate
- Compile
- Manipulate data
- Reproduce information

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

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
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.

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.

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
Please provide me an electronic copy of all documents filed yesterday, December 15, 2018.

Responsive Information:
- There are 20 responsive documents.
- The clerk’s office estimates it will be able to fit them onto CD.
- It will take a total of 30 minutes to locate and copy.
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

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.

Are overhead charges applicable?

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

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.

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
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

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.

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
**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

**Final Costs**

**Itemized List of Charges:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Qty x Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>CD</td>
<td>1 x $1.00</td>
<td>$1.00</td>
</tr>
<tr>
<td>Labor minutes ($15/hour)</td>
<td>30 x $0.25</td>
<td>$7.50</td>
</tr>
<tr>
<td>Overhead charges</td>
<td>20% of $7.50</td>
<td>$1.50</td>
</tr>
<tr>
<td>Postage cost</td>
<td></td>
<td>$3.00</td>
</tr>
<tr>
<td>Miscellaneous supplies</td>
<td></td>
<td>$2.00</td>
</tr>
<tr>
<td>Padded envelope</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total cost** $15.00

**Bulk request**

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

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

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?
Are overhead charges applicable?

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

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 could based drive.
- $8.80
  - 4 hours x $2.20 per hour

Are remote document retrieval charges applicable?

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

Will there be postage?

- Yes
- $10.00 for postage

Final Costs

Itemized List of Charges:

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

Total cost $94.80
### 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.

### 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

- Section 552.2615(g) of the Government Code
  - Sending a cost estimate does not affect a governmental body's deadlines to request a ruling.

### Do the ruling deadlines change?

- 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.
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.

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

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

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?

Additional Resources

- Cost Rules: 2018 Public Information Handbook at:  
  - [https://www.texasattorneygeneral.gov/open-government](https://www.texasattorneygeneral.gov/open-government)
- Public Information Cost Estimate Model Letter  
- Open Government Hotline: (877) OPEN TEX
- Cost Hotline: (888) OR COSTS