Charges for Public Information

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Before You Calculate Costs

- Copies or inspection?
  - Requestor’s choice

- How does the information exist?
  - Paper records, electronic records, or both
Let’s Compare

<table>
<thead>
<tr>
<th></th>
<th>Copies</th>
<th>Inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor*</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>Programming/Manipulation of Data</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Overhead</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>Computer resources</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>Paper copies*</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>Miscellaneous supplies</td>
<td>✓</td>
<td>x</td>
</tr>
</tbody>
</table>

*In certain instances, governmental bodies can charge for labor and paper copies when a requestor chooses to inspect.

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 allowable charges for copies?

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

When Labor Charges Apply

Texas Administrative Code 70.3(d)

- 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
When Labor Charges Do Not Apply

- 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

Programming Definition

- Section 552.003(4) of the Government Code
  
  "Programming" means the process of producing a sequence of coded instructions that can be executed by a computer.
John Bates, IT Analyst, codes a script to create a query in order for the computer to search for responsive e-mails based on certain parameters

✓ Meets the definition of programming

Anna Smith, legal intern, types a keyword into her Outlook search bar to locate responsive e-mails.

X Does not meet the definition of programming

**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
  - Must provide a cost estimate prior to work being completed.
  - May request a deposit.
Section 552.2615(a) of the Government Code, the statement of estimated charges must contain certain notices:

- You must inform the requestor that he or she may contact you regarding a less costly alternative (inspection is almost always less costly).
- 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.

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
Public Information Cost Estimate Model

This model will calculate costs associated with a request for COPIES of information, but not a request to INSPECT information. For questions about estimating costs when a requester asks to INSPECT information, please call our toll-free Cost Hotline at 1-888-COSTS (1-888-667-8787).

<table>
<thead>
<tr>
<th>Government Body's Information</th>
<th>Requestor's Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency Name</td>
<td>First/Last Name</td>
</tr>
<tr>
<td>Contact Name</td>
<td>Name</td>
</tr>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
<tr>
<td>City</td>
<td>City</td>
</tr>
<tr>
<td>State/Zip</td>
<td>State/Zip</td>
</tr>
</tbody>
</table>

Date request was received: 03/02/2015

Itemization of costs:
- Did the requestor ask for standard paper copies? Yes □ No □
- Did the requestor ask for copies of nonstandard documents (e.g., oversized paper, DVD, or VHS tape)? Yes □ No □
- Did labor costs? Yes □ No □
- Are overhead charges applicable? Yes □ No □
- Are computer resource charges applicable? Yes □ No □
- Are remote document retrieval charges applicable? Yes □ No □
- Will there be charges for miscellaneous supplies? Yes □ No □
- Will there be postage? Yes □ No □

If the total charges exceed $100, will you require a prepayment deposit? Yes □ No □

OR

If the total charges exceed $1000, will you require a prepayment bond? Yes □ No □

Generate Estimate  Clear Form

Request

- Please provide an electronic copy of all documents filed yesterday. I’ll pick up the information when it is ready.

- Lady Mary Crawley
Responsive Information

- The clerk has the following:
  - 50 total documents maintained electronically

Did the Requestor Ask for Standard Paper Copies?

- No
Did the Requestor Ask for Copies of Nonstandard Documents?

- Yes
- Note: This can cover everything from a hard drive to VHS.
- $1.00 for a CD

Can Labor Charges be Added?

- Yes
- Request includes electronic information.
  - And therefore, falls under the general rule and is not only fewer than 50 pages of paper records.
- The clerk estimates the following after conducting a sample test:
  - .5 hours to locate, compile, and reproduce the responsive information
- $7.50
  - .5 hours x $15.00
Are Overhead Charges Applicable?

- Yes
  - Because there was a labor charge
- $1.40
  - 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.

- 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 Charges

- 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 LAN

- Actual time required by a computer to execute a program
**Are Remote Document Retrieval Charges Applicable?**

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

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**Will There be Charges for Miscellaneous Supplies?**

- No
- **Section 70.3(i)**
  - Actual cost of miscellaneous supplies
Will There be Postage?

- No
  - The requestor will pick up the requested information.
- 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>Labor minutes ($15/hour)</td>
<td>30 x $0.25</td>
<td>$ 7.50</td>
</tr>
<tr>
<td>Overhead charges</td>
<td>.20 x $7.50</td>
<td>$ 1.50</td>
</tr>
<tr>
<td>CD</td>
<td>1 x $1.00</td>
<td>$ 1.00</td>
</tr>
<tr>
<td>Postage cost</td>
<td></td>
<td>$ 0.00</td>
</tr>
<tr>
<td><strong>Total cost</strong></td>
<td></td>
<td><strong>$ 10.00</strong></td>
</tr>
</tbody>
</table>
Please provide an electronic copy of all documents filed from January 1, 1901 to present day. Please mail the information to me.

- Lady Mary Crawley

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 2 hours to locate and copy.
Add labor costs?

- Yes
- Request includes electronic information.
- The county clerk determines it will required two hours to locate the files and download them to the hard drive.
- $30.00
  - 2 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
- $6.00
  - 20% of $30.00

Are computer resource charges applicable?

- Yes
  - Although telling the computer which files to copy only took 2 hours, it took the computer an additional 2 hours to actually copy the files.
- What type of computer was used?
  - One of the deputy clerks used her desktop which is connected to a cloud-based drive.
- $4.40
  - 2 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>120 x $0.25</td>
<td>$30.00</td>
</tr>
<tr>
<td>Overhead charges</td>
<td>20% of $30.00</td>
<td>$6.00</td>
</tr>
<tr>
<td>Computer Resource Charge</td>
<td>2 x $2.20</td>
<td>$4.40</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 $117.40
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

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.
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.

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.

What Questions May We Ask?

- Was a certain step necessary?
- What is the technological capability of the governmental body?
- What sample test did you use to determine your estimated charges?
- If the estimate includes programming: Who is performing the programming and what tasks does it involve?
Review

- General Rule for Copies:
  - All reasonable costs including labor, materials, and overhead unless an exception applies

- General Rule for Inspection of Paper Records:
  - No charges unless an exception applies

- General Rule for Inspection of Electronic Records
  - No charges unless the request requires programming or manipulation of data

Review

- Labor Definition: The time required to locate, compile, manipulate data, and copy information.

- Cost Estimate Requirements:
  - (1) itemized,
  - (2) include a notice regarding inspection if it's a less costly alternative, and
  - (3) notify the requestor of the choices the requestor is allowed to make under the Act.

- Ruling deadlines do not change unless the cost estimate requires a deposit.
Additional Resources

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