



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

	Copies	Inspection
Labor*	✓	x
Programming/ Manipulation of Data	✓	✓
Overhead	✓	x
Computer resources	✓	x
Paper copies*	✓	x
Miscellaneous supplies	✓	x

*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.



Programming Examples

- ▶ 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

- ▶ \leq \$40.00
 - Invoice or bill the requestor upon completion of work.
- ▶ $>$ \$40.00 and \leq \$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.



Cost Estimate Requirements (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 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.



Cost Estimate Requirements (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



Public Information Cost Estimate Model

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 requestor asks to **INSPECT** information, please call our toll-free Cost Hotline at 1-888-OR COSTS (1-888-672-6787).

Date request was received: 02/02/2015

Government Body's Information	Requestor's Information
Agency Name: <input type="text"/>	<input type="radio"/> Mr. <input type="radio"/> Ms. First/Last Name: <input type="text"/>
Contact Name: <input type="text"/>	Address: <input type="text"/>
Address: <input type="text"/>	City: <input type="text"/>
City: <input type="text"/>	State/Zip: <input type="text"/>
State/Zip: <input type="text"/>	

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

Add 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 \$100, will you require a prepayment bond? Yes | No



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 midsize
 - \$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.



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:

Description Qty x Price	Total
Labor minutes (\$15/hour)	30 x \$0.25 \$ 7.50
Overhead charges	.20 x \$7.50 \$ 1.50
CD	1 x \$1.00 \$ 1.00
Postage cost	\$ 0.00
Total cost	\$ 10.00



Bulk request

- ▶ 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:

Description	Qty x Price	Total
Hard Drive	1 x \$65.00	\$65.00
Labor minutes (\$15/hour)	120 x \$0.25	\$30.00
Overhead charges	20% of \$30.00	\$6.00
Computer Resource Charge	2 x \$2.20	\$4.40
Postage cost		\$10.00
Miscellaneous supplies	Padded envelope	\$2.00
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.



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.



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.



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.



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.



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