

Copy Costs

To better define “actual cost” for more than 100 pages of printed copies and for electronic copies.

Background

Provide background on 1205.0300 and advisory opinions and how those may contribute to the confusion (standard schedule of copying charges, lowest paid employee, how can costs be both “reasonable” and “actual”)

Actual Cost

These can be included

- Cost of media (paper, CD ROMs, DVDs, etc.)
- Mailing costs
- Employee time to prepare copies
- Costs of reproduction that cannot be done by the entity, such as photographs (Advisory Opinions [95-044](#) and [97-012](#))
- Employee time to search for and retrieve data for copying ([Advisory Opinion 00-054](#)) [Entities **cannot** charge search for and retrieval time when the requestor is the data subject]

These cannot be included

- Employee time to separate public from not public data ([Advisory Opinion 04-072](#))
- Operating expenses of copier, such as electricity, wear and tear, etc. (Advisory Opinions [01-066](#) and [04-040](#))
- Costs not related to copying, such as preparing a fax cover sheet, invoice, etc. (Advisory Opinion [04-055](#))
- Returning data to off-site storage ([Advisory Opinion 95-044](#))
- Sorting, reviewing, or verifying accuracy if not necessary for copying ([Advisory Opinion 04-072](#))
- Sales tax (Advisory Opinions [94-059](#) and [99-024](#))
- Accounting functions ([Advisory Opinion 04-003](#))
- Costs related to inspection ([Advisory Opinion 04-038](#))

Note: Employee time must be calculated based on the wages/salary (may include benefits) of the lowest-paid entity employee who could complete the task ([Advisory Opinion 04-056](#))

Possible Options

- Change “actual cost” to a set dollar amount for time spent searching and retrieving
 - Public and/or data subject requests
 - Consider average state/local gov’t administrative staff salaries
 - No charge for initial time spent searching for and retrieving (e.g. 1 hour)
 - Increases for inflation
- Public interest exemption from fees (similar to FOIA)
- Costs for redaction
- Costs for inspection
- Penalties for overcharging/inflating costs

FOIA

- Each agency sets its own fee schedule.

- Agencies may charge “reasonable” fees for the “direct” costs of searching for and copying the records you request, unless entitled to fee benefits or waivers (representatives of the news media do not pay search fees; see below).
- Search fees generally range from \$11 to \$28 per hour, based on the salary and benefits of the employee doing the search.
- Fees for computer time, which are described in each agency’s FOIA regulations, vary greatly. They may be as high as \$270 per hour. Photocopying costs are normally between 3 and 25 cents per page.
- Search fees may be charged even if few or no documents are located in response. Unless you are requesting information for a commercial use, agencies may not charge you for the time they spend examining files to determine what individual documents should be exempt from disclosure or for deleting material in those documents.

A “representative of the news media” is a person or entity that gathers and disseminates information of current interest to the public. In addition to traditional broadcasters and periodicals, it encompasses freelance journalists and sometimes bloggers if they “can demonstrate a solid basis for expecting publication” with a particular news-media entity, which might include a blog.

States with some set copy fees vs. “actual” or “reasonable” costs

The states listed also include those with free search time, those with fees for inspection and/or review of the records, and those where copy fees are set by agency regulation.

Alaska (statute: 40.25.110)

If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search. A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest.

Colorado (statute: 24-72-205)

Records custodian can set fee in response to a request for search and retrieval of public record. Must post or publish fees. No charge for first hour expended in search and retrieval, after the first hour, fee not to exceed \$30 per hour.

Hawaii (rule: 2-71-31)

Set by administrative rule

- Search for the record, \$2.50 per fifteen minutes (\$10/hour)
- Review and segregation of the record, \$5 per fifteen minutes (\$20/hour)
- The agency shall not assess the first \$30 in total amount of the fees
- No fees for the search, review, or segregation of a record when it is not necessary for the agency to search for, review, or segregate to permit inspection or duplication of the requested record and the agency finds that the public interest would be served by a waiver of fees

Idaho (statute: 74-102)

The first two hours of labor and the first 100 pages of copies, for any public records request in Idaho, are free.

[Iowa \(statute: 22.2-22.3A\)](#)

“Actual costs” but can charge a “reasonable fee for the services of the lawful custodian or the custodian’s authorized designee in supervising the examination and copying of the records.”

[Illinois \(statute: 5 ILCS 140/6\)](#)

If not commercial purpose or a voluminous request, no charge for the costs of any search for and review of the records. Fees for paper copies not applicable to electronic copies.

If a voluminous request is for electronic records, not in PDF, may charge up to \$20 for not more than 2 megabytes of data, up to \$40 for more than 2 but not more than 4 megabytes of data, and up to \$100 for more than 4 megabytes of data. If a voluminous request is for PDF records, may charge up to \$20 for not more than 80 megabytes of data, up to \$40 for more than 80 megabytes but not more than 160 megabytes of data, and up to \$100 for more than 160 megabytes of data. Must provide an accounting of all fees, costs, and personnel hours.

No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page. If a public body provides copies in color or in a size other than letter or legal, actual cost.

No charge or reduced charge if waiver or reduction of the fee is in the public interest. May charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record or examining the record for necessary redactions. No fees shall be charged for the first 8 hours spent by personnel in searching for or retrieving a requested record.

[Louisiana \(Statute: 44:32; regulation: Title 4, part I, chapter 3, section 301\)](#)

For all public records of state agencies, it shall be the duty of the custodian of such records to provide copies to persons so requesting. Fees for such copies shall be charged according to the uniform fee schedule adopted by the commissioner of administration.

Regulation: Each agency shall develop a uniform fee schedule for providing printouts of public records stored in a computer data base utilizing routing utility programs. Such uniform fee schedule shall be first approved by the Division of Administration. An estimated cost shall be given for reproduction of public records stored in a computer which require program modification or specialized programs. The requesting party shall be advised of the estimate, and that it is an estimate, but the actual cost for reproduction, including programming costs, shall be charged if it differs from the estimate.

[Maryland \(statute: 4-206\)](#)

An agency may charge a “reasonable fee” for searching for a public record, including locating and reviewing the record. The first two hours of search time are free. Actual fee schedules may be found in agency regulations.

[Massachusetts \(statute: G. L. c. 66, § 10\)](#)

5 cents for black and white paper copies or computer printouts of public records for both single and double-sided sheets.

Beginning January 1, 2017, if a response to a public records request requires more than 4 hours of employee time, an agency RAO may assess a fee of the hourly rate of the lowest paid employee with the skills necessary to search for, compile, segregate, redact or reproduce a requested record. However, the fee shall not exceed \$25 an hour.

Beginning January 1, 2017, if a response to a public records request requires more than 2 hours of employee time, a municipal RAO may assess a fee of the hourly rate of the lowest paid employee with the skills necessary to search for, compile, segregate, redact or reproduce a requested record. However, the fee shall not exceed \$25 an hour, unless approved by the Supervisor of Records. Municipalities with populations of 20,000 people or fewer will be permitted to charge for the first 2 hours of employee time.

[North Dakota \(Statute: 44-04-18\)](#)

An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material from the records, including electronic records. If a public entity receives five or more requests from the same requester within seven days, the public entity may treat the requests as one request in computing the time it takes to locate and excise the records.

[Oregon \(statute: 192.440\)](#)

May establish fees reasonably calculated to reimburse the public body for the actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request.

Fee may include the cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. The public body may not include the cost of time spent by an attorney for the public body in determining the application of definitions or exemptions. May furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

[Virginia \(statute: 2.2-3704\)](#)

The Supreme Court of Virginia has held that a public body may charge for the review of public records to assure that those records are responsive, are not exempt from disclosure, and may be disclosed without violating other provisions of law. *American Tradition Institute v. Rector and Visitors of the University of Virginia*, 756 S.E.2d 435 (Va. 2014).

[Wisconsin \(statute: 19.35\)](#)

Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is \$50 or more. No charge for redaction per case law (*Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65).