



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL**

SCHEDULE OF REASONABLE CHARGES

PURPOSE:

Pursuant to Tenn. Code Ann. § 8-4-604(a)(1), the Office of Open Records Counsel (“OORC”) is required to establish a schedule of reasonable charges a records custodian may use as a guideline to charge citizens requesting copies of public records. Additionally, Tenn. Code Ann. § 10-7-503(g) requires each governmental entity subject to the Tennessee Public Records Act (“TPRA”), Tenn. Code Ann. § 10-7-501, et seq., to establish a written public records policy that includes a statement of any fees charged for copies of public records and the procedures for billing and payment. Accordingly, the following policy sets forth general guidelines for records custodians when assessing reasonable charges associated with record requests under the TPRA.

POLICY:

I. General Considerations

- A. A records custodian may not assess a charge to view a public record unless otherwise required by law. The following schedule of reasonable charges should not be interpreted as requiring a governmental entity to adopt a public records policy requiring records custodians to impose charges for copies of public records.
- B. A charge for the copy or duplication of public records must be pursuant to properly adopted reasonable rules and evidenced by a written policy authorized by the appropriate local governing body. See Tenn. Code Ann. § 10-7-506(a) and .§ 10-7-503(a)
- C. Application of an adopted schedule of charges shall not be arbitrary. Additionally, excessive fees and other rules shall not be used to hinder access to non-exempt, public records. A records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity’s properly adopted written public records policy. Pursuant to Tennessee case law, a records custodian may also require payment for the requested copies or duplication prior to production of the copies or duplication.
- D. The TPRA does not distinguish requests for inspection of records based on intended use, be it for research, personal, or commercial purposes. Likewise, this Schedule of Reasonable Charges does not make a distinction in the charges assessed based on

the purpose of a record request. However, other statutory provisions, such as Tenn. Code Ann. § 10-7-506(c), enumerate fees that may be assessed when specific documents are requested for a specific use. Any distinctions made, or waiver of charges permitted, based upon the type of records requested should be expressly set forth and permitted in the adopted public records policy.

II. Copying Charges

- A. A records custodian may assess a charge of 15 cents per page for each standard 8 ½ x 11 or 8 ½ x 14 black and white copy produced.
- B. If a public record is maintained in color but can be produced in black and white, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy. If the requestor requests a color copy, the records custodian may assess a charge of 50 cents per page for each 8 ½ x 11 or 8 ½ x 14 color copy.
- C. If a governmental entity's actual costs are higher than those reflected above, or if the requested records are produced on a medium other than 8 ½ x 11 or 8 ½ x 14 paper, the governmental entity may develop its own charges. The governmental entity must establish a schedule of charges documenting "actual cost" and state the calculation and reasoning for its charges in a properly adopted policy. A governmental entity may charge less than those charges reflected above. Charges greater than 15 cents for black and white, and 50 cents for color, can be assessed or collected only with documented analysis of the fact that the higher charges actually represent such governmental entity's cost of producing such material; unless there exists another basis in law for such charges.
- D. A records custodian may assess a charge for a duplex copy equivalent of the charge for two (2) separate copies.

III. Additional Production Charges

- A. When assessing a fee for items covered under this section, records custodians shall utilize the most economical and efficient method of producing the requested records.
- B. It is presumed copies of requested records will be delivered by hand when a requestor returns to a custodian's office to retrieve the requested records. In the event a requestor chooses not to personally retrieve the records, a records custodian shall deliver the copies via mail through the United States Postal Service if the actual cost of delivering the copies in addition to any other permitted charges has been paid by the requestor or is waived pursuant to the public records policy. It is within the discretion of a records custodian to agree to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.
- C. If a records custodian utilizes an outside vendor to produce copies of requested records because it is not practicable or feasible for the custodian to produce the copies in his/her office, the records custodian may recover from the requestor the amount assessed by the vendor.

- D. If a records custodian is assessed a charge to retrieve requested records from archives, or any other entity having possession of requested records, the records custodian may recover from the requestor the costs assessed for retrieval.

IV. Labor Charges

- A. A records custodian shall utilize the most cost efficient method of producing requested records. Accordingly, a records custodian should strive to utilize current employees at the lowest practicable hourly wage to fulfill public records requests for copies. Only when it is not practicable should a records custodian utilize nonemployees.
- B. "Labor" is the time, in hours, reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, redacting, and reproducing records.
- C. "Labor threshold" is the first hour of labor reasonably necessary to produce requested material(s). A governmental entity may adopt a higher labor threshold than the one reflected above. A records custodian is only permitted to charge for labor exceeding the labor threshold established by the governmental entity.
- D. "Hourly wage of an employee" is based upon the base salary of the employee and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year. For example, an employee who is expected to work a 37.5 hour work week and receives \$39,000 in salary on an annual basis will be deemed to be paid \$20 per hour.
- E. In calculating labor charges, a records custodian should determine the total amount of labor for each employee and subtract the one (1) hour labor threshold from the labor of the highest paid employee. The records custodian should then multiply the amount of labor for each employee by each employee's hourly wage to calculate the total amount of labor charges associated with the request.

i. Example:

The hourly wage of Employee #1 is \$15.00. The hourly wage of Employee #2 is \$20.00. Employee #1 spends 2 hours on a request. Employee #2 spends 2 hours on the same request. Because employee # 2 is the highest paid employee, subtract the one-hour threshold from the hours employee #2 spent producing the request. Multiply the number of hours each employee is able to charge for producing the request by that employee's hourly wage and then add the amounts together for the total amount of labor that can be charged (i.e. $(2 \times 15) + (1 \times 20) = \50.00). For this request, \$50.00 could be charged for labor.

Submitted to ACOG: November __, 2016

Effective: