## Coates' Canons Blog: Charging for Copies of Public Records

**By Frayda Bluestein**

**Article: https://canons.sog.unc.edu/charging-for-copies-of-public-records/**

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How much can a public agency charge for responding to public records requests? The statute limits charges to a "minimal amount," which is defined as the "actual cost of reproducing the public record or public information." G.S. 132-1(b). A separate statute defines "actual cost" as: "direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made." G.S. 132-6.2(b).

Several important and commonly accepted interpretations of these provisions are:

1. Charges are limited to a very few kinds of costs — the cost of paper, CD's, flash drives, or other media in which copies of records are provided, and any postage or shipping charges for mailing.
2. There is probably nothing that can be charged for providing electronic records by email.
3. There is no authority to charge anything when the request is to inspect (rather than receive copies of) public records.
4. There is no general authority to charge for the employee time spent to analyze a public records request, determine what records are responsive to it, search for the records, and redact them as necessary.
5. Since employees are already on the payroll, the time they spend responding to public records requests is an existing cost and is not attributable to the existence of the request.
6. The only authority in the current law to charge for labor is in the case of a request that requires "extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency…" G.S. 132-6.2(b)

The provision in G.S. 132-6.2, which only applies when there is "extensive use" of information technology resources or personnel, is not specific regarding what kinds of tasks can be charged for. The provision has not been interpreted by the courts to date. Some questions that remain unanswered include, for requests for electronic copies of records, what activities might be considered to be included in "time spent reproducing the record or information?" Would this include time spent searching for, extracting, and compiling records, or would it be limited to the acts of sending an email or downloading files to an external storage device for delivery. If the intent of the statute is to pass along only the clerical and administrative costs, then it would make sense then charges should be limited to the searching, downloading, and copying records activities, and not the substantive review and redaction of the content of the records.

A second question is at what rate the labor should be charged. The statute does not establish a specific rate, providing only that the charge must be "reasonable" and based on the "actual cost" incurred for the information technology resources and labor. States that allow public agencies to charge for the labor in providing public records sometimes limit charges to the hourly rate of the lowest level employee who could perform the work. This protects the requester from having to pay more simply because the unit chooses a higher paid (and perhaps overqualified) employee to do the work.

## Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=132-1
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=132-6.2