



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
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Justin P. Wilson
Comptroller

March 16, 2012

Ms. Janina Muller
Chattanooga City Attorney's Office
100 E. 11th Street, 2nd Floor
Chattanooga, Tennessee 37402

You have requested an opinion from this office that addresses the following issue:

How are labor fees to be assessed when an individual requests to inspect a large volume of records and then after inspection only requests copies of a portion of the records inspected?

I. Analysis

In July 2008, Public Chapter 1179, Acts of 2008 became law and the most significant changes to the Tennessee Public Records Act (hereinafter referred to as the "Act") since its original passage in 1957 became effective. The overarching provision of the Act is found in Tenn. Code Ann. Section 10-7-503. Public Chapter 1179, Acts of 2008 included several amendments to this section of the law. Tenn. Code Ann. Section 10-7-503(a)(7)(A) was added and it reads in part, "A records custodian may not . . . assess a charge to view a public record unless otherwise required by law." Tenn. Code Ann. Section 10-7-503(a)(7)(C)(i) was also added and it allows a records custodian to "require a requestor to pay the custodian's reasonable costs incurred in producing the requested material and to assess the reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604."

Shortly after Public Chapter 1179, Acts of 2008 became effective, the Office of Open Records Counsel worked with the Advisory Committee on Open Government to establish the Schedule of Reasonable Charges (hereinafter referred to as the "Schedule"). The Schedule establishes a per page charge for copies or duplicates of records¹, a formula for calculating labor, and sets out that a local government entity should have an approved policy in place

¹ A governmental entity also has the ability to assess a fee for copies or duplicates above the fee set out in the Schedule, but only after a cost analysis has been performed which shows that the actual cost to the entity for a copy or duplicate exceeds the fee in the Schedule.

before assessing fees in accordance with the Schedule.² The introductory language in the Schedule makes it clear that unless there is a provision within the law that requires a fee to be assessed, there should not be any charge assessed if a requestor only requests to inspect public records.

Because generally there can be no charge assessed for any of the costs associated with making records available for inspection, and because Tenn. Code Ann. Section 10-7-503(a)(7)(C)(i) permits a records custodian to assess the “custodian’s reasonable cost in producing the requested material,” this office is of the opinion that if a requestor determines after inspecting records that he/she wants copies or duplicates of only a portion of the records inspected, the records custodian can only assess a labor fee that is proportional to the copies or duplicates requested. In the situation that you presented, you indicated that it took staff approximately 4400 minutes to produce 4000 copies for inspection. You also indicated that after reviewing the 4000 copies, the requestor requested copies of 109 of the records she inspected. I first divided the 4400 minutes by the total number of copies produced for inspection ($4400/4000=1.10$ (which indicates that it took approximately 1.10 minutes to locate, retrieve, review, redact and/or copy each page inspected)). I then multiplied 1.10 by the 109 copies requested ($1.10*109=$ approximately 120 minutes or 2 hours of labor can assessed).³

Example:

1. Total time spent producing (locating, retrieving, reviewing, redacting and/or copying) records (minutes) ÷ total number of pages inspected = total time it takes to produce each copy

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2. Total time it takes to produce each copy * number of copies requested= total number of minutes required to produce the requested records

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3. Total number of minutes required to produce the requested records- 1 hour labor threshold=total time for which labor can be assessed

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4. Total time for which labor can be assessed * the hourly rate of the individual(s) producing the records⁴= total labor fee

² The Tennessee Attorney General’s Office opined that before a state level entity can assess fees permitted by Tenn. Code Ann. Section 10-7-503(a)(7)(C)(i), the entity is required to promulgate a rule through the Uniform Administrative Procedures Act.

³ The one free hour of labor had already been deducted because there were several hours of labor incurred by the City Attorney’s office related specifically to the request for copies and none of that time was factored into the 4400 minutes. However, once the total number of minutes for which a labor fee can be assessed is calculated, one hour or sixty minutes needs to be deducted from the total.

⁴ If multiple individuals produce the records for inspection, the records custodian should document the time that each employees spends on the request and if possible, include a description of the records produced by

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Based upon the above mentioned, it is the opinion of this office that when an individual requests to inspect a large volume of records and then after inspection only requests copies of a portion of the records inspected, the records custodian is permitted to assess a labor fee that is proportional to the number of copies requested.

Please feel free to call me at (615) 401-7891 if you have any further questions.

Elisha D. Hodge
Open Records Counsel

each employee on a time log. Additionally, if certain records take significantly more time to produce than others, it is important to note that on a time log, so that in the event those particular records are the ones for which copies are requested, the records custodian can calculate the labor fee accordingly.