

SCHEDULE AND POLICY COMMENT FORM

[Section 6 of Public Chapter 1179, Acts of 2008](#) adds T.C.A. Section 8-4-604(a)(1) which requires the Office of Open Records Counsel to establish a schedule of reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records under the Tennessee Public Records Act (T.C.A. Sections 10-7-501 et seq.) (“TPRA”). Public Chapter 1179 further directs the Office to establish a separate policy related to reasonable charges a records custodian may charge for frequent and multiple requests for public records.

Application of either the schedule of reasonable charges or the policy shall not be arbitrary. Any charge included in the schedule of reasonable charges or permitted under the policy may be reduced or waived in whole or in part, if in accordance with a duly promulgated rule. Public Chapter 1179 adds T.C.A. Section 10-7-503(a)(7)(A) expressly prohibits a records custodian from charging a fee for inspection under the TPRA unless otherwise required by law.

In conjunction with the Advisory Committee on Open Government, the Office of Open Records Counsel is seeking comment on the following with respect to the Schedule:

SCHEDULE OF REASONABLE CHARGES FOR COPIES OF PUBLIC RECORDS

Copy Charges

- A records custodian may assess a charge of up to 20 cents per page for each standard, 8 ½ x11 or 8 ½ x14 black and white copy produced.
- If a public record is maintained in color and the requestor specifically requests a color copy, a records custodian may assess a charge of up to 50 cents per page for each 8 ½ x11 or 8 ½ x14 color copy produced.
- If a record custodian’s actual costs are higher than those reflected above, the custodian may develop its own charges. The custodian must establish a schedule of charges documenting “actual cost” and state the calculation and reasoning for its charges. A schedule of charges without this analysis is insufficient.
- If a record custodian determines that certain information (i.e. pie charts, graphs, etc.) within requested records has more relevance when produced in color, 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.
- The charge for a duplex copy shall be the same as the charge for two (2) separate copies.

- The schedule of reasonable charges makes no distinction in the charge assessed an individual requesting records under the TPRA based on the intended use of the record, whether for research, personal, or commercial. Other statutory provisions, such as T.C.A. Section 10-7-506(c), enumerate fees that may be assessed when specific documents are requested for a specific use.

Additional Production Charges

- A records custodian shall be expected to provide records to a requestor through means of the United States Postal Service or in hand delivery when the requestor returns to the custodian's office to retrieve the requested records. It is within the discretion of a records custodian to deliver records through other means, including electronically. If the requestor chooses not to return to the records custodian's office to retrieve the copies, then the cost incurred by the records custodian in delivering the records may be assessed in addition to any other permitted charge.
- If a records custodian utilizes an outside vendor to produce copies of requested records because the custodian is legitimately unable to produce the copies in his/her office, the cost assessed by the vendor to the governmental entity may be recovered from the requestor.
- If the records custodian is assessed a charge to retrieve requested records from a county public records commission, the Tennessee State Library and Archives, or from any other entity having possession of requested records, the records custodian may assess the requestor the cost assessed the governmental entity for retrieval of the records.

Labor Charges

- A custodian is permitted to charge the hourly wage of the employee(s) reasonably necessary to produce the requested records above the "labor threshold" (defined below). The "hourly wage" is based upon the employee(s) base salary, and does not include benefits. The charge may include but is not limited to the time spent reviewing, redacting, and reproducing copies of the requested records. A records custodian shall utilize the most cost efficient method of producing the requested records.
- "Labor threshold" for a records custodian in a department with a staff of twenty (20) or fewer employees is defined as the labor of the employee(s) reasonably necessary to produce requested material for the **first two (2) hours** incurred by the records custodian in producing the material. For a records custodian in a department with a staff of more than twenty (20) employees, the "labor threshold" is defined as the labor of the employee(s) reasonably necessary to produce requested material for the **first four (4) hours** incurred by the records custodian in producing the material.
- In calculating the charge for labor or the "man-hours" spent producing the records, a records custodian shall determine the hourly wage of each employee

reasonably necessary to produce the request, based upon that employee's base salary. Then the custodian is to multiply the number of hours each employee spent producing the request by that employee's hourly wage. The records custodian will then add together the total for all of the employees involved in producing the request. Next, the records custodian will multiply the hourly wage of the highest paid employee by the number of hours of the labor threshold which is not to be charged and subtract that amount from the overall total.

Example. There are 20 employees in the department where the records are requested. Employee #1 hourly wage is \$15.00. Employee #2 hourly wage is \$20.00. Employee #1 spends 2 hours on a request and Employee #2 spends 3 hours on the request. The total amount for labor or man-hours that can be assessed is \$50.00.

The total wages of the employees who worked on the request is $\$90 = (\$15 \times 2) + (\$20 \times 3) = \$30 + \$60$. The permitted charge is $\$50 = \$90 - (\$20 \times 2) = \$90 - 40$ (hourly wage of the highest paid employee multiplied by the number of hours for which labor cannot be charged based upon department size).

Additionally, in conjunction with the Advisory Committee on Open Government, the Office of Open Records Counsel is seeking comment on the following with respect to the Policy:

POLICY RELATED TO REASONABLE CHARGES A RECORDS CUSTODIAN MAY CHARGE FOR FREQUENT AND MULTIPLE REQUESTS FOR PUBLIC RECORDS

- In calculating the "labor threshold", the custodian may aggregate time spent during the calendar month on all TPRA requests by the requestor. Additionally, if the records custodian reasonably believes the requestor to be acting in concert with or as agent of another person, entity or organization, the records custodian can aggregate the time spent on all of those TPRA requests. Disputes as to aggregation shall be brought to the Office of Open Records Counsel.