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January 18, 2008

Dear Mr. Byrd:

Ann and I greatly appreciated the opportunity that we had to speak with you last week. During our conversation, the following questions arose: (1) Do governmental entities have the ability to charge citizens for “retrieving, supervising access and inspection” of public records?; (2) Is the governmental entity required to make the copy or extract for the citizen? Below these issues are addressed.

With regard to whether or not government entities have the ability to charge citizens for “retrieving, supervising access and inspection” of public records, the answer appears to be “no.” While there has not been a Tennessee Attorney General Opinion (hereinafter “Op. Tenn. Atty. Gen.”) issued that specifically addresses assessing citizens costs for “retrieving, supervising access and inspection,” of public records, Op. Tenn. Atty. Gen. 80-455 (September 19, 1980), sets out that the custodian of records may only charge a reasonable approximation of the actual cost of copying a public record. Additionally, in addressing the reasonableness of fees charges for public records, Op. Tenn. Atty. Gen. 01-021 (February 8, 2001), states, “a local government may generally not charge more than its actual cost to copy public records.” The opinion also indicates that charging for researching, locating or retrieving public records is not proper “per se.”

With the exception of the actual cost of copying the record, the only other fees that are expressly permissible are the cost of delivering records requested by a citizen that is not physically able to appear before the custodian of the records and the cost of creating a new program that will extract all of the information requested when the custodian fails to have access to a program that will extract all of the requested information. *Waller v. Bryan*, 16 S.W. 3d 770 (Tenn. Ct. of App., 1999) and *Tennessean v. Electric Power Bd. of Nashville*, 979 S.W.2d 297 (Tenn., 1998).

In addressing whether or not the governmental entity is responsible for providing the citizen a copy or extract of the record that is the subject of the open records request, case law indicates that it is the governmental agency's responsibility. Relying again on the *Waller* opinion, the court says that the governmental agency has a "clear obligation...to provide a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor."

Please feel free to call either me or Ann upon receipt of this letter if you have anything further that you would like to discuss. We look forward to reviewing the revisions of Bradley County's policy for requesting records and copying fees.

Sincerely,

Elisha D. Hodge
Open Records Specialist