



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
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You have requested an opinion from this office that addresses the following issues:

1. How much is a local government law enforcement agency permitted to charge for a copy of an accident report?
2. How much is a local government law enforcement agency permitted to charge for a copy of an incident report?

I. Analysis

In July 2008, Public Chapter 1179, Acts of 2008 became law. This public chapter made significant changes to the Tennessee Public Records Act which included providing a time frame for responding to public records, establishing the Office of Open Records Counsel, and explicitly allowing governmental entities to charge for copies of public records. The provisions in Public Chapter 1179, Acts of 2008 that are relevant to this analysis are codified in Tenn. Code Ann. Sections 8-4-601 et seq. and 10-7-503(a)(7)(C)(i).

Tenn. Code Ann. Section 10-7-503(a)(7)(C)(i) reads, “[a] records custodian may 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.” Beginning in August 2008, this office, in conjunction with the Advisory Committee on Open Government, held a series of public meetings, which included a public hearing on September 5, 2012, related to the development of the Schedule of Reasonable Charges (hereinafter referred to as the “Schedule”). Tenn. Code Ann. Section 8-4-604 sets out the factors that were to be considered when establishing the Schedule which include:

(i) Such factors as the size, by population, of the county or municipality, the complexity of the request, the number of man hours involved in retrieving the documents, redacting confidential information from the documents and any other costs involved in preparing the documents for duplication, the costs of duplication, the costs of mailing the documents if the requestor is not returning to retrieve the requested documents, and any other costs that the office of open records counsel deems appropriate to include in the charge; and

(ii) The principles presented by the study committee created by Acts 2006, ch. 887:

(a) That state policies and guidelines shall reflect the policy that providing information to the public is an essential function of a representative government and an integral part of the routine duties and responsibilities of public officers and employees;

(b) That excessive fees and other rules shall not be used to hinder access to nonexempt public information;

(c) That, in accordance with [§ 10-7-503\(a\)\(7\)\(A\)](#), no charge shall be assessed to view a public record unless otherwise required by law;

(d) That the requestor be given the option of receiving information in any format in which it is maintained by the agency, including electronic format consistent with title 10, chapter 7, part 1; and

(e) That when large-volume requests are involved, information shall be provided in the most efficient and cost-effective manner, including but not limited to permitting the requestor to provide copying equipment or an electronic scanner;

In October 2008, the Schedule was established and each year since, the Schedule has been reviewed and revised where appropriate. The fees established in the Schedule are relative only to paper documents and the Schedule is not applicable to records that are subject to other statutorily set fees. The Schedule permits a records custodian to assess a requestor 15 cents for a standard size black and white copy and 50 cents for a standard size color copy, once the governmental entity has a properly adopted public records policy in place. Additionally, the Schedule permits a governmental entity that has a properly adopted public records policy in place to assess a fee in excess of the 15 cents and the 50 cents mentioned above, but only if the entity can document through a cost analysis that the actual cost to the entity for a copy exceeds 15 cents and/or 50 cents.

This office has been unable to find any other statutory provision that permits a local government law enforcement agency to assess a fee for copies of accident and incident reports outside of what is permitted in Tenn. Code Ann. Section 10-7-503(a)(7)(C)(i). As such, it is the opinion of this office that these agencies are permitted to assess 15 cents per page for standard size black and white copies of accident or incident reports and 50 cents per page for standard size color copies of accident or incident reports. However, if a local law enforcement agency is able to justify through a cost analysis that the actual cost of a copy to the agency exceeds the 15 cents and 50 cents threshold in the Schedule, the agency would also be permitted to assess a per page fee that reflects its actual costs.

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This office is aware of the fact that a number of local government law enforcement agencies assess a set fee for copies of accident and incident reports with these fees ranging from \$3.00 to \$10.00 per report. While this office is sensitive to the fact that these fees have been assessed for a number of years, it is appropriate to point out the Tennessee Department of Safety is the only agency that has the ability to assess a set fee for copies of accident reports. Tenn. Code Ann. Section 55-10-108(d) permits the Tennessee Department of Safety to assess a fee of \$4.00 for reports related to accidents that are investigated by the Department of Safety. This office has been unable to find any statutory provision that permits a local government law enforcement agency to assess a fee for copies of these reports in the same manner.

Based upon the above mentioned, it is the opinion of this office that a local government law enforcement agency is permitted to assess a requestor 15 cents per page for a standard size black and white copy of an incident or accident report and 50 cents per page for a standard size color copy of an accident or incident report. However, if an agency has conducted a cost analysis that shows that its actual cost to make a copy exceeds the 15 cents and 50 cents mentioned above, the agency has the ability to assess a per page fee that is the equivalent of the actual cost incurred by the agency to make a copy.

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

Elisha D. Hodge
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