

Open Records Laws: Fee Provisions

From Across the United States

Staff Time/Labor	Photo Copies	Exclusion Review/Redaction
<ul style="list-style-type: none"> No charge for search/production 	<ul style="list-style-type: none"> No charge for first XX number of pages <ul style="list-style-type: none"> <i>first 100 pages (Idaho)</i> <i>first 50 pages (Texas)</i> 	<ul style="list-style-type: none"> No charge for exclusion review
<ul style="list-style-type: none"> No charge for first X hours of search/production <ul style="list-style-type: none"> <i>first 5 hours/ mo (Alaska)</i> <i>first hour (Colorado; Maine; South Dakota; Tennessee)</i> <i>first 15 mins (Georgia)</i> <i>first 2 hours (Idaho; Maryland; New York)</i> 	<ul style="list-style-type: none"> \$X/page (<i>different charges for single sided vs. double sided copies; color copies; larger paper sizes</i>) <ul style="list-style-type: none"> <i>\$0.25/pg (New York; North Dakota)</i> 	<ul style="list-style-type: none"> No charge for exclusion review, but can charge for redaction time
<ul style="list-style-type: none"> May charge for research/retrieval if fee schedule posted beforehand (<i>Colorado; Delaware</i>) 	<ul style="list-style-type: none"> Actual cost of providing the copy 	<ul style="list-style-type: none"> Charge for exclusion review may not exceed X times a certain amount <ul style="list-style-type: none"> <i>Michigan – 6 times the state minimum wage</i>
<ul style="list-style-type: none"> Fee may not exceed \$X/hour <ul style="list-style-type: none"> <i>\$33.58/hr (Colorado)</i> <i>\$15/hr after first hour (Maine; Rhode Island)</i> <i>\$25/hr (North Dakota)</i> <i>\$0.33 to \$0.57/min → \$19.80 to \$34.20/hr (Vermont)</i> 		<ul style="list-style-type: none"> No charge for cost of redacting records
<ul style="list-style-type: none"> Fee may not exceed actual hourly wage of lowest paid employee with skill/knowledge to search for/respond to request (<i>Georgia; Missouri; South Carolina; Tennessee</i>) <ul style="list-style-type: none"> <i>Regardless of whether employee is available or actually fills the request (Michigan)</i> 		

Actual Costs

- Defined explicitly in statute (may or may not include labor/overhead costs)

- May not charge for determining whether a record is a public record, searching for/retrieving records, staff time, a requester's use of a personal device to copy/photograph public records, or recouping original cost of developing/producing records (*Nevada*)

Fee Schedule

- Must be posted/published on website

- Differentiation between state and local bodies with regards to fees that are charged

- Fee schedule determined by a specific agency/entity for all public bodies

- Fee schedule, but first X amount is waived
 - *first \$30-\$60 is waived (Hawaii)*

Miscellaneous

- Some statutes differentiate between state and local public bodies for production/retrieval charges or copying fees
 - *State agencies: no more than \$0.25/pg; local public bodies: no more than \$0.50/pg (Connecticut)*

- Multiple requests from same person/entity to the same public body within a 30 day time period are considered one request (*Rhode Island*)

- May charge additional fees for format conversions, postage, etc.

Virginia Law

§ 2.2-3704, subsections F through I

- May charge “reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records.”
- Duplicating fee (copies) → not to exceed actual cost of duplication
- Per citizen request, charges shall be estimated in advance (tolls time period).
- Electronic records may be provided at a reasonable cost, not to exceed actual costs
- If charges likely to exceed \$200, public body may require a deposit not to exceed amount of advance determination (tolls time period). Deposit credited towards final cost.
- Before processing a request, public body may require requester to pay any past due charges for previous requests that remain unpaid for 30+ days

American Traditions Institute, et al. v. Rector and Visitors of the University of Virginia, et al.

- Trial Court Judgment (Circuit Court of Prince William County)
 - “A public body . . . may seek reimbursement for review of public records sought pursuant to the Act to assure that those records are responsive, are not exempt from disclosure, and may be disclosed without violating other provisions of law. Such review is inherent in the process of ‘assessing, duplicating, supplying, or searching for the requested records’ explicitly authorized by [Code] § 2.2-3704 (F).”
- Supreme Court of Virginia **affirmed** the Trial Court’s ruling
 - Looked to the principles of statutory construction and the ordinary meaning of “accessing,” “duplicating,” “supplying,” and “searching”
 - Determined that “[i]n the context of Code § 2.2-3704 (F), ‘searching’ includes ‘inquiring or scrutinizing’ whether a disputed document can be released under federal or state law.”