

SB 324 Workgroup

Best Practices - Draft Language for Fee Caps

September 30, 2024

As you will recall, at its last meeting the workgroup suggested drafting alternative fee cap language both in the form of legislation (see separate drafts) and in the form of best practices language. Both are based on language taken from York County's FOIA policy regarding using the median rate of pay of employees or the rate of the employee who actually performs the work, whichever is less (alternative #1), and the other using the rate of median pay or a cap of \$40 per hour, whichever is less (alternative #2). The language below is nearly identical to that of the legislative drafts except that it is presented here as recommendations rather than as a statutory directive. If the workgroup chooses to adopt this best practices language, staff recommends that it be incorporated into the FOIA Council's existing guide on FOIA Charges.

Alternative #1:

The FOIA Council recommends that charges for staff time be calculated based on the median hourly rate of pay of employees of the public body or the actual hourly rate of the employee who is accessing, duplicating, supplying, or searching for the requested records, whichever is the lesser amount. The hourly rate calculated shall not include the cost of fringe benefits or any overhead costs. When calculating the median rate of pay, the rate of pay of full-time and part-time employees should be included, but the rate of pay of temporary employees should not be included.

Alternative #2:

The FOIA Council recommends that charges for staff time be calculated based on the median hourly rate of pay of employees of the public body or \$40 per hour, whichever is the lesser amount. The hourly rate calculated shall not include the cost of fringe benefits or any overhead costs. When calculating the median rate of pay, the rate of pay of full-time and part-time employees should be included, but the rate of pay of temporary employees should not be included.