RIGHT TO KNOW ADVISORY COMMITTEE

LEGISLATIVE SUBCOMMITTEE MEETING
DRAFT AGENDA
December 1, 2009
10:30 a.m.
Room 438, State House

Welcome and introductions

1. Review of communications outside of public proceedings issue
   - Draft guidance/FAQ on use of email and other communications
   - Discussion

2. Requests for bulk electronic data
   - Discussion with Beverly Bustin-Hatheway, Kennebec County Register of Deeds, on issues related to Registries of Deeds databases
   - Discussion

3. Additional matters

Adjourn

Right to Know Advisory Committee
Legislative Subcommittee Discussion Draft---Changes highlighted
Guidance on the Use of Email or Other Electronic Communication by Elected Officials

Proposed New FAQ to be added to website:

Can members of a body communicate with one another by email outside of a public proceeding?

There is no legal prohibition against email communication between members of a public body outside of a public proceeding. However, email communication among a quorum of the members of a body used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 MRSA § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.

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Hours: Mon-Fri / 8 a.m.-4 p.m.

TO: Right to Know Advisory Committee

FR: Beverly Bustin-Hatheway, Registrar, Kennebec County Registry of Deeds

RE: Selling electronically stored public records in bulk in the State of Maine

Chairman Spruce and members of the Committee,

I am Beverly Bustin-Hatheway, Registrar, Kennebec County Registry of Deeds. I am also the president of the Maine Registers of Deeds Association. Thank you for giving me this opportunity to address you regarding the sale of bulk records in Maine. You are aware of the recent court case regarding McImage vs. Hancock County. You are also aware of requests to the Department of Public Safety and the Secretary of State, Bureau of Motor Vehicles for electronically stored public records.

These bulk transfer requests, solely for commercial purposes, were never anticipated when we created statutes to ensure public access to records documenting the conduct of government business.

The court case is specific to Registries of Deeds records. We all know that this issue is not about just the Deeds records but encompasses all of state and local government records as well. Having said that, I have only done minimal research on how this affects the counties and more specifically, the Deeds records and will be stating the case for the Maine Registries of Deeds.

There are a number of public policy questions that arise as a result of these requests which have been rare if non-existent in the Maine. I have listed below some of those that are currently being discussed. I am sure there are other questions that should be added:

1. Should there be in law administrative procedures that sets standards, rules, regulations, etc. for the dissemination of public documents?

2. Should requests for obtaining public records in bulk be an exception of the FOAA, Title 1, law?

3. Should there be a distinction between commercial and non-commercial requests for obtaining public records in bulk?

4. Should there be an exception for media who are obtaining the information for informing the public or for non-profit purposes.

5. Should there be "not-withstanding" language in the FOAA law that allows other statutes to prevail in setting fees for copies?

6. Should there be a definition of "reasonable fees" in law? What measurements are used to determine reasonable fees?

7. Should there be permissive language in the FOAA law that allows a public agency to make a determination to sell or not sell public records as a bulk sale?

8. Should governmental agencies be "required" to sell in bulk when they have an established procedure for allowing public inspection and copying of the records in their jurisdiction?

9. Are public agencies allowed to collect revenues for these sales to offset the burden on the taxpayers to fund state and local government operations?

The Maine County Commissioners Association and the Maine Registry of Deeds Association have joined in trying to address the issue of selling Deeds records in bulk and have proposed two bills for the second legislative session. We want to be as helpful to the public as possible in providing our customers with a complete and accurate collection of land records in Maine. We started this journey in 1999 when the registries began entering into contracts with our vendors that included digital images. We were already inputting the index in electronic format. I have now completed the indexing and imaging for all of Kennebec County documents including plans. This does, in fact, make it a valuable collection to have. We are not opposed to working with the public in making this available in a form that will serve them best.

We are very concerned about the integrity of the collection and most particularly the collection being obtained strictly for commercial purposes. We do take a strong position if there is going to be a mandate to provide electronically stored public records in bulk to commercial businesses that there should be a statute regulating those sales. While currently we have a law decision interpreting the FOAA requiring bulk sales in Maine. we think a public law is the appropriate place to set public policy so that all voices can be heard on this issue and a determination by our elected officials has been made. It is most important that the law be passed in this second session because of the impact this sale will have on the State, county, and local governments. I know that this is a huge issue to address in a short session. My research shows me that other states began looking at this issue in 1996, if not before by amending their FOAA statutes. Usually, I am proud to say, Maine leads the nation but we have not in the case of selling in bulk.

Both the county commissioners and the registers of deeds of the various counties are working together to establish a reasonable fees for copies of documents and plans that are more reflective of the costs incurred in establishing an electronic data base in Maine. The completeness of the Registries electronic data bases vary widely.

Important questions are:

what is the cost of creating, storing and duplicating and thus the value of that data,

how should it be made accessible and at what cost?

We are also working together to look at providing a statewide portal for our electronic records. This will probably require a bid process to obtain the best price for establishing and maintaining this website.

We currently have a link to all the registries on our website:

https://www.maineregistryofdeeds.us.

Following are a few examples of what other states have done: (these are just excerpts from the law and should not be viewed as complete)

OKLAHOMA – Title 51, Chapter 1, sec.24A.5 – Exemptions .....

3. ....."In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

   The fees shall not be used for the purpose of discouraging request for information or as obstacles to disclosure of requested information.
4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, the index shall not be copied or mechanically reproduced for the purpose of sale of the information."

ARIZONA – 1. Statute Basic Application. D. Fee provisions or practices. Distinguishes between commercial and non-commercial purpose. The language for non-commercial is mandatory. The language for commercial is permissive and sets out requirements and spells out what can be included in the charge for the copies. It also takes the position that journalists are not seeking record for a commercial purpose.

FLORIDA – "an agency may charge a reasonable special service charge for the use of information technology resources based on the cost incurred for extensive use of information technology resources or extensive use of clerical and supervisory assistance."

IOWA – also addresses "geographic computer data base"

MAINE – 1 MRSA 408(3) (C) "If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation."

MICHIGAN – "If there is an act or statute specifically authorizing the sale of public records, including the amount of the fee for providing a copy of the public record, the FOIA fee provisions do not apply."

OHIO – Computer-stored records cannot exceed the cost for copying paper records but if the copying creates an "increased financial burden" the costs can be passed on the requester and allows public offices to arrange for outside contractors with the costs passed on to the requester.

PENNSYVANIA – Established by the Office of Open Records for Commonwealth and local agencies and by the judicial and legislative agency.

VERMONT – The Secretary of State is charged with adopting rules.

Obviously, there are many other states that are not noted here with many different ways of addressing the public policy issues regarding bulk sales. A more thorough review would be judicious in forming public policy for Maine. My source is: "Open Government Guide" published by "The Reporters Committee for Freedom of the Press, 2006" and a compilation of various state statutes addressing the availability of copies and the fees for obtaining those copies.

Thank you for giving me this opportunity to present these issues to you. While they are not complete, I hope it will be of some assistance to you in what you decide to recommend to the Judiciary Committee. Our impassioned plea is to have bulk sales language in the Maine statutes that is not mandatory for commercial sales other than media and non-profits and the fees charged for this service includes the true cost of compiling the database as soon as possible in the second session of the 124th Legislature of the State of Maine .

Open Government Guide

Published by The Reporters Committee for Freedom of the Press, 2006

Retrieved October 28, 2009

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Open Records
I. STATUTE -- BASIC APPLICATION
D. Fee provisions or practices.
2. Particular fee specifications or provisions.

Comparing: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

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Alabama

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

There are no particular fee provisions by rule or statute for searches of public records. Attorney General opinions have implied that a fee may be charged for a search if "a substantial amount of an employee's time is required." 184 Op. Att'y Gen. Ala. 27, 28 (Aug. 15, 1981); 251 Op. Att'y Gen. Ala. 38 (June 12, 1998).

b. Duplication.

Particular fee provisions for duplication of public records are included in only a few Alabama statutes, rules and decisions, as follows:

1. *Alabama Criminal Justice Information Center (ACJIC):* Fees not to exceed $25. Ala. Code § 41-9-644 (2000).

2. *Appellate court records:* $5.00 for one to ten pages; $.50 per page for more than ten pages. Order Adopting Schedule of Fees for Photocopies (Oct. 29, 1991).

3. *Department of Public Safety records:* A fee not to exceed $15 for each record or report, unless a different fee is otherwise prescribed by law. Ala. Code § 32-2-8 (Supp. 2005).

4. *Motor vehicle records:* $5.75 for each individual driving record, Ala. Code § 32-7-4 (1999), and "the actual reasonable cost incurred by the Department [of Public Safety] to create any new computer program required to comply with any . . . request by the Plaintiff [for the Department's computer database information]," *Birmingham News Co. v. Peevy,* 21 Media L. Rep. (BNA) 2125 (Cir. Ct. of Montgomery County, Ala., July 22, 1993) (effective Sept. 13, 1997, access to MVRs is governed by 18 U.S.C. 2721).

5. *Trial court records:* $.25 per page; $1.00 for certification. Alabama Rules of Judicial Administration 30(A).

c. Other.

A public entity may not recover attorneys' fees incurred in determining whether public writings are subject to an exception that would prevent their release to the public. 251 Op. Att'y Gen. Ala. 38 (June 12, 1998).

Alaska

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The law authorizes public agencies to charge for search time, as well as other time involved in the production of requested public records, but only to the extent that the time spent in producing records for any one requester exceed five-person hours in a calendar month. If it does, and to the extent that it does, the agency can require the requester to pay the personnel costs required during the month to complete the search and copying tasks, but the personnel costs that are charged may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. AS 40.25.110(c). So, for example, if the actual salary and benefit costs for the records clerk satisfying your request amount to $15 and six hours are spent in a calendar month searching for and producing the document that you have requested, the total amount you may be charged for personnel costs is $15, not $90. If fewer than five hours are spent in the one calendar month on search and copying tasks to produce requested documents, no fees can be imposed. *Id.*, and see *Fuller v. City of Homer (Fuller II)*, 113 P.3d at 666.

b. Duplication.

Unless otherwise provided by law, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency. AS 40.25.110(b). This includes public records obtained in electronic form. The fee for duplicating these may not exceed the "actual incremental costs" of the public agency. AS 40.25.115(c).

c. Other.

Arkansas

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

Ark. Code Ann. § 27-50-909(a)(2) (Office of Driver Services may charge $7.00, an amount set by Ark. Code Ann. § 27-23-117(c), for search of drivers' records).

b. Duplication.

Ark. Code Ann. § 7-5-109(b) (county clerk may charge a fee for the reproduction of voter registration lists, based on cost of reproduction); § 7-5-109(c) (setting fee for computerized lists of registered voters from $10 to $50, depending on the number of voters on the list); § 14-55-402(b) (city clerk may charge for copies of ordinances at same rate allowed circuit clerks for copies); § 21-6-202(a)(7) ($0.80 per page for copies of records of Secretary of State); § 21-6-202(a)(8) (Secretary of State may set fee for copies of maps and similar documents, based on clerical labor and paper costs); § 21-6-401(c)(3) ($0.50 per page for copies of Supreme Court records); § 21-6-

402(11) (circuit clerks may charge $1.50 per page for copies of transcripts); § 27-19-406 ($0.50 per page for abstracts of driver records under Motor Vehicle Safety Responsibility Act); § 27-53-210(b)(1) ($10.00 for copy of state and local law enforcement motor vehicle accident report).

c. Other.

Arizona

There is no information under this heading in this state's outline. Because there might be relevant text in the parent point in the outline, the text for that section follows:

Open Records
I. STATUTE -- BASIC APPLICATION
D. Fee provisions or practices.

The Arizona Public Records Law distinguishes between records requested for a "commercial purpose" versus a "non-commercial purpose."

Non-Commercial Purpose.

For "non-commercial" purposes, the Public Records Law mandates the furnishing of such copies, printouts or photographs and permits the custodian of records to "charge a fee if the facilities are available . . . ." A.R.S. § 39-121.01(D)(1).

However, state law prohibits a state, county, city or any officer or board thereof from demanding or receiving "a fee or compensation for issuing certified copies of public records or for making search for them, when they are to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which is to be presented to the United States or a bureau or department thereof." A.R.S. § 39-122(A).

While some public bodies have attempted to impose prohibitively high fees to discourage requests under the law, the media has succeeded in challenging and reducing such fees. *Cf. Phoenix Newspapers Inc. v. Purcell*, 187 Ariz. 74, 927 P.2d 340 (Ct. App. 1996) (the court refused to rule that A.R.S. § 16-168(E) is unconstitutional for charging a high statutory fee for the production of voter registration lists, noting that it "cannot sit as a super-legislature to determine the wisdom, the necessity, or the inconvenience of a legislative enactment").

Commercial Purpose.

"Commercial purpose" is defined as "the use of a public record for the purpose of sale or resale or for the purpose of reproducing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record." A.R.S. § 39-121.03(D).

A person requesting copies, printouts or photographs of public records for a commercial purpose "shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used." A.R.S. § 39-121.03(A).

Upon being furnished the statement, the custodian of records "may furnish reproductions, the charge for which shall include the following:

- a portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs;

· a reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction;

· the value of the reproduction on the commercial market."

A.R.S. § 39-121.03(A).
If an individual obtains records for a commercial purpose without indicating the commercial purpose, in many circumstances, that individual can be liable for:

· three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorneys' fees or

· shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

A.R.S. § 39-121.03(C).
Arizona media consistently have taken the position that journalists involved in newsgathering activities are not seeking records for a "commercial purpose." The Superior Court and Arizona Attorney General have agreed with that position, which has not been challenged. *Media America Corp. v. Phoenix Police Dep't*, 21 Media L. Rep. (BNA) 2087 (Maricopa County Super. Ct. 1993); Ariz. Atty. Gen. Op. No. I86-90.

California

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

Unlike the fee provision for copying public records, the CPRA contains no fee provision for inspecting records pursuant to Section 6253(a). Cal. Gov't Code § 6253(a).

b. Duplication.

Section 6253(b) of the CPRA provides that absent a statute authorizing a different fee, an agency may charge an amount that covers only the direct costs of duplication. Cal. Gov't Code § 6253(b); *see also North County Parents Org. v. Dept. of Ed.*, 23 Cal. App. 4th 144, 148, 28 Cal. Rptr. 2d 359 (1994)(where court disapproved of a 25 cent per-page fee that included not only copying costs but staff time involved in searching for the records, reviewing records for exempt information and deleting exempt portions).

c. Other.

Electronically Stored Public Records: See Section I. D. 1. above.

E-Mail Transmission Fees. Agencies transmitting public records via electronic transmission (e-mail) may require the requester to pay the direct costs associated with that transmission. Cal. Gov't Code § 11104.5(b).

Colorado

See subsection 1 above. Where records are in the custody of the Secretary of State, costs of copies are governed by Colo. Rev. Stat. § 24-21-104(3). No statutory fee is set.

Connecticut

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The FOIC has held that public agencies are not permitted to impose a service charge in addition to the statutory fees. *Pearl v. Town of Newington*, Do. #FIC 83-57 (Aug. 26, 1983).

b. Duplication.

For non-state public agencies, duplication charges are generally fifty cents per page. *See above.*

c. Other.

If a person applies for a "transcription of a public record," the fee "shall not exceed the cost thereof to the public agency." Conn. Gen. Stat. § 1-212(a)(2); *see also Maher v. FOIC*, 192 Conn. 310, 472 A.2d 321 (1984) (requester must pay costs of new computer program to access computer storage system).

The fee for computer/electronic records "shall not exceed the cost thereof to the public agency" taking into consideration certain factors. Conn. Gen. Stat. § 1-212(b). *See Assessor, Town of Franklin v. FOIC,* No. CV 97-0113250, 1998 WL 305420 (Conn. Super. June 2, 1998). *See also Records Outline* at III.

District of Columbia

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

Search, review and copying fees cannot exceed the actual costs of searching, reviewing and/or copying records. D.C. Code Ann. § 2-532(b). The fee schedules that may be adopted by a public body vary depending on the purpose of the request and the identity of the requester. When records are not sought for commercial use and the request is made by a representative of the news media or by an educational or non-commercial scientific institution for scholarly or scientific research, fees are limited to reasonable standard charges for document duplication. When records are requested for commercial use, fees are limited to reasonable standard charges for searching, duplication and review. For all other types of requests, fees are limited to reasonable standard charges for document search and duplication. § 2-532(b).

b. Duplication.

Reasonable standard charges for duplication may be charged. § 2-532(b).

c. Other.

Review costs shall include only the direct costs incurred during the initial examination of a document to determine whether it must be disclosed or withheld in part. Review costs may not include costs incurred to determine issues of law or policy related to the request. § 2-532(b).

Delaware

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The Delaware Attorney General has concluded that an agency may charge a person requesting documents for the time spent by the public employees conducting searches of documents and copying such documents, at least where the requester has decided not to personally conduct such searches and copying. *See* Del. Op. Att'y Gen., No. 95-ib08 (Feb. 6, 1995). However, if the agency regulation only indicates that duplication charges will be made and does not indicate that a charge will be made for the time of the government employee as well, the requester may not be obligated to pay such charges. *Id. See also* Del. Op. Att'y Gen., No. 91-I003 (Feb. 1, 1991).

b. Duplication.

Each agency establishes its own fee structure for duplication charges. *See* Del. Op. Att'y Gen., No. 94-I013 (Mar. 15, 1994).

c. Other.

FOIA does not require an answering party to pull together information from various forms and arrange it in a required format to create a new public record that does not already exist. Del. Op. Att'y Gen., No 99-ib12 (Sept. 21, 1999); Del. Op. Att'y Gen., No. 00-ib18 (Oct. 31, 2000); Del. Op. Att'y. Gen., No. 05-IB08 (Apr. 4, 2005); Del. Op. Att'y Gen., No. 03-IB24 (Oct. 30, 2003); Del. Op. Att'y Gen., No. 03-IB13 (Jun. 2, 2003); Del. Op. Att'y Gen., No. 04-IB14 (Jun. 28, 2004); Del. Op. Att'y Gen., No. 02-ib18 (Aug. 19, 2002); Del. Op. Att'y Gen., No. 02-ib03 (Feb. 1, 2002).

Delaware's FOIA is silent on how quickly a public body must respond to a public records request, other than to require "[r]easonable access." 29 Del. C. § 10003(a). It has been determined -- by analogy to the federal FOIA -- that "reasonable access" means that a public body "should, within ten (10) days after the receipt of a definitive request, issue a written determination to the requestor stating which of the requested records will, and which will not, be released and the reasons for any denial of a request." Del. Op. Att'y Gen., No. 91-IO03 (Feb. 1, 1992). *See also* Del. Op. Att'y Gen., No. 03-ib26 (Nov. 13, 2003). This 10-day response time may be extended: "(1) When there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) when there is a need to search for, collect, and examine a voluminous amount of separate and distinct records; and (3) when there is a need for consultation, which shall be conducted with all practicable speed, with another agency or agency counsel." Del. Op. Att'y Gen., No. 91-IO03 (Feb. 1, 1992).

Florida

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

Such items as "search or exploration" fees, employee time fees, fees imposed for ordinary wear and tear on machinery and the like may not be charged and collected by record custodians as a condition of inspection in the absence of specific statutory authorization. *See* I.D.1, *supra*. *Compare* Fla. Stat. secs. 15.09, 15.091, 28.24, 382.025 (1991) (imposing fees for searching certain public records).

b. Duplication.

Record custodians must furnish copies of records, certified or otherwise, upon the payment of the actual cost of the duplication in the event specific fees are not prescribed by law. Fla. Stat. sec. 119.07(1)(a) (1995). *See* discussion, *supra*, I.D.1.

c. Other.

Computer Access. The public records law does not contain a special fee provision governing computer access to public records. As with other public records, in the absence of statutory authorization, a charge may not be imposed for the mere inspection of public records. *See* Op. Att'y Gen. Fla. 84-3 (1984); Op. Att'y Gen. Fla. 76-34 (1976). However, as discussed *supra* at I.D.1, an agency may charge a reasonable special service charge for the use of information technology resources based on the cost incurred for extensive use of information technology resources or extensive use of clerical and supervisory assistance.

Minnesota

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

No fee may be charged for searching for data the requester wishes to inspect. One who requests a *copy* of the data may be asked to pay the actual costs of the search. § 13.03, subd. 3.

b. Duplication.

Duplication fees may be charged by the agency. § 13.03, subd. 3.

c. Other.

If a requester asks for a copy of electronic data in electronic form, the agency may require the requester "to pay the actual cost of providing the copy." § 13.03, subd. 3(e).

Georgia

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The Act provides that reasonable charges may be assessed "for search, retrieval, and other direct administrative costs for complying with a request under this Code section. The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour." O.C.G.A. § 50-18-71(d). However, the Georgia Supreme Court has made clear that a fee may not be imposed when a citizen seeks only to inspect records that are routinely subject to public inspection, such as deeds, city ordinances or zoning maps. *McFrugal Rental v. Garr*, 262 Ga. 369, 418 S.E.2d 60 (1992) ("[A]ny fee imposed pursuant to O.C.G.A. § 50-18-71 constitutes a burden on the public's right of access to public records. Therefore, the statute must be narrowly construed. As we construe the statute, the imposition of a fee is allowed only when the citizen seeking access requests copies of documents or requests action by the custodian that involves an unusual administrative cost or burden"). *See also Trammell v. Martin*, 200 Ga. App. 435, 408 S.E.2d 477 (1991) (agencies may not charge for

attorney time spent reviewing records for exempt information).

b. Duplication.

The Act provides that, unless a higher charge is specifically authorized by law, custodians may charge and collect a uniform copying fee not to exceed 25 cents per page. O.C.G.A. § 50-18-71 (a), (b), (c). "An agency shall utilize the most economical means available for providing copies of public records." O.C.G.A. § 50-18-71(e).

With respect to photographic duplication and other methods of reproduction, an interested member of the public shall have the right of access to any subject records for the purposes of making photographs or reproductions while they are in the custody of their lawful custodian. O.C.G.A. § 50-18-71(a).

c. Other.

Computer records. The Act provides that "[w]here information is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred and may charge for the administrative time involved as set forth in subsection (d) of this Code section." O.C.G.A. § 50-18-71(f). At the request of the party seeking the records, an agency is, where practicable, to make records maintained by computer available by electronic means, including the Internet. O.C.G.A. § 50-18-70(g). No new fees other than those directly attributable to providing access can be charged where records are made available by electronic means. O.C.G.A. § 50-18-71.2.

A separate Code Section, however, allows clerks of the superior courts to sell "records or computer generated data of the office of the clerk" for profit. O.C.G.A. § 15-6-96. This provision "in no way limits public access to the information," but instead only allows clerks of court to "contract to earn a profit by providing a computer disk or tape containing this already public information." *Powell v. VonCanon*, 219 Ga. App. 840, 467 S.E.2d 193 (1996). O.C.G.A. § 15-6-96 thus permits clerks to obtain remuneration for providing data in easily accessible formats to companies who profit from re-selling this information.

Hawaii

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

Most agencies allow requesters themselves to search for the records they request, depending on the type of records sought. In assessing fees for disclosure of government records, agencies may charge the following fees: $2.50 per fifteen minutes for an agency search for the record; $5.00 per fifteen minutes for an agency review and segregation of the record; and the actual rate of charge that is charged to the agency by a person other than the agency for services to assist the agency in the search. Haw. Admin. Rules § 2-71-31(a). The first $30 of fees for search, review and segregation of a record are automatically waived. *Id.*

b. Duplication.

Duplication costs vary in amount depending on the agencies, ranging from five cents to one dollar per page. Haw. Rev. Stat. § 92-24 (imposing a fee of one dollar per page for documents in the possession of the Departments of Finance and Commerce and Consumer Affairs).

c. Other.

Computer access, printouts. Some agencies maintain computer terminals that are available to the

public for searching records although not all agency records are maintained thereon. Many agencies also maintain current computer printouts allowing the public to search records maintained by the agency in at least certain computer files. Nevertheless, at least some major agencies (and probably most agencies) still do not make records available on computer disks or provide computer printouts of data requested. Such practices are of clearly dubious legality under the UIPA.

There is only limited public online, off-premise access to government records themselves. The services currently available through HAWAII FYI, the state-sponsored online network, are free. Because the State is in the process of phasing out HAWAII FYI in order to move toward internet access of government records, information currently available on HAWAII FYI is limited to access of a few government bulletin boards, the State and University of Hawaii library catalog system and the legislative bill tracking system. The State government web page, found at http://www.ehawaiigov.org, currently provides public access to information concerning (1) business name registration; (2) certificates of good standing; (3) freshwater game fishing application; (4) insurance licensees; (5) sex offender registry; and (6) tax licenses. The individual agency web pages may follow the State government's trend of providing internet access to government records.

While not as convenient as internet access, the OIP provides terminal access from its office to a database of the records reports from state agencies. Presently, the database is current through 1995 and includes the following information:

· how the record is stored and retrieved;

· the name, business address, and telephone number of the officer in charge of the record;

· the retention period for the record;

· whether the record is public or confidential;

· whether it is a personal record;

· the legal authority for maintaining the record; and

· uses of the record, and the categories of routine users of the record.

See Haw. Rev. Stat. § 92F-18(b) (1996).

Microfiche/Microfilm.

Some agencies make microfiche directly available to members of the public wishing to search their records. Many use microfiche or microfilm to consolidate and reduce the volume of records they must maintain. *See* Haw. Rev. Stat. § 92-24 (1996) (allowing agencies to microform records). After placing records on microfiche or microfilm, agencies may then destroy the originals provided they first receive approval from the State Comptroller, who has the discretion to require that the originals be deposited with another agency or with a research library including the State Archives. Haw. Rev. Stat. § 92-31.

Non-print audio or audio-visual records.

Section 92-21 mentions fees for copies of photographs. Otherwise, there are no special provisions on audio, film, or video records, although some agencies apparently still refuse to make audio and video records, i.e., of meetings, available to the public. *See Burnham Broad. Co. vs. County of Hawaii*, Civ. No. 92-0161 (Haw. 3d Cir., filed Feb. 14, 1992) (refusing to release 911 tapes); Audio Tape Recording of Comm'n's Pub. Meeting, OIP Op. Ltr. No. 92-13 (Aug. 13, 1992) (requiring release of audio tape of meeting rather than written minutes when requested if available in audio tape).

Iowa

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

No search fee is imposed. Instead, the custodian is allowed to charge a "reasonable fee" for "supervisory" services. Iowa Code § 22.3.

b. Duplication.

"The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service."

Public records include records stored "in *any* medium." Iowa Code § 22.1 (emphasis added). However, "a government body which maintains a geographic computer data base is not required to permit access to or use of the data base by any person except upon terms and conditions acceptable to the governing body. The governing body shall establish reasonable rates and procedures for the retrieval of specified records, which are not confidential records, stored in the data base upon the request of any person." Iowa Code § 22.2(3).

c. Other.

Idaho

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The public agency may establish fees to cover the actual labor costs associated with locating and copying documents if "(1) the request is for more than 100 pages of paper records; or (2) the request includes records from which nonpublic information must be deleted, or (3) that actual labor associated with locating and copying documents for the request exceeds two (2) person hours." Idaho Code § 9-338(8)(a).

b. Duplication.

The act provides that any fees charged for copying a public record cannot exceed "the actual cost to the agency of copying the record." Idaho Code § 9-338(8).

c. Other.

The public agency or independent public official may charge a fee for providing a duplicate of a computer tape, computer disk, microfilm or similar record system containing public record information. Idaho Code § 9-338(8)(b). This fee must be uniform to all persons and cannot exceed the sum of the agency's direct cost of copying the information in that form and the standard cost for selling the same information in the form of a publication. *Id.* The custodian of these public records may require advance payment for the cost of copying the records in this form. *Id.*

Illinois

There are no specific fee provisions in the act. Fees are required to be imposed according to a standard

scale of fees, established and made public by the body imposing them. *See* 5 ILCS 140/6(a). The Act does provide that "[t]he purposeful imposition of a fee not consistent with [the fee specifications of the Act] shall be considered a denial of access to public records for the purposes of judicial review." 5 ILCS 140/6(c). Therefore, onerous fee requirements are subject to challenge.

The Illinois Attorney General has opined that, while county recorders may establish a Web site providing Internet access to information contained in the recorders' records and need not post public records in their entirety (though they all must be open for examination at the recorders' offices), county recorders may not charge a fee upon persons or businesses as a condition of providing Internet access to records, absent a statutory provision authorizing the fee. *See* Ill. Att'y Gen. Op. 012 (2000).

Indiana

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The statute generally prohibits public agencies from charging any fee to inspect, search for, examine or review a record to determine whether the record may be disclosed. Ind. Code § 5-14-3-8(b)(1)-(2). The sole exception is that a "reasonable" fee is authorized "for permitting a governmental agency to inspect public records by means of an electronic device." Ind. Code § 5-14-3-8(i).

b. Duplication.

For providing a duplicate of a computer tape, computer disk, microfilm or similar record system containing information, a public agency may charge a fee that does not exceed the sum of the agency's direct cost of supplying the information in that form and the standard cost for selling the same information in the form of a publication. Ind. Code § 5-14-3-8(g). In the case of the Legislative Services Agency, the fee may be a reasonable percentage of the agency's direct cost of maintaining the system in which the information is stored. However, that fee cannot exceed the sum of the agency's direct cost of supplying the information in that form and the standard cost for selling the same information in the form of a publication. *Id.* "Direct cost" means 105 percent of the cost of initial program development, labor required for retrieval, and the medium for electronic output. Ind. Code § 5-14-3-2. A 1993 amendment authorized "enhanced access" to public records through electronic devices other than those provided by the public agency. Ind. Code § 5-14-3-3.5. This cleared the way for outside vendors to provide electronic access to public records for a fee. Enhanced access may be provided only if the requester or a third party has entered into a contract with the agency. Agencies may restrict the use to which the information obtained through enhanced access may be put. Ind. Code § 5-14-3-3(e). The agency may charge "any reasonable fee agreed on in the contract." Ind. Code § 5-14-3-8(h).

c. Other.

No other fees are authorized under the Act.

Kansas

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

Fees shall include the cost of staff time required to make the information available. K.S.A. 45-219(c)(1). Presumably this means search time is included.

b. Duplication.

Actual cost. K.S.A. 45-219(c)(1).

c. Other.

Fees for electronic records shall include only use of any computer services including staff time. K.S.A. 45-219(c)(2). There is no specific cost provision for microfiche or non-print media.

Kentucky

Public agencies are limited to charging a "reasonable fee" for making copies of public records. KRS 61.874(3). For a noncommercial use, the only permissible fee is "the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required." *Id.*

In an administrative regulation adopted long before the 1994 amendments, the Finance and Administration Cabinet stated that "all state administrative agencies" were limited to charging "ten (10) cents a page for each record." 200 KAR 1:020 § 3(1).

For a commercial use, the fee must also be "reasonable" but the public agency is permitted to charge for staff time and/or the cost of acquiring the records:

> The fee provided for in subsection (a) of this section may be based on one or both of the following:
>
> 1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;
>
> 2. Cost to the public agency of the creation, purchase or other acquisition of the public records.

KRS 61.874(4)(c).
If there is no cost to a public agency in providing a record for inspection, the agency may not charge any fee, regardless of whether the requester has a commercial purpose. *See* 94-ORD-145.

Louisiana

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

Except for searches outside of regular office hours, no fees may be charged to examine or inspect a record. La. Rev. Stat. Ann. § 44:32(C)(3).

b. Duplication.

Except for records of state agencies, fees for copies of records are established by the custodian and must be "reasonable." Fees for copies of records of state agencies are charged according to the uniform fee schedule adopted by the commissioner of administration unless otherwise fixed by law. La. Rev. Stat. Ann. § 44:32(C).

c. Other.

The fee for an autopsy report is the same as that charged by the registrar of vital records for a

death certificate, with the exception that one free copy must be provided to the decedent's next of kin. La. Rev. Stat. Ann. § 33:1563(J).

Massachusetts

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

On non-computerized records, a pro-rated fee may be charged based on the hourly rate of the lowest paid public employee capable of performing the search. 950 CMR 32:06(l)(c). For a search of computerized records, the actual cost incurred from the use of computer time may be charged. 950 CMR 32:06(l)(e).

b. Duplication.

Custodian is not required to produce more than one copy. 950 CMR 32.05(6). Otherwise, except where provided by statute, fees are not more than 20 cents per page for photocopies of paper records. 950 CMR 32:06(1). For computer printouts, not more than 50 cents per page. 950 CMR 32:06(l)(d). For microfiche, not more than 25 cents per page. 950 CMR 32:06(l)(b).

c. Other.

For non-print audio or audio-visual records, there are no specific fee provisions. However, regulations do provide that, for copies of public records not susceptible to ordinary means of reproduction, actual cost of providing copy may be charged. 950 CMR 32:06(l)(f).

Maryland

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The *PIA Manual* defines "search fees" as the "costs to an agency for locating requested documents." *PIA Manual,* at 11. "Preparation fees are the costs to an agency to prepare a record for inspection or copying, including the time needed to assess whether any provision of law permits or requires material to be withheld." *Id.* An official custodian may not charge a fee for the first two hours spent searching for a public record and preparing it for inspection. § 10-621(c). In addition, various state and local agencies have adopted standard fee schedules. *See PIA Model Rules, PIA Manual,* at App. D-6.

b. Duplication.

A reproduction fee may not be set by the custodian if the fee is provided for by another law. § 10-621(d). The custodian may charge for the cost of providing facilities for reproduction if the custodian does not have such facilities. § 10-621(2)(3). In addition, various state and local agencies have adopted standard fee schedules. *See PIA Model Rules, PIA Manual,* at App. D-6 through D-8.

c. Other.

Maine

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The agency or official may charge a fee to cover the actual cost of searching for, retrieving, and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408(3)(B). Compiling the public record includes reviewing and redacting confidential information. *Id.*

b. Duplication.

The fee must be "reasonable." 1 M.R.S.A. § 408(3)(A).

c. Other.

The cost of translating a record from an electronic form to a readable form, if necessary, can be charged. 1 M.R.S.A. § 408(3)(C). An agency or official may not charge for inspection. 1 M.R.S.A. § 408(3)(D). Many electronic records are available through InforME: The Information Resource of Maine. InforME is a self-supporting electronic gateway that provides and enhances access to public information stored in electronic form. 1 M.R.S.A. § 533. InforME charges a fee for most records.

Michigan

Labor costs incurred in duplication, mailing, separation of material, etc., are to be calculated at no more than "the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request . . ." MCLA § 15.234(3). This 1996 amendment is a change from the previous version of the FOIA. Despite this seemingly clear language, the Michigan Attorney General has opined that in calculating these labor costs a public body may include fringe benefits paid to its employees. 1999 Op. Att'y Gen. No. 7017 (1999) Attorney General opinions are not binding on the courts. Further, public bodies are charged to "utilize the most economical means available for providing copies." *Id.*; *see also Tallman v. Cheyboygan Area Schools,* 183 Mich. App. 123, 454 N.W.2d 171, 174-75 (1990) (school district not permitted to employ its own method of computing copying charges, even if reasonable, to save money because a public body may not on its own deviate from computation method set forth in FOIA). If there is an act or statute specifically authorizing the sale of public records, including the amount of the fee for providing a copy of the public record, the FOIA fee provisions do not apply. *Title Office Inc. v. Van Buren County Treasurer*, 496 Mich. 516, 676 N.W.2d 207 (2004) (The fees for copies of property tax records requested from a county treasurer are to be computed according to the fee schedule provided in the Transcripts and Abstracts of Records Act [TARA].)

Missouri

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

Research time for fulfilling records requests may be charged at the actual cost of research time, but the research should be done in a way to produce the lowest cost. Mo.Rev.Stat. § 610.026.1(1).

b. Duplication.

Not to exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the governmental body. Mo.Rev.Stat. § 610.026.1(1).

c. Other.

The charge for all forms of electronic media and paper copies larger than nine by fourteen inches includes only the cost of the copies and the staff time for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. "Staff time" shall not exceed the average hourly rate of pay for staff of the governmental body. If programming is required beyond the "usual and customary" level to comply with a records request, the fees may include the actual cost of programming. Mo.Rev.Stat. § 610.026.1(2).

Mississippi

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

There are no particular fee specifications in the statute. Each agency may, however have "reasonable written procedures" concerning its charges. § 25-61-5(1).

b. Duplication.

There are no particular fee specifications in the statute. Each agency may, however have "reasonable written procedures" concerning its charges. § 25-61-5 (1).

c. Other.

Fees can be established on a standard scale to reimburse costs of "creating, acquiring and maintaining" electronically accessible data, and such fees must be reasonably related to cost, but "in determining the fees or charges . . . the public body may consider the type of information requested, the purpose or purposes for which the information has been requested and the commercial value of the information." § 25-61-7(2). There is no statutory authority for chancery clerks to charge a flat monthly fee to abstractors for use of their office fax machine to transmit records to members of the public.

Montana

For information in nonprint form, fees cannot exceed: (1) The cost of purchasing the electronic media used for transferring the data; (2) Mainframe processing charges; (3) Agency's cost of online access; (4) Other out-of-pocket expenses directly related to the request; (5) First half hour of agency employee's time is free; hourly rate thereafter, at $8.50/hour. Mont. Code Ann. § 2-6-110.

North Carolina

Several statutes fix the fees for copies of specific types of records. For example, G.S. § 20-26 sets the fee for a copy of a driver license record at $8.00 ($11.00 if the copy is certified). G.S. § 7A-308(12) requires clerks of court to charge $2.00 for the first page of a copy and 25 cents for each additional page. G.S. § 58-6-5(3) sets the fee for copies of Department of Insurance records at 50 cents per page. Anyone requesting copies of public records should verify in advance what fees the agency providing the copies

proposes to charge for them.

North Dakota

With the exception of a two dollar fee for copies of accident reports from the State Transportation Department provided for in N.D.C.C. § 39-08-13 and the three dollar maximum fee for Motor Vehicle Registrar licensing information provided for in N.D.C.C. § 39-02-05, the statutes themselves do not provide guidance on the levels or limitations of fees. Each agency traditionally determines the amount of its fees, which have historically ranged from ten cents to twenty-five cents per photocopy. *See* Attorney General's Opinion 94-25 (August 5, 1994) 105 (discussing "reasonable fee").

N.D.C.C. § 44-04-18(2) states:

> Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. The entity may charge a reasonable fee for making the copy. Fees received under this subsection are public moneys and must be deposited as provided by law. An entity may require payment before making the copy. If the entity is not authorized to use the fees to cover the cost of providing the copy, the entity may make arrangements for the copy to be provided by another entity, public or private, and the requester shall pay the fee to that other entity.

A recent opinion of the Attorney General states:

> It is my opinion that when determining a reasonable fee to be charged for a copy of public records a public agency may consider the costs of the copying equipment and materials and other costs actually and necessarily incurred in making the copies as well as the labor expenses, excluding the labor expenses incurred in locating and reviewing the records.

Attorney General's Opinion 94-25 (August 5, 1994) 105.
A law passed in 1999 provides that a county official is not required to compile statistical information not already compiled in response to requests made by private individuals, firms or corporations. However, if they choose to do so and the process takes more than one hour, the county commissioner can then determine a fee not to exceed $25 per hour. N.D.C.C. § 11-13-02.1.

Nebraska

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

None.

b. Duplication.

Persons may obtain copies of any public record, although custodians may charge the reasonably calculated actual cost for reproducing public records, which may include a "reasonably calculated" fee for the custodian's time to reproduce requested documents. Certified copies are available upon payment of cost of duplication, plus $1 for certificates. Neb. Rev. Stat. § 25-1280 (Reissue 1995). Certified copies of birth, death, or marriage certificates cost $7. Neb. Rev. Stat. § 71-612 (Cum.Supp. 2004). Claimants before the U.S. Veteran's Bureau or U.S. Bureau of Pensions may obtain certified copies free of charge. Neb. Rev. Stat. § 84-712.02 (Reissue 1999).

c. Other.

New Hampshire

The legislature may establish by law fees for obtaining copies of public records and, if they do, a public body may not impose any additional charge. RSA 91-A:4,IV.

New Jersey

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to the Act is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the rates set forth in D.1 above shall be established in advance by ordinance. The requester shall have the opportunity to review and object to the charge prior to it being incurred.

(See *N.J.S.A.* 47:1A-5(c)).

New Mexico

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

By statute, a custodian may charge (only) reasonable fees for copying and shall not charge a fee for the cost of determining whether any public record is subject to disclosure. § 14-2-9(B)(4), NMSA 1978. This has been commonly interpreted to prohibit a fee for a search or an inspection, although there is no written appellate decision presumably because of the relatively clear statutory provisions.

b. Duplication.

A public body is limited to a "reasonable fee for copying public records," not to exceed $1 per page for documents 11" x 17" or smaller. § 14-2-9, NMSA 1978.

c. Other.

Nevada

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

There is no statutory provision for search fees.

b. Duplication.

A governmental entity may charge a fee for providing a copy of a public record. The fee cannot exceed the actual cost to the governmental entity except as set by statute. The entity may not charge a fee if the statute requires the entity to provide the copy free of charge. N.R.S. 239.052.

c. Other.

Nevada Open Records Act requires the governmental entity to maintain a list of fees it charges for providing copies of public records in each office in which it provides copies of public records. Each office must post in a conspicuous place a notice of the fees it charges or a location in which a list of fees may be found. N.R.S. 239.052(3).

New York

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

The FOIL does not provide for search fees.

b. Duplication.

Except where a different fee is prescribed by statute, the fee for duplication shall not exceed:

· $.25 per photocopy not in excess of 9" x 14," or

· the actual cost of reproducing any other record.

N.Y. Pub. Off. Law § 87(1)(b)(iii) (McKinney 1988); *Schulz v. New York State Board of Elections*, No. 4797-94 (Sup. Ct., Albany County, 1995) ("'reproducing' a record certainly does not include 'producing' the record in the first place -- i.e. compiling the information from which the record is produced.").

c. Other.

Computer access; printout. Fees for copies of computer printouts and tapes shall not exceed the actual cost of reproduction, except where otherwise prescribed by statute. N.Y. Pub. Off. Laws § 87(1)(b)(iii) (McKinney 1988). *See Brownstone Publishers Inc. v. New York City Department of Buildings*, 166 A.D.2d 294, 560 N.Y.S.2d 642 (1st Dep't 1990) (computer files were required to be transferred onto computer tapes); *Reese v. Mahoney*, (Sup. Ct., Erie County, June 28, 1984) (allowing fee of $125 as actual cost of reproduction of computer tape); *Real Estate Data Inc. v. County of Nassau*, No. 11364 (Sup. Ct., Nassau County, Sept. 18, 1981).

Microfiche. Fees for copies of microfiche shall not exceed the actual cost of reproduction, except where otherwise prescribed by statute. N.Y. Pub. Off. Law § 87(1)(b)(iii) (McKinney 1988).

Non-print audio or audio-visual records. Fees for copies of recordings shall not exceed the actual cost of reproduction, except where otherwise prescribed by statute. N.Y. Pub. Off. Law § 87(1)(b)(iii) (McKinney 1988). This has been held to require exclusion of fixed costs of the agency, such as operator salaries. *Zaleski v. Hicksville Union Free School Dist.*, N.Y.L.J., Dec. 27, 1978 (Sup. Ct., Nassau County, 1978).

CD-ROM format. Many agencies now disclose information from computerized databases in a CD-ROM format at a nominal fee to the requester.

Ohio

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those

subpoints in a separate comparison.

a. Search.

The statute does not authorize charging the requester for employee time to search for requested records. The Ohio Supreme Court has ruled that the right to inspect records cannot be conditioned on the payment of any fee, even if officials have to redact information exempt from disclosure before allowing the inspection. Also, even where "cost" can be charged for the making of copies, no fee for public employee time can be charged. *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994). Consequently, public offices cannot charge fees based on public employee labor to search for requested records.

A provision of the statute allows the Bureau of Motor Vehicles to include labor charges under limited circumstances related to requests for commercial purposes. The statute excepts news reporting and gathering as a commercial purpose. Although unclear, the statute may allow the bureau to charge commercial requesters for search time. Ohio Rev. Code § 149.43(E).

b. Duplication.

The statute provides that copies are available "at cost." Ohio Rev. Code § 149.43(B).

The statute does not define "cost," but the Ohio Supreme Court has ruled that "cost" does not include any labor expenses for public employee time. In effect, "cost" is limited to the "actual cost" of depleted supplies, such as toner and paper, used in making copies. *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994). See *S/O, ex rel. Strothers v. Murphy*, 132 Ohio App. 3d 645, 725 N.E.2d 1185 (Cuyahoga App. 1999) (police department required to charge no more than five cents per page for copying public records).

For computer-stored records, the cost charged cannot exceed the amount charged for copying paper records. *State ex rel. Recodat v. Buchanan*, 46 Ohio St. 3d 163, 546 N.E.2d 203 (1989). But, where copying computer tapes creates an "increased financial burden" on the public office, that increased financial burden can be passed on to the requester. *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 584 N.E.2d 665 (1992).

Public offices may arrange with outside contractors to copy computer tapes, and pass the cost of that service directly to the requester. *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 584 N.E.2d 665 (1992).

The only exception is the Bureau of Motor Vehicles, which may charge the following: (1) actual cost (depleted supplies, storage costs, delivery costs, direct equipment operating and maintenance costs, (2) the cost of the time spent by the lowest paid employee competent to perform the task of responding to the request and/or to create a computer program to respond to the request, (3) plus 10 percent. This exception does not apply to requesters who give assurance that they do not "intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes." "Surveys, marketing, solicitation, or resale for commercial purposes" does not include "reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research." Ohio Rev. Code § 149.43(E).

c. Other.

Copies of public records through the mail: public offices must comply with a request that copies of records be transmitted to a requester by mail; but may charge a fee in advance before transmitting copies of public records by mail. The fee is limited to the cost of postage and related depleted supplies. Ohio Rev. Code § 149.43(B)(3).

An indigent criminal defendant is only entitled to one free copy of his criminal trial transcript. Additional requests, under the Public Records Act, require him to pay "cost" for additional copies

and for postage and mailing supplies. *State ex rel. Call v. Fragale*, 104 Ohio St. 3d 276, 819 N.E.2d 294 (2004).

Oklahoma

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

If the request is solely for commercial purposes or would clearly cause excessive disruption to the public body's essential functions, then the public body may recover the direct cost of any document search. 51 Okla. Stat. Supp. 2005 § 24A.5.3. *See Transportation Information Services Inc. v. Oklahoma Dep't of Corrections,* 1998 Okla. 108, 970 P.2d 166 (Agency may charge reasonable fee to cover costs to write and test necessary software and to gather specific information requested). Fees charged by the Department of Public Safety for record in computerized format shall not exceed the direct cost of making the copy unless a separate fee is established by law. 51 Okla. Stat. Supp 2005 § 24A.5.3.

b. Duplication.

"Notwithstanding any state or local provision to the contrary" a public body may recover only the reasonable, direct costs of copying and in no instance shall the cost be more than 25 cents per page for documents less than 8 1/2 x 14 inches or a maximum of one dollar for a certified copy. However, if the request is made solely for a commercial purpose or would cause excessive disruption in gathering the documents, then the public body can charge a reasonable fee to recover the direct cost of the document search. 51 Okla. Stat. Supp. 2005 § 24A.5.3. This provision has been held not to apply to court records, the cost of which are set by statute *Williams v. Austin*, *supra*. Obtaining public documents for publication in a newspaper or broadcast by news media is not considered a commercial purpose. 51 Okla. Stat. Supp. 2005 § 24A.5.3.

c. Other.

Oregon

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

A per-page charge for copies may include the cost of a routine or extraordinary file search and segregation of exempt material from non-exempt. ORS 192.440(3). The Attorney General has held that public bodies may charge for searches even if no responsive records are located.

b. Duplication.

Duplication is limited to actual costs.

c. Other.

A public body may charge for its attorney's time in redacting and segregating exempt and non-exempt records, but it may not charge for any attorney time spent to determine the applicability of exemptions. ORS 192.440(3)(6).

Pennsylvania

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

A fee to review a document is not permissible. No fee may be charged for "an agency's review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this act." Section 1307(g).

b. Duplication.

The Act requires that the fees "shall be established" by the Office of Open Records for Commonwealth and local agencies, by each judicial agency and by each legislative agency. Section 1307(b)(1).

Fees for duplication – whether by "photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication" – "must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities." Section 1307(b)(2). "Fees for local agencies may reflect regional price differences." Section 1307(b)(3).

A retrieval and copying fee of 25 cents per page was held reasonable under the Act. *Weiss v. Williamsport Area Sch. Dist.*, 872 A.2d 269 (Pa. Commw. Ct. 2005) (interpreting the old act). In so holding, the Court permitted the School District to rely on comparable charges levied by other local colleges and banks and rejected the requester's evidence of lower fees charged by such local businesses as Staples. *Id.*

If the public record is only maintained electronically or in non-paper form, the agency may charge only the lesser of the fee for duplication on paper or the fee for duplication in the original media, unless the request is specifically for duplication in the more expensive medium. Section 1307(d).

c. Other.

"Fees for postage may not exceed the actual cost of mailing." Section 1307(a).

Agencies may offer "enhanced electronic access" to public records using a different rate structure – *e.g.*, flat rate, subscription fee, per transaction fee, etc. – so long as the enhanced electronic access is "in addition to making the records accessible for inspection and duplication" as required by the Act. "The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records, and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency." Section 1307(e).

The Act has special rules for "complex and extensive data sets, including geographic information systems or integrated property assessment lists." In such situations, "[f]ees for copying may be based on the reasonable market value of the same or closely related data sets." Section 1307(b)(4)(i). Such fees, however, "shall not apply" to requests by (1) newspapers, magazines, broadcast stations, weekly publications and press associations "for the purpose of obtaining information for publication or broadcast" or (2) "nonprofit organizations for the conduct of educational research." Section 1307(b)(4)(ii).

The Act allows agencies to "impose reasonable fees for the official certification of copies if the certification is at the request of the requester and for the purpose of legally verifying the public record." Section 1307(c). Once an agency grants a request for access, the Act obligates an agency to provide a certified copy if the requester pays the applicable fees under Section 1307.

Section 904.

The Act permits different fees for transcripts depending on whether the adjudication is final. Prior to an adjudication becoming "final, binding and nonappealable," transcripts of an administrative proceeding are available from the agency stenographer or court reporter "in accordance with agency procedure or an applicable contract." Section 707(c)(1). But where the adjudication is final, the "duplication rate" may not exceed that established by Section 1307(b), i.e., they must be "reasonable and based on prevailing fees for comparable duplication services provided by local business entities." Section 707(c)(2). In other words, until an adjudication is final, fees may be a much higher charge consistent with per page rates set by court reporters and stenographers.

Rhode Island

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

A reasonable charge may be made for the search. However, hourly costs cannot exceed $15.00 per hour, with no charge for first hour of search. R.I. Gen. Laws § 38-2-4(b).

b. Duplication.

Fifteen cents per page maximum for documents copyable on common business or legal size paper. R.I. Gen. Laws § 38-2-4(a).

c. Other.

A public body may not charge more than the reasonable actual cost for providing electronic records. R.I. Gen. Laws § 38-2-4(a).

South Carolina

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

A public body may charge for searching for a public record, but it may not charge to review a document to see if it is subject to disclosure. S.C. Code Ann. § 30-4-30(b).

b. Duplication.

A public body may charge for copying a public record. S.C. Code Ann, but the charge is not to exceed the actual cost of copying. § 30-4-30(b).

c. Other.

South Dakota

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

None.

b. Duplication.

None.

c. Other.

Tennessee

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

There are no specific provisions related to search fees.

b. Duplication.

Even though § 10-7-507 by its terms is limited to records of traffic violations of county or municipal ordinances, presumably the "reasonable fee" provision applies to all sections of Chapter 3 of the Act under the principle that "[s]tatutes *pari materia* shall be considered together." *Cleveland Newspapers Inc. v. Bradley County Memorial Hospital Board of Directors*, 621 S.W.2d 763, 766 (Tenn. Ct. App. 1981) (citation omitted) (Holding that two sections of Chapter 7, T.C.A. § 10-7-501 and 10-7-503, should be read together).

c. Other.

If the requester can identify the records requested with specificity, he need not personally appear to have copies of the records sent to him. *Waller v. Bryan*, 16 S.W.3d at 773.

If records have "commercial value" the custodians may also charge fees to offset the cost of developing and updating the records. T.C.A. § 10-7-506.

Texas

As stated above, § 552.261 provides that "[t]he charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead."

Utah

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

A governmental entity may charge for the cost of staff time for search and retrieval of records *if* the request is for records complied in a form other than that normally maintained by the governmental entity. Utah Code Ann. § 63G-2-203(2)(a)-(b). GRAMA does provide, however, that a governmental entity may *not* charge a fee for (i) reviewing a record to determine whether it is subject to disclosure and (ii) inspecting a record. *See id.* § 63G-2-203(5). In *Graham v. Davis*

County Solid Waste Management & Energy Recovery Special Serv. Dist., 1999 UT App 136, 979 P.2d 363, the Utah Court of Appeals held that "a governmental agency may assess compilation fees in conjunction with a request for records only if: (1) a request specifies that the documents be compiled in a form other than that used by the agency and the requester consents to the imposition of compilation fees; or (2) the request, without specifying that the records be compiled in a form other than that maintained by the agency, nonetheless requires the agency to extract materials from a larger document or source and it is not feasible or reasonable to allow the requester to compile the records." *Id.* at 372. If a requester appeals a compilation fee, the governmental entity has the burden of proving that either of these two conditions apply. *See id.* at 372-73.

b. Duplication.

The fee a governmental entity may charge for providing records is limited to the "actual cost" and the fee must be "reasonable" and approved by the entity's executive officer. Utah Code Ann. § 63G-2-203(1). GRAMA further provides that a governmental entity "may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this chapter." Utah Code Ann. § 63G-2-201(11).

c. Other.

Virginia

Not specified.

Vermont

There is no information under this heading in this state's outline. Because there might be relevant text in the parent point in the outline, the text for that section follows:

Open Records
I. STATUTE -- BASIC APPLICATION
D. Fee provisions or practices.

Under a 1996 amendment to the statute, the Vermont legislature for the first time granted public agencies and subdivisions the authority to recover costs and fees for providing information under the public records law. Agencies may charge and collect the "actual cost of providing the copy," including "the costs associated with mailing or transmitting the record by facsimile or other electronic means." 1 V.S.A. § 316(b).

The 1996 amendment directs the Secretary of State to establish the actual cost of providing a copy of a public record, in order to set the fees that may be charged by state agencies. 1 V.S.A. § 316(d). Once the actual cost is determined, the Secretary of State is required to adopt rules establishing "a uniform schedule of public record charges for state agencies." *Id.* Political subdivisions of the State are also directed to "establish actual cost charges for copies of public records," and to post them in prominent locations in the town offices. 1 V.S.A. § 316(e).

Under certain circumstances, agencies and political subdivisions "may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record." 1 V.S.A. § 316(c). These costs may be recovered if: "(1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes." *Id.* Where a request for public records is subject

to staff time charges, the agency may require that the request be made in writing and that the charges be prepaid. *Id.*

Washington

For photocopies, the default rate is fifteen cents per page. RCW 42.17.260(8) (recodified as RCW 42.56.070(8), .120, .130, eff. 7/1/06). An agency may establish a higher rate is necessary to recover actual costs of providing photocopies. However, the agency must make available to the public a statement of the actual per page cost or other costs, and the basis for computation of the charge. RCW 42.17.260(7) (recodified as RCW 42.56.070(7), eff. 7/1/06). The Act sets forth criteria which may be considered in determining such cost. *Id. See* RCW 70.58.107 (2000) (birth, death, marriage, and dissolution certificates).

Wisconsin

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

A search fee may be imposed if the actual, necessary and direct cost of locating the record exceeds $50, unless otherwise provided or authorized to be prescribed by law. Wis. Stat. § 19.35(3)(c); *Osborn v. Board of Regents*, 2002 WI 83 ¶46, 254 Wis. 2d 266, 303-04, 647 N.W.2d 158, 176.

b. Duplication.

Fees can in general be imposed for the "actual, necessary and direct costs of reproduction." Wis. Stat. § 19.35(3)(a); *Osborn*, 2002 WI 83 ¶46, 254 Wis. 2d at 303-04, 647 N.W.2d at 176.

c. Other.

West Virginia

The FOIA contains no provisions for separate charges for searches, duplication, computer access or printouts, microfiche, or non-print audio or audio-visual records. Since the statute only authorizes charges for the cost of "reproduction," additional "search" charges should be prohibited. There is one complication regarding the fee issue, however. W. Va. Code § 59-1-10 provides a schedule of fees to be charged by county clerks for copies of the various documents required by statute to be maintained by such officers which are sometimes as much as $2.00 per page. The Attorney General has advised county clerks that this fee schedule is mandatory. Op. Att'y Gen., September 8, 1986. Although the Attorney General's opinion does not mention the Freedom of Information Act, some county clerks now charge these higher fees, rather than the "actual cost in making reproductions," for documents provided under the FOIA.

Wyoming

There is no information under this heading in this state's outline. Because there might be relevant text in the sub-points in the outline, the text for those sections follows; however, you may want to examine those subpoints in a separate comparison.

a. Search.

No fee may be charged for inspection of records. A person requesting a copy of the records should first ask to inspect the record in order to avoid an attempt to include a search fee in the

cost of copying the records.

b. Duplication.

Duplication is controlled by the reasonable fee provision. *Id.*

c. Other.

Computer access, printouts. Records that primarily or solely exist in electronic form are specifically governed by Wyo. Stat. § 16-4-202(d). If the requester requests a compilation or extraction of specific information from a computer database, the custodian may charge for the cost of constructing the record, including the cost of programming and computer services, as well as the cost of producing the actual copy.

Microfiche. Microfiche copies and use should be covered by the general provision allowing for reasonable fees. *Id.*

Non-print audio or audio-visual records. There is no specific reference to fees for this type of media, but presumably this would be within the scope of the general provision. *Id.*

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COLORADO REVISED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2009 LEGISLATIVE SESSION ***

TITLE 24. GOVERNMENT - STATE
PUBLIC (OPEN) RECORDS
ARTICLE 72. PUBLIC RECORDS
PART 2. INSPECTION, COPYING, OR PHOTOGRAPHING

GO TO COLORADO STATUTES ARCHIVE DIRECTORY

C.R.S. 24-72-204 (2009)

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(d) Such inspection would be contrary to the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the general assembly or the office of the governor in connection with pending or anticipated legislation;

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property, if a condemning authority determines that it intends to acquire said property as provided in *section 38-1-121, C.R.S.*, relating to eminent domain proceedings, but, in any case, the contents of such appraisal shall be available to the owner under this section no later than one year after the condemning authority receives said appraisal; and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner of such property who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which the owner has obtained relative to the proposed acquisition of the property.

(V) Any market analysis data generated by the department of transportation's bid analysis and management system for the confidential use of the department of transportation in awarding contracts for construction or for the purchase of goods or services and any records, documents, and automated systems prepared for the bid analysis and management system;

(VI) Records and information relating to the identification of persons filed with, maintained by, or prepared by the department of revenue pursuant to *section 42-2-121, C.R.S.*;

(VII) Electronic mail addresses provided by a person to an agency, institution, or political subdivision of the state for the purposes of future electronic communications to the person from the agency, institution, or political subdivision; and

(VIII) (A) Specialized details of security arrangements or investigations. Nothing in this subparagraph (VIII) shall prohibit the custodian from transferring records containing specialized details of security arrangements or investigations to the office of preparedness, security, and fire safety in the department of public safety, the governing body of any city, county, city and county, or other political subdivision of the state, or any federal, state, or local law enforcement agency; except that the custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of such entity unless such information is already publicly available.

(B) Records of the expenditure of public moneys on security arrangements or investigations, including contracts for security arrangements and records related to the procurement of, budgeting for, or expenditures on security systems, shall be open for inspection, except to the extent that they contain specialized details of security arrangements or investigations. A custodian may deny the right of inspection of only the portions of a record described in this sub-subparagraph (B) that contain specialized details of security arrangements or investigations and shall allow inspection of the remaining portions of the record.

(C) If an official custodian has custody of a public record provided by another public entity, including the state or a political subdivision, that contains specialized details of security arrangements or investigations, the official custodian shall refer a request to inspect that public record to the official custodian of the public entity that provided the record and shall disclose to the person making the request the names of the public entity and its official custodian to which the request is referred.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(c) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential pursuant to the provisions of *section 24-4.1-107.5*.

(d) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by a witness protection board, the department of public safety, or a prosecuting attorney that are confidential pursuant to *section 24-33.5-106.5*.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

LEXISNEXIS (TM) CONNECTICUT ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE FEBRUARY 2008 REGULAR SESSION ***
*** AND THE JANUARY, JUNE 11, AUGUST AND NOVEMBER 24, 2008 SPECIAL SESSIONS ***
*** ANNOTATIONS CURRENT THROUGH AUGUST 26, 2009 ***

TITLE 1 PROVISIONS OF GENERAL APPLICATION
CHAPTER 14 FREEDOM OF INFORMATION ACT

GO TO CONNECTICUT STATUTES ARCHIVE DIRECTORY
Conn. Gen. Stat. § 1-212 (2008)

Legislative Alert:
LEXSEE 2009 Ct. ALS 3 -- See section 140.

Sec. 1-212. (Formerly Sec. 1-15). Copies and scanning of public records. Fees.

(a) Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record. The fee for any copy provided in accordance with the Freedom of Information Act:

(1) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, **shall not exceed twenty-five cents per page; and**

(2) By all other public agencies, as defined in *section 1-200*, shall not exceed fifty cents per page. If any copy provided in accordance with said Freedom of Information Act requires a transcription, or if any person applies for a transcription of a public record, **the fee for such transcription shall not exceed the cost thereof to the public agency.**

(b) The fee for any copy provided in accordance with subsection (a) of *section 1-211* shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

(1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;

(2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;

(3) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and

(4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services. Notwithstanding any other provision of this section, the fee for any copy of the names of registered voters shall not exceed three cents per name delivered or the cost thereof to the public agency, as determined pursuant to this subsection, whichever is less. The Department of Information Technology shall monitor the calculation of the fees charged for copies of computer-stored public records to ensure that such fees are reasonable and consistent among agencies.

(c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more. The sales tax provided in chapter 219 shall not be imposed upon any transaction for which a fee is required or permissible under this section or *section 1-227*.

(d) The public agency shall waive any fee provided for in this section when:

(1) The person requesting the records is an indigent individual;

(2) The records located are determined by the public agency to be exempt from disclosure under subsection (b) of *section 1-210*;

(3) In its judgment, compliance with the applicant's request benefits the general welfare; or

(4) The person requesting the record is an elected official of a political subdivision of the state and the official (A) obtains the record from an agency of the political subdivision in which the official serves, and (B) certifies that the record pertains to the official's duties.

(e) Except as otherwise provided by law, the fee for any person who has the custody of any public records or files for certifying any copy of such records or files, or certifying to any fact appearing therefrom, shall be for the first page of such certificate, or copy and certificate, one dollar; and for each additional page, fifty cents. For the purpose of computing such fee, such copy and certificate shall be deemed to be one continuous instrument.

(f) The Secretary of the State, after consulting with the chairperson of the Freedom of Information Commission, the Commissioner of Correction and a representative of the Judicial Department, shall propose a fee structure for copies of public records provided to an inmate, as defined in *section 18-84*, in accordance with subsection (a) of this section. The Secretary of the State shall submit such proposed fee structure to the joint standing committee of the General Assembly having cognizance of matters relating to government administration, not later than January 15, 2000.

(g) Any individual may copy a public record through the use of a hand-held scanner. A public agency may establish a fee structure not to exceed ten dollars for an individual to pay each time the individual copies records at the agency with a hand-held scanner. As used in this section, "hand-held scanner" means a battery operated electronic scanning device the use of which (1) leaves no mark or impression on the public record, and (2) does not unreasonably interfere with the operation of the public agency.

BURNS INDIANA STATUTES ANNOTATED
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***STATUTES CURRENT THROUGH THE 2009 FIRST REGULAR SESSION AND THE 2009 SPECIALSESSION ***
*** Annotations current through July 22, 2009 ***

Title 5 State And Local Administration
Article 14 Public Proceedings
Chapter 3 Access to Public Records

Go to the Indiana Code Archive Directory

Burns Ind. Code Ann. § 5-14-3-8 (2009)

5-14-3-8. Copying fee.

(a) For the purposes of this section, "state agency" has the meaning set forth in *IC 4-13-1-1*.

(b) Except as provided in this section, a public agency may not charge any fee under this chapter:

(1) to inspect a public record; or

(2) to search for, examine, or review a record to determine whether the record may be disclosed.

(c) The Indiana department of administration shall establish a uniform copying fee for the copying of one (1) page of a standard-sized document by state agencies. **The fee may not exceed the average cost of copying records by state agencies or ten cents ($0.10) per page, whichever is greater.** A state agency may not collect more than the uniform copying fee for providing a copy of a public record. However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized documents.

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in *IC 36-1-2-6*) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. **The fee for certification of documents may not exceed five dollars ($5) per document. The fee for copying documents may not exceed the greater of:**

(1) ten cents ($0.10) per page for copies that are not color copies or twenty-five cents ($0.25) per page for color copies; or

(2) the actual cost to the agency of copying the document.

As used in this subsection, "actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

(e) If:

(1) a person is entitled to a copy of a public record under this chapter; and

(2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record;

the public agency must provide at least one (1) copy of the public record to the person. However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 [*IC 5-14-3-3.5*] of this chapter, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance.

(f) Notwithstanding subsection (b), (c), (d), (g), (h), or (i), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.

(g) Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following:

(1) The agency's direct cost of supplying the information in that form.

(2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

(3) In the case of the legislative services agency, a reasonable percentage of the agency's direct cost of maintaining the system in which the information is stored. However, the amount charged by the legislative services agency under this subdivision may not exceed the sum of the amounts it may charge under subdivisions (1) and (2).

(h) This subsection applies to the fee charged by a public agency for providing enhanced access to a public record. A public agency may charge any reasonable fee agreed on in the contract under section 3.5 of this chapter for providing enhanced access to public records.

(i) This subsection applies to the fee charged by a public agency for permitting a governmental entity to inspect public records by means of an electronic device. A public agency may charge any reasonable fee for the inspection of public records under this subsection, or the public agency may waive any fee for the inspection.

(j) Except as provided in subsection (k), a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision.

(k) The fee charged by a public agency under subsection (j) to cover costs for maintaining, upgrading, and enhancing an electronic map may be waived by the public agency if the electronic map for which the fee is charged will be used for a noncommercial purpose, including the following:

(1) Public agency program support.

(2) Nonprofit activities.

(3) Journalism.

(4) Academic research.

ANNOTATED LAWS OF MASSACHUSETTS
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*** CURRENT THROUGH ACT 104 OF THE 2009 LEGISLATIVE SESSION ***

PART I ADMINISTRATION OF THE GOVERNMENT
TITLE X PUBLIC RECORDS
Chapter 66 Public Records

GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY

ALM GL ch. 66, § 10 (2009)

§ 10. Records Open for Public Inspection.

(a) Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search. **The following fees shall apply to any public record in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.**

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The executive director of the criminal history systems board, the criminal history systems board and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and

ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, shall not be public records in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in *section 167 of chapter 6*. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
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*** THIS SECTION IS CURRENT THROUGH THE FIRST SESSION ***
*** OF THE FORTY-NINTH LEGISLATURE ***
*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-053 AND 2009-NMSC-018 ***

CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS
ARTICLE 2. INSPECTION OF PUBLIC RECORDS

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 14-2-9 (2009)

§ 14-2-9. Procedure for inspection

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database.

B. A custodian:

(1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;

(2) shall not charge fees in excess of one dollar ($1.00) per page for documents eleven inches by seventeen inches in size or smaller;

(3) may require advance payment of the fees before making copies of public records;

(4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(5) shall provide a receipt, upon request.

HISTORY: Laws 1993, ch. 258, § 6.

Libraries & Archives

OKLAHOMA STATUTES, ANNOTATED BY LEXISNEXIS (R)

*** This document is current with Emergency Legislation through Chapter 2 ***
*** of the First Regular Session of the 52nd Legislature ***
*** August 11, 2009 Annotation Service ***

TITLE 51. OFFICERS
CHAPTER 1. GENERAL PROVISIONS
OKLAHOMA OPEN RECORDS ACT

Go to the Oklahoma Code Archive Directory

51 Okl. St. § 24A.5 (2009)

§ 24A.5. Inspection, copying and/or mechanical reproduction of records--Exemptions

All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of this title, does not apply to records specifically required by law to be kept confidential including:

a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,

b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes,

c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or

d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided however, the Department of Public Safety shall not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license number is not furnished by the requesting person.

The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names, dates of birth, and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person.

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, **in no instance shall the record copying fee exceed twenty-five cents ($0.25) per**

page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar ($1.00) per copied page for a certified copy. However, if the request:

a. is solely for commercial purpose, or

b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, the index shall not be copied or mechanically reproduced for the purpose of sale of the information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one person shall be available at all times to release records during the regular business hours of the public body.

General Laws of Rhode Island
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*** Current through the January 2009 Session ***
*** Annotations current through June 10, 2009 ***

TITLE 38. PUBLIC RECORDS
CHAPTER 2. ACCESS TO PUBLIC RECORDS

R.I. Gen. Laws § 38-2-4 (2009)

§ 38-2-4. Cost

(a) Subject to the provisions of *§ 38-2-3*, a public body must allow copies to be made or provide copies of public records. **The cost per copied page of written documents provided to the public shall not exceed fifteen cents ($.15) per page for documents copyable** on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records.

(b) A reasonable charge may be made for the search or retrieval of documents. **Hourly costs for a search and retrieval shall not exceed fifteen dollars ($15.00) per hour and no costs shall be charged for the first hour of a search or retrieval.**

(c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body shall provide an estimate of the costs of a request for documents prior to providing copies.

(d) Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.

(e) A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

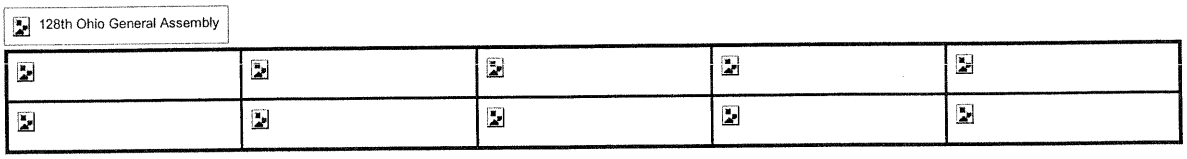
(G)(1) Except as otherwise provided in division (F)(1) of this section or as otherwise provided in any other section of the Revised Code authorizing a higher cost recovery amount per request, a public office may adopt rules under Chapter 119. of the Revised Code to reasonably limit the number of bulk data requests. The rules may include provisions for charges to be made for bulk data requests to cover the actual cost to the public office of making the bulk data available for inspection and copying. The public office also may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in this division:

(a) "Actual cost" means the cost of depleted supplies, records storage costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services, or actual labor costs paid to cover the time spent by the lowest paid public employee competent to perform the tasks of maintaining, locating, and copying the requested records.

(b) "Bulk data request" means a request for copies of a record that includes fifty or more images or fifty or more separate entries of information.

Susan Bulay wrote:



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As Introduced

128th General Assembly
Regular Session
2009-2010

H. B. No. 22

Representative Fende
Cosponsors: Representatives Yuko, Bubp, Garrison, Stebelton, Bolon, Harris, Luckie, Letson, Williams, B., Hagan, Slesnick

A BILL

To amend section 149.43 of the Revised Code to authorize public offices to limit the number of bulk data requests, impose charges to cover the actual costs associated with bulk data requests, and charge for the cost of redacting certain information.

10/26/2009

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 149.43 of the Revised Code be amended to read as follows:

Sec. 149.43. (A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

(p) Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, other than the report prepared pursuant to section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Information reported and evaluations conducted pursuant to section 3701.072 of the Revised Code;

(y) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(z) Records listed in section 5101.29 of the Revised Code.

(aa) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information" means any information that discloses any of the following about a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT:

(a) The address of the actual personal residence of a peace officer, parole officer, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT, except for the state or political subdivision in which the peace officer, parole officer, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT resides;

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's employer from the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's compensation unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

As used in divisions (A)(7) and (B)(9) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in divisions (A)(7) and (B)(5) of this section, "correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

As used in divisions (A)(7) and (B)(5) of this section, "youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

As used in divisions (A)(7) and (B)(9) of this section, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A)(7) and (B)(9) of this section, "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

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HB 22

As Introduced

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Synopsis of Committee Amendments

Conference Committee Synopsis

Fiscal Notes

Status Report of Legislation

Votes

Bill Sponsors

REPRESENTATIVES:
Fende Yuko Bubp Garrison Stebelton Bolon Harris Luckie Letson Williams, B. Hagan Slesnick

Other Versions of Bill and Associated Reports

HELP - Field Definitions for this Page

(8) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.

(B)(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available ~~at cost and~~ within a reasonable period of time. Except as otherwise provided in divisions (F) and (G) of this section, or in any other section of the Revised Code, the copies shall be provided at cost. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person chooses to obtain a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking a copy of the public record to make the copies of the public record.

(7) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT and, if the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

As used in this division, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and

reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(1) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requestor shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(2)(a) If the court issues a writ of mandamus that orders the public office or the person responsible for the public record to comply with division (B) of this section and determines that the circumstances described in division (C)(1) of this section exist, the court shall determine and award to the relator all court costs.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, the court may award reasonable attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section when either of the following applies:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(c) Court costs and reasonable attorney's fees awarded under this section shall be construed as remedial and not punitive. Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. The court may reduce an award of attorney's fees to the relator or not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in division (C)(2)(c)(i) of this section would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. In addition, all public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under

section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

(2) The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(G)(1) Except as otherwise provided in division (F)(1) of this section or as otherwise provided in any other section of the Revised Code authorizing a higher cost recovery amount per request, a public office may adopt rules under Chapter 119. of the Revised Code to reasonably limit the number of bulk data requests. The rules may include provisions for charges to be made for bulk data requests to cover the actual cost to the public office of making the bulk data available for inspection and copying. The public office also may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in this division:

(a) "Actual cost" means the cost of depleted supplies, records storage costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services, or actual labor costs paid to cover the time spent by the lowest paid public employee competent to perform the tasks of maintaining, locating, and copying the requested records.

(b) "Bulk data request" means a request for copies of a record that includes fifty or more images or fifty or more separate entries of information.

Section 2. That existing section 149.43 of the Revised Code is hereby repealed.

Section 3. Section 149.43 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 214 and Am. Sub. S.B. 248 of the 127th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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Provided to Legislature Subcommittee 12/1

From Dick Thompson, OIT

Kansas Legislature

45-217

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION
Article 2.--RECORDS OPEN TO PUBLIC

45-217. Definitions. As used in the open records act, unless the context otherwise requires:

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) "Clearly unwarranted invasion of personal privacy" means revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.

(c) "Criminal investigation records" means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405 and amendments thereto.

(d) "Custodian" means the official custodian or any person designated by the official custodian to carry out the duties of custodian of this act.

(e) "Official custodian" means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control.

(f) (1) "Public agency" means the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) "Public agency" shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; (B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or (C) any officer or employee of the state or political or taxing subdivision of the state if the state or political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

(f) (1) [(g) (1)] "Public record" means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency including, but not limited to, an agreement in settlement of litigation involving the Kansas public employees retirement system and the investment of moneys of the fund.

(2) "Public record" shall not include records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public

funds or records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state.

(3) "Public record" shall not include records of employers related to the employer's individually identifiable contributions made on behalf of employees for workers compensation, social security, unemployment insurance or retirement. The provisions of this subsection shall not apply to records of employers of lump-sum payments for contributions as described in this subsection paid for any group, division or section of an agency.

(h) "Undercover agent" means an employee of a public agency responsible for criminal law enforcement who is engaged in the detection or investigation of violations of criminal law in a capacity where such employee's identity or employment by the public agency is secret.

History: L. 1984, ch. 187, § 3; L. 1992, ch. 321, § 22; L. 1994, ch. 293, § 4; L. 2005, ch. 126, § 7; July 1.

Kansas Legislature

45-218

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION
Article 2.--RECORDS OPEN TO PUBLIC

45-218. Inspection of records; request; response; refusal, when; fees. (a) All public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose. No person shall removal original copies of public records from the office of any public agency without the written permission of the custodian of the record.

(b) Upon request in accordance with procedures adopted under K.S.A. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 45-220.

(c) If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.

(e) The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence.

(f) A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219.

History: L. 1984, ch. 187, § 4; Feb. 9.

Kansas Legislature

45-219

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION
Article 2.--RECORDS OPEN TO PUBLIC

45-219. Abstracts or copies of records; fees. (a) Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency.

(b) Copies of public records shall be made while the records are in the possession, custody and control of the custodian or a person designated by the custodian and shall be made under the supervision of such custodian or person. When practical, copies shall be made in the place where the records are kept. If it is impractical to do so, the custodian shall allow arrangements to be made for use of other facilities. If it is necessary to use other facilities for copying, the cost thereof shall be paid by the person desiring a copy of the records. In addition, the public agency may charge the same fee for the services rendered in supervising the copying as for furnishing copies under subsection (c) and may establish a reasonable schedule of times for making copies at other facilities.

(c) Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following:

(1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.

(2) In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.

(3) Fees for access to or copies of public records of public agencies within the legislative branch of the state government shall be established in accordance with K.S.A. 46-1207a and amendments thereto.

(4) Fees for access to or copies of public records of public agencies within the judicial branch of the state government shall be established in accordance with rules of the supreme court.

(5) Fees for access to or copies of public records of a public agency within the executive branch of the state government shall be established by the agency head. Any person requesting records may appeal the reasonableness of the fees charged for

providing access to or furnishing copies of such records to the secretary of administration whose decision shall be final. A fee for copies of public records which is equal to or less than $.25 per page shall be deemed a reasonable fee.

(d) Except as otherwise authorized pursuant to K.S.A. 75-4215 and amendments thereto, each public agency within the executive branch of the state government shall remit all moneys received by or for it from fees charged pursuant to this section to the state treasurer in accordance with K.S.A. 75-4215 and amendments thereto. Unless otherwise specifically provided by law, the state treasurer shall deposit the entire amount thereof in the state treasury and credit the same to the state general fund or an appropriate fee fund as determined by the agency head.

(e) Each public agency of a political or taxing subdivision shall remit all moneys received by or for it from fees charged pursuant to this act to the treasurer of such political or taxing subdivision at least monthly. Upon receipt of any such moneys, such treasurer shall deposit the entire amount thereof in the treasury of the political or taxing subdivision and credit the same to the general fund thereof, unless otherwise specifically provided by law.

(f) Any person who is a certified shorthand reporter may charge fees for transcripts of such person's notes of judicial or administrative proceedings in accordance with rates established pursuant to rules of the Kansas supreme court.

History: L. 1984, ch. 187, § 5; L. 1984, ch. 282; § 2; L. 1994, ch. 100, § 1; L. 1995, ch. 135, § 1; July 1.

Kansas Open Records Act

From Sunshine Review

The **Kansas Open Records Act** (KORA) is a series of laws designed to guarantee that the public has access to public records of government bodies at all levels in Kansas. Statues 45-215 - 45-223 passed by the Kansas legislature define the law.

The **Kansas Open Meetings Act** (KOMA) legislates the methods by which public meetings are conducted. Statutes 75-4317 - 75-4320 of the Kansas legislature define the law.

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Recent news

Transparency blocking

- Sheriff denies C-J's request
- Secrecy clouds search for Wichita superintendent

More transparency blocking news from across the country.

Litigation

- Crop groups seek records investigation
- Ag groups seek query of open records, meetings law violations

More FOIA litigation news from across the country.

Legislation

- Bill reopens crime victim records
- Kan. House advances bill on records exceptions

More FOIA legislation news from across the country.

Sunshine Guardians

No recent news. If you have news add it here

Other Sunshine Guardians from across the country.

WikiFOIA

State Sunshine Laws

State Sunshine laws
State Open Meeting Laws
Transparency headlines
Statutory changes
Notable FOIA requests
How to ask for records

State sunshine lawsuits

State court cases
E-mail access
Private agency, public dollars

The WikiFOIA portal

Relevant legal cases

See also: Court cases with an impact on state FOIA

Here is a list of lawsuits in Kansas. For more information go the page or go to Kansas sunshine lawsuits. (The cases are listed alphabetically. To order them by year please click the icon to the right of the **Year** heading)

Lawsuit	Year
Cypress Media v. City of Overland Park	2000
Memorial Hospital Association Inc. v. Knutsen	1986
O'Hair v. USD 300	1990
State of Kansas v. USD 305	1988
State v. Sedgwick County Commissioners	1989
State, ex rel. Stephen v. Harder	1982
Stephens v. Van Arsdale	1980

Kansas's transparency report card

A 2008 study, **BGA - Alper Integrity Index**, conducted by the Better Government Association and sponsored by Alper Services, ranked Kansas #18 in the nation with an overall percentage of 56.00%. [1]

A 2007 study, **Graded state responsiveness to FOI requests**, conducted by BGA and the NFOIC, gave Kansas 47 points out of a possible 100, a letter grade of "F", and a ranking of 25 out of the 50 states.[2]

A 2002 study, **Freedom of Information in the USA**, conducted by IRE and BGA, ranked Kansas's law as the 34th worst in the country, giving it a letter grade of "D+".[3]

Features of the law

Public Records are addressed by Kansas statutes 45-215 - 45-223 (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19304). The basis of the law that it "is declared to be the public policy of the state that public records shall be open for inspection by any person"[4].

In 2009 the Kansas legislature extended 30 exceptions to the Kansas Open Records Act [5]. This extension expires in 2014.

It is also important to note that if records request are made to an incorrect department, the department has the responsibility of notifying the individual as to the correct department to make the request.

What records are covered?

The act defines public records as any records that are created or kept in public agencies and that pertain to the workings of the government. [6] However, there are some important exceptions clauses, KORA 55-219.a state that, "A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or

devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency" thus exempting many non print records from FOIA requests[7]. Other exemptions include:

- Medical Records
- Personal records of employees, excluding contracts, salaries, names, and positions
- Information concerning undercover agents
- Letters of reference
- Library records
- Charitable donor information
- Testing and exam materials
- Criminal prosecution records and civili records involving the state, except where the records are deemed in the public interest and would not interfere with the trial or reveal confidential information
- Security information
- Correspondence between the state and individuals
- Employer-Employee negotiations
- Student financial information
- Oil well information
- "Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting. " [8]
- Work of attorneys representing the state
- Correctional records
- Prospective business information
- Academic information and research
- Archaeological information
- University Marketing information
- Military discharge papers
- Shelter information

[8]

KORA also establishes guidelines for considering adding exemptions to the current list. Any potential exemptions must either be of a "personal nature concerning individuals", be necessarily concealed for efficient governing or concern confidential information. [9]

What agencies are covered?

The Kansas ORA defines public agencies as any division of the state government and local government as well as any that is supported in part by public by public funds. The law however excludes any group who receives funds in exchange for money, all judges, and any employee who is not given an office that is open at least 35 hours a week. [6] This includes non-profits that receive greater than $350 a year in public funds. If the non-profit segregates funds between public and private then only the budgets of public funds are available. If the organization does not segregate, then their full budgets are open to public review.[10]

Who may request records?

See also: List of who can make public record requests by state.

Anyone may request public documents in Kansas. "All public records shall be open for inspection by any person". [11]

Must a purpose be stated?

While the law does not require an explicit statement of purpose, it does allow departments to reject records claims if it places "an unreasonable burden" on the department of if the department feels it is designed to disrupt the flow of the workings of government[12].

How can records be used?

Kora does not permit the use of lists of names and addresses for commercial purposes outside of political and educational opportunities and the use of student lists by university sales offices. [13]

Time allowed for response

See also: Request response times by state.

Kansas statute allows for three days to respond to a request. However, if the department feels it needs more time to complete the request, it may notify the person making the request in writing and provide the earlliest possible date the records will be prepared. [14]

Fees for records

KORA allows for the charging of reasonable fees which can include, not only the cost of duplication, but also the cost of staff time needed for both locating the records and supervising the copying as well as fees for computer maintenance. ANy fees that come out to less than $.25 a page are deemed reasonable, however larger fees may be deemed reasonable in certain situations.[15]

Open meetings

Open Meetings are addressed by Kansas statutes 75-4317 - 75-4320 (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=35180). A meeting is defined as: "'meeting' means any gathering, assembly, telephone call or any other means of interactive communication by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency." [16].

KORA/KOMA training

In June 2009 Attorney General Six's office provided public training (http://kansasmeadowlark.com/2009/04/24/kansas-attorney-general-to-train-on-open-records) for KORA and KOMA in Dodge City (http://www.dodgeglobe.com/announcements/x1662364281/Open-meetings-records-training-today), Olathe (http://kansasmeadowlark.com/2009/06/24/kansas-open-meetings-open-

records-training), Topeka (http://www.wibw.com/localnews/headlines/49092291.html) and Wichita.

The contents of the CD given to participants of these training classes included several files, including the Powerpoint presentations given by Assistant Attorney General Michael J. Smith:

* KOMA Outline
* KOMA Frequently Asked Questions
* KOMA Powerpoint presentation

* KORA Outline
* KORA Frequently Asked Questions
* KORA Powerpoint presentation

Proposed changes

Main article: Proposed reforms in state sunshine laws, 2009

2009

Since 2000 an expiration date on new exemptions to KORA has been required. The exemptions can be renewed past the expiration date, but there must be a review first. The Kansas Senate will be debating Senate Bill 34 [17] [18] regarding extending the life of 30 exemptions to KORA during this session. [19]

In January 2009, the Kansas Senate gave first-round approval to SB 34 on a voice vote. SB 34 renews 30 exceptions to the Kansas Open Records Act. Don Moler, executive director of the League of Kansas Municipalities spoke in favor of the bill, saying, ""Every one of the exemptions that are in there are in there for a reason."[20]

Notable requests

Criticisms

The act requires that government respond within three business days, but this is not always the case in practice. Flint Hills Center for Public Policy, a Kansas-based think tank, requested information from 105 counties and received fulfilled requests from only 67 counties. [21] Formal complaints filed with county attorneys were largely ignored.

The organization notes several loopholes for evading disclosure the act allows:

- The 300 exemptions to the Open Records Act that the Legislature has granted.[21]
- The provision that permits government to reject a request that causes them to 'create' a record, meaning they don't have to provide information unless it is maintained in the exact manner in which it is requested.[21]

See also

- Kansas FOIA procedures
- Exemptions to the Kansas Open Records Act
- Kansas transparency legislation

External links

- Complete text of Kansas Open Records Act (current as of January 2007, and with annotations) (http://www.ksag.org/files/shared/KORA.pdf)
- Kansas Open Records Statute (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19409) Search for statute 45-215, then use the "next" button to page through to 45-223.
- Kansas Open Meetings Statute (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=35180) Search for statute 75-4317, then use the "next" button to page through to 75-4320c.
- Open Government Guide to Kansas (http://www.rcfp.org/ogg/index.php?op=browse&state=KS)
- Kansas Attorney General page on open government (http://www.ksag.org/content/page/id/63)
- Kansas Sunshine Coalition (http://www.sunshinecoalition.wichita.edu/)
- Past articles on Kansas (http://wikifoia.pbwiki.com/Kansas)

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2. ↑ *Graded state responsiveness to FOI requests*, 2007 (http://www.bettergov.org/pdfs/foia_results_2008.pdf)
3. ↑ *Freedom of Information in the USA*, 2002 (http://www.ire.org/foi/bga/ranking.pdf)
4. ↑ *Open Record statute 45-216* (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19305)
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6. ↑ [6.0] [6.1] KORA 45-217 (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19411)
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8. ↑ [8.0] [8.1] Kora 45-221 (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19415)
9. ↑ KORA 45-229 (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19430)
10. ↑ KORA 45-240 (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19435)
11. ↑ *KSA, 45-218* (http://www.kslegislature.org/legsrv-statutes/getStatuteFile.do?number=45-218.html)
12. ↑ KORA 45-218.E (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19412)
13. ↑ KORA 45-230 (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19433)
14. ↑ KORA 45-218.D (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19412)
15. ↑ KORA 45-219
16. ↑ *Open Record statute 75-4317a* (http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=35181)
17. ↑ *Text of SB 34* (http://www.kslegislature.org/bills/2010/34.pdf)
18. ↑ *Supplemental Note to SB 34* (http://www.kslegislature.org/supplemental/2010/SN0034.pdf)
19. ↑ *Kan. Senate to debate open records exceptions* (http://www.nebraska.tv/Global/story.asp?S=9740035), Associated Press, January 27, 2009
20. ↑ *The Hays Daily News*, "Kan. Senate advances bill on open records", January 27, 2009 (http://www.hdnews.net/wirestories/k1095-BC-KS-XGR-OpenRecords-3rdLd-Writethru-01-27-0641)
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December 1, 2009

VIA E-MAIL AND FIRST CLASS MAIL

Chris Spruce
Chair of Right to Know Legislative Subcommittee
Room 438, State House
Augusta, ME 04333

Re: Right to Know Legislative Subcommittee
Issues Related to FOAA Requests for Bulk Copies of Electronic Public Records

Dear Mr. Bruce and Right To Know Advisory Committee Members:

Thank you for the opportunity to appear before the Legislative Subcommittee on November 17, 2009 to discuss issues related to bulk requests for electronic public records. I have for many years been an advocate for open government and access to public records and proceedings. The purpose of this letter is to provide you with comments and recommendations relating to proposed legislation that might carve out exceptions in the Freedom of Access Act, 1 M.R.S.A. § 401 et seq. (the "FOAA") for requests of electronic public records made in bulk.

I. The Public Interests Served by Public Records

It is vital to recognize that public records serve many valuable public purposes.[1]

A vital reason for public records laws is without question to shed light on the functions of government. As James Madison wrote, "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." It has been said that sunshine is a powerful disinfectant. Access to public records allows journalists, public watchdogs, and concerned citizens to monitor public officials and government operations.

Not only do journalists gather information about legislative proposals, government fraud and abuse, they also report on crimes, waste and numerous other issues of importance to the public. An open public record allows journalists to keep the general public abreast of important actions, issues and problems. For example, by systematically examining local government

[1] These comments quote and paraphrase, in part, a white paper published by the Property Records Industry Association.

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records, *San Francisco Examiner* reporter Candy Cooper discovered that police investigated rapes in upscale Berkeley far more readily than in the crime-infested neighborhoods of Oakland. In our own State, the *Lewiston Sun Journal* recently reported on information gathered as a result of bulk requests for municipal e-mails.

Researchers, academics, librarians, public interest groups, and others use public information for thousands of studies each year concerning public health, traffic safety, environmental quality, crime, prisons, governance, and many other subjects. These studies often apply statistics to large sets of public records derived from bulk data requests.

Public records form the core of databases used by law enforcement on a daily basis to prevent, detect, and solve crimes. These databases contain billions of records from all 50 states, including Maine. These powerful databases include data such as addresses, phone numbers, driver's licenses, vehicle ownership, court records and property deed transfers. Law enforcement, private investigators, and others use these databases to solve all types of crimes, to find missing children, and to locate parents delinquent on child support payments. These databases are created as the result of bulk downloads of electronic data.

Public records are part of the critical infrastructure of our information economy. In order to grant credit rapidly and appropriately, the collection of information about consumers through public records is necessary for businesses to make fair and objective risk decisions. Sustaining an open public record system helps reduce the cost of credit. Data from public records is compiled routinely and efficiently instead of having to be assembled for each credit decision. Likewise, open public records help reduce consumer costs by preventing check fraud and identity theft. The databases used by businesses and lenders includes public records information obtained by bulk access requests.

Public records play an essential role in property transactions. The Property Records Industry Association, a non-profit organization including governmental representatives and private interests, explains:

> Our entire system of real property ownership and nearly all real estate transactions depend on public records. These records are used to confirm the existence of the property, its location, its defined boundaries, its conveyance, and any other interests in the property. Real estate agents, brokers, appraisers, and multiple listing services, among others, all use public land records and information to perform their professional responsibilities within the industry. Buyers, lenders, title insurers, and others use these records to verify the title owner, track chain of title, and obtain constructive notice of liens and other impairments, which they would not otherwise be able to discover. Mortgages, many legal judgments, liens and other claims against real property require recording in the public record to notify anyone else interested in the property of rights against the property and its owners.

Public land records collected and prepared by registries of deeds are a backbone of our system of real property ownership. The need to keep such records public cannot be overstated.

II. Reasons Not to Discriminate Against "Commercial" Requests for Bulk Electronic Records

Maine's FOAA has never conditioned the right to inspect and copy public records on the identity of the person requesting access or whether the request is for a commercial purpose. Since the 1970s, the FOAA has included "electronic data compilations" within the definition of public records pursuant to 1 M.R.S.A. § 402(3).

Indeed, there has been a long history in Maine of bulk requests for electronic records for commercial purposes. In 1978, the Attorney General ruled that a list of 95,000 licenseholders kept on magnetic tape by the Department of Inland Fisheries and Wildlife "would be a data compilation from which information can be obtained after translation that is in the possession of [the] [D]epartment and has been received and prepared for use in connection with the transaction of public business." Op. Atty. Gen., 1978 Me. AG LEXIS 233 (July 26, 1978). As a result "such records must by statute be made available to any member of the public" and copies had to be disclosed to the Sportsmen's Alliance of Maine "for a massive telephone solicitation effort."

In *LOCATEPLUS.COM v. State of Maine*, 2002 Me. Super. LEXIS 61 at *11 (Me. Super. Ct. Apr. 30, 2002) Justice Donald Marden addressed a request for copies of a Bureau of Motor Vehicles database containing motor vehicle registration information of 1,249,570 records, motor vehicle title information containing 2,082,180 records, and drivers license information containing 951,529 records. He wrote, "it is clear that the data requested in this case is part of the public records as contemplated by the Freedom of Access Act." *Id.*

Just this year, Justice Thomas Warren ruled in *MacImage v. Hancock County* that registry of deeds databases of public land records are "electronic data compilations" within the definition of public records. *MacImage of Maine, LLC v. Hancock County*, 2009 Me. Super. LEXIS 7 at *4 (Me. Super. Ct. May 20, 2009). "The database maintained by the Hancock County Registry of Deeds is an 'electronic data compilation' that falls within the definition of 'public records' contained in § 402(3)." There is nothing particularly ground-breaking about this decision in that it follows a consistent line of authority finding that electronic bulk records are open to the public in Maine.

The law does not differentiate between commercial requests and other requests for good reason. The FOAA prevents public officials from taking the "I like this guy but I don't like that guy" approach. By doing so, the law divests government officials of the discretion to decide to whom public records should be made available, for what purpose, or on what conditions. By eliminating any discretion to apply personal prejudice to a request (unconscious or otherwise), we ensure that public records remain freely accessible to the public.

An effort to distinguish between a commercial request and other requests ignores the important public benefits in making public records available for commercial purposes. As noted above, public records form a part of our information infrastructure. Public records contain information that allows the economy and business to function smoothly, efficiently, and quickly by making business and credit decisions, screening employees, and enabling property transactions. There is nothing wrong with access to public records for commercial reasons since much of our economy is built on open access to information. There is nothing wrong with a commercial request by a company that is trying to create jobs, generate revenue, and pay taxes. We should not be putting up road-blocks that limit the use of important public information for commercial reasons.

The FOAA as written avoids difficult exercises in line-drawing between commercial requests and other requests. How would one define a "commercial entity" or a "commercial purpose?" Would for-profit newspaper and television companies be required to pay a higher fee for copies than PBS? If a religious group requests copies of the same records requested by a commercial company, should government charge lower fees to the church? Could the church then sell copies to raise money to support its religious mission? Would government charge a different fee if a for-profit requestor were reorganized as a non-profit organization? What is the principled basis for distinguishing two requests for an identical set of records when one request is to facilitate commerce and create jobs and the other is for an academic research project?

Similar issues arise in determining when a request for records becomes a "bulk" request. One can easily imagine a request for 100 paper copies not being classified as a bulk request, but a request for a copy of one data file (which contains copies the same documents intermingled with 1,000 other records) might be classified as a bulk request. It might take several hours to locate and copy 100 paper documents, but only a minute to copy the electronic data file. Would it make sense to make it more difficult or expensive to provide electronic copies in bulk in this typical scenario?

III. Fees for Bulk Access to Electronic Public Records

The FOAA as it is now written allows public agencies to charge certain fees to offset the cost of making copies of public records. The FOAA has never allowed government to sell public records based on the commercial value of records and earn a "profit" based on the value of such records. Our government should not be in the business of selling public records to the public to which, after all, public records ultimately belong. Doing so conflicts with the purposes served by our public records laws.

The possibility that private businesses may profit by reselling public information obtained at a low cost via bulk FOAA requests has caused some to question whether the FOAA should be amended. It has been argued that government agencies should be allowed to recover the full cost of operations which generate public records – not just the cost of making copies.

The argument that government should capitalize on the commercial value of public records is based on the false assumption that Maine citizens will lose if businesses gain. Businesses want to make a profit, of course, but that is not the end of the story. In order to succeed, a business must offer different, better quality, or less expensive services (or some combination) than what is offered by government or other businesses. Taxpaying Maine citizens are the primary consumers of services derived from information in Maine public records and they benefit when that information is more accessible or less expensive.

By providing access to public records for a fee equal to the cost of making a copy of the records, FOAA creates a level playing field in which both government and private businesses have equal access to public records and compete for customers based on price and quality of their services. A level playing field and competition ultimately ensures that services derived from access to public records are provided to the public at the lowest possible cost. In some cases, government will remain the low cost provider. However, in many cases the public will be best served by businesses with expertise and resources not available in the government.

In addition, government operating costs are incurred whether or not anyone requests a copy. Thus, operating costs are sunk costs. Those costs are generally incurred to advance government objectives regardless of whether anyone ever asks for a copy of a record.

There are particular problems in justifying a fee for copies of registry of deeds based on the cost of creating registry databases of records. The statute, as interpreted by the Superior Court in *MacImage of Maine v. Hancock County*, does not allow registries to charge a fee unrelated to the cost of providing copies. Setting aside existing state law, the Registry of Deeds Association completed a survey showing that the costs of all registry operations are already completely offset by the recording fees collected by registries whenever a document is recorded. Persons recording documents pay a fee that already funds all registry operations. The recording fees are set by statute pursuant to 33 M.R.S.A. § 751(1). The cost of converting old paper records at the registries into digital form is also paid by persons recording documents. The registries are authorized to collect surcharge fees, pursuant to 33 M.R.S.A. § 752. The surcharge fee may be used only for "the restoration, re-creation and preservation of the records recorded in the office of the register of deeds, including preservation by creation of a digital image stored on magnetic or optical media." *Id.* at § 752(3). *As a result, taxpayers at large do not pay any costs whatsoever for creating the registry databases at issue in the MacImage litigation.*

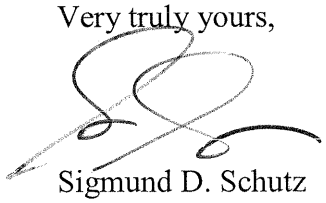
Indeed, the taxpayers have in the past received a windfall from copy revenue since the registries have been using copy charges, at rates that have now been ruled to be illegal, to fund other unrelated county operations. It is not clear why persons having business with land records at the registries should pay a disproportionate burden of paying for general county operations.

CONCLUSION

The FOAA is working as intended. The many important goals advanced by the FOAA should not be compromised. Existing state law allows Maine citizens and taxpayers to continue to get the best possible services government and business can provide while working together on a level playing field. The taxpayers benefit when business has access to public records and can provide useful services. At the same time taxpayers are not left holding the bag since existing law allows government to charge the actual cost of making copies in response to any request for records.

I urge the Committee against recommending any steps that would advance secrecy in government, create impediments to commerce, and limit the public's right-to-know.

Very truly yours,



Sigmund D. Schutz

SDS:jac