



# **Cost Rules**

Tamara Smith  
Assistant Attorney General  
Open Records Division

“Views expressed are those of the presenters, do not constitute legal advice,  
and are not official opinions of the Office of the Texas Attorney General.”



# General Rule

- ▶ Section 552.261
  - The 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.



# Exceptions

- ▶ Less than 50 pages of paper records
- ▶ Copies are not requested
  - Inspection
  - Viewing the records



# What are the allowable charges for copies?

- ▶ \$0.10 per page for paper copies
- ▶ \$1.00 per CD
- ▶ \$3.00 per DVD
- ▶ \$15.00 per hour for labor
  - For time to locate, compile, reproduce, and manipulate data
- ▶ Twenty percent of the labor as overhead
- ▶ Note: Pursuant to section 552.262, a non-state agency may charge up to 25% more than these established rules.



# Labor Charges (Slide 1 of 3)

- ▶ 1 Texas Administrative Code 70.3(d)
- ▶ \$15.00 per hour for the time spent to:
  - Locate
  - Compile
  - Manipulate data
  - Reproduce information



# Labor Charges (Slide 2 of 3)

- ▶ Locate
  - Time spent finding the records that are responsive to the request
- ▶ Compile
  - Time spent gathering and pulling together the responsive information
- ▶ Manipulate data
  - Section 552.003(4) of the Government Code
  - Time spent modifying, reordering, or decoding information with human intervention
  - Example: Redacting information
- ▶ Reproduce information
  - Time spent copying the responsive records



# Labor Charges (Slide 3 of 3)

- ▶ 1 Texas Administrative Code 70.3(d)(3)
  - May not charge labor for the time spent to:
    - Determine whether exceptions apply
    - Research or prepare a request for ruling
  
- ▶ Note: You cannot charge for the time spent looking for responsive information if none is found.
  
- ▶ Remember: You do not need to create any new information, conduct legal research, or answer questions.
  - Open Records Decision Nos. 563, 555



# Cost Estimates Section 552.2615

- ▶  $\leq$  \$40.00
  - Invoice or bill the requestor upon completion of work.
- ▶  $>$  \$40.00 and  $\leq$  \$100.00
  - Must provide a cost estimate prior to the work being completed
- ▶  $>$  \$100.00
  - May request a deposit.



# What needs to be in a cost estimate? (Slide 1 of 2)

- ▶ Section 552.2615(a) of the Government Code, the statement of estimated charges must contain certain notices
  - You must inform the requestor that inspection is available if it is a less costly option (it almost always is).
  - You must inform a requestor that they must respond within 10 business days and the manners in which they may respond.
- ▶ Note: You cannot withdraw a request by operation of law unless the written itemized statement contains the proper notices.



# What needs to be in a cost estimate? (Slide 2 of 2)

- ▶ Section 552.2615(b)
  - Ways in which the requestor may properly respond
    - Accept the estimated charges
    - Modify the request in response to the itemized statement
    - Notify you that a complaint has been sent to the Attorney General's Office alleging the requestor has been overcharged



# Public Information Cost Estimate Model

## Public Information Cost Estimate Model

This model will calculate costs associated with a request for **COPIES** of information, but not a request to **INSPECT** information. For questions about estimating costs when a requestor asks to **INSPECT** information, please call our toll-free Cost Hotline at 1-888-OR COSTS (1-888-672-6787).

Date request was received: 02/02/2015

Government Body's Information	Requestor's Information
Agency Name: <input type="text"/>	<input type="radio"/> Mr. <input type="radio"/> Ms.
Contact Name: <input type="text"/>	First/Last Name: <input type="text"/>
Address: <input type="text"/>	Address: <input type="text"/>
City: <input type="text"/>	City: <input type="text"/>
State/Zip: <input type="text"/>	State/Zip: <input type="text"/>

### Itemization of costs:

Did the requestor ask for standard paper copies? Yes  | No

Did the requestor ask for copies of nonstandard documents (e.g., oversized paper, DVD, or VHS tape)? Yes  | No

Add labor costs? Yes  | No

Are overhead charges applicable? Yes  | No

Are computer resource charges applicable? Yes  | No

Are remote document retrieval charges applicable? Yes  | No

Will there be charges for miscellaneous supplies? Yes  | No

Will there be postage? Yes  | No

If the total charges exceed \$100, will you require a prepayment deposit? Yes  | No

OR

If the total charges exceed \$100, will you require a prepayment bond? Yes  | No

Generate Estimate

Clear Form



# Request

- ▶ Please provide me a copy of all correspondence sent and received by Detective John McClane on September 1, 2016.



# Responsive Information

- ▶ The New York, Texas Police Department has the following:
  - 50 e-mails
  - 2 memos
  - 10 letters



# Did the requestor ask for standard paper copies?

- ▶ Yes
- ▶ 70 pages
  - 2 memos at 10 pages each = 20 pages
  - 10 letters at 5 pages each = 50 pages
- ▶ \$7.00
  - 70 x \$0.10



# Did the requestor ask for copies of nonstandard documents?

- ▶ Yes
- ▶ E-mails
  - \$1.00 for a CD
- ▶ Note: This can cover everything from a diskette to microfilm to maps.



# Add labor costs?

- ▶ Yes
  
- ▶ Request is for more than 50 pages and includes electronic information.
  
- ▶ The department estimates the following after conducting a sample test:
  - 3 hours to locate, compile, and reproduce the memos and letters
  - 1 hour to locate, compile, and reproduce the e-mails
  - 1 hour to redact confidential information electronically from e-mails
  
- ▶ \$75.00
  - 5 hours x \$15.00



# Are overhead charges applicable?

- ▶ Yes
  - Because there was a labor charge
  
- ▶ \$15.00
  - 20% of \$75.00



# Overhead

- ▶ Section 70.3(e)
- ▶ Whenever a labor charge is applicable to a request for copies, a governmental body may include overhead.
- ▶ Overhead is computed at 20% of the labor charge



# Are computer resource charges applicable?

- ▶ No
  - This was a simple search completed in a matter of seconds
  
- ▶ When might they apply?
  - When the computer is processing a request for a measurable amount of time
  - Never charged for the same time a labor charge is already being charged to a requestor.



# Computer Resource Charge

- ▶ Section 70.3(h)
- ▶ Based on the type of computer being used:
  - \$10.00 per CPU minute for a mainframe
  - \$1.50 per CPU minute for a midsized
  - \$2.20 per clock hour for a client/server
  - \$1.00 per clock hour for a LAN
- ▶ Actual time required by a computer to execute a program



# Are remote document retrieval charges applicable?

- ▶ No
  - All of this information was located at the police department's headquarters.
  
- ▶ When might they apply?
  - If the requested information was stored off-site
  - For example, because it older and out of use



# Remote Document Retrieval

- ▶ Section 70.3(g)
- ▶ If documents are stored off-site, it is permissible to recover costs if a request otherwise qualifies for labor.
- ▶ A governmental body may charge the fee a private company charges the governmental body to locate, retrieve, deliver, and return to storage.
  - No other labor costs may be added for these tasks.



# Will there be charges for miscellaneous supplies?

- ▶ Yes
- ▶ \$2.00 for a padded envelope to send CD and documents
- ▶ Section 70.3(i)
  - Actual cost of miscellaneous supplies



# Will there be postage?

- ▶ Yes
- ▶ \$3.00 for postage
- ▶ Section 70.3(j)
  - Actual cost necessary to transmit the information
  - May not charge for certified mail



# Final Costs

## Itemized List of Charges:

Description Qty x Price	Total
Standard sized copies	70 x \$0.10 \$7.00
CD	1 x \$1.00 \$1.00
Labor minutes (\$15/hour)	300 x \$0.25 \$75.00
Overhead charges	20% of \$75.00 \$15.00
Postage cost	\$3.00
Miscellaneous supplies Padded envelope	\$2.00
<b>Total cost</b>	<b>\$103.00</b>



# Example Cost Estimate

## PUBLIC INFORMATION COST ESTIMATE MODEL LETTER

Mr. Joe Bob Yawl  
123 My House  
Number Two, Texas 88888

Dear Mr. Yawl:

We have received your request for information dated 11/30/2012.

We have determined that complying with your request will result in the imposition of a charge that exceeds \$40. Therefore, we are providing this cost estimate as required by section 552.2615 of the Government Code.

### Itemized List of Charges:

Description	Qty x Price	Total
Standard sized copies	11500 x \$0.10	\$1150.00
Labor minutes (\$15/hour)	4255 x \$0.25	\$1063.75
Overhead charges	20% of \$1063.75	\$212.75
Postage cost		\$75.00
Total cost		\$2501.50

The estimated charges exceed \$100.00; therefore, as allowed by section 552.263(a) of the Government Code, we require a deposit of 50% (\$1250.75) before starting work on your request.

There are less expensive ways for you to obtain this information. These charges may be reduced if you narrow or clarify the scope of your request. You may inspect the information in person at our offices. If you choose to inspect the information in person, please provide me with three dates and times when it will be convenient for you to come. If you choose to inspect the information, there will be approximately 4,600 pages that will require redaction of confidential information. Under section 552.271(b) of the Government Code, we are allowed to charge \$0.10 per redacted page. Therefore, if you choose to inspect, you will be charged \$460. Half that amount must be paid before we commence work on your request, and the remaining half must be paid prior to the inspection or on the day of the inspection.

Your request will be considered automatically withdrawn if you do not notify us in writing within ten business days from the date of this letter that you either:

- (a) accept the charges;
- (b) wish to modify your request; OR
- (c) have sent the Open Records Division of the Office of the Attorney General a complaint alleging that you are being overcharged for the information you have requested.

Sincerely,

Bea Queen  
Department of Making the World a Better Place  
123 Kingdom Street  
Best in the World, Texas 77777



# Inspection of Paper Records (1 of 2)

- ▶ Section 552.271 of the Government Code
  - Generally, a charge may not be imposed when making records available for inspection.
  
- ▶ Section 552.271(b) of the Government Code
  - You may charge the cost of a photocopy for a page where confidential information must be redacted because it is mixed with public information on the same page.



# Inspection of Paper Records (2 of 2)

- ▶ Section 552.271(c) of the Government Code, more than 15 full-time employees
  - You may charge for labor if the records:
    - Are more than five years old or completely fill six archival boxes; and
    - You estimate that more than five hours will be required to make the information available for inspection
  
- ▶ Section 552.271(d) of the Government Code, fewer than 16 full-time employees
  - You may charge for labor if the records:
    - Are more than three years old or completely fill three archival boxes; and
    - You estimate that more than two hours will be required to make the information available for inspection



# Inspection of Electronic Records

- ▶ Section 552.272 of the Government Code
  - You may not impose a charge for records that exist in an electronic medium unless complying with the request will require programming or manipulation of data.



# What could have been charged for inspection of McClane's correspondence?

- ▶ \$15.00
  - For manipulation of data, or redaction the confidential information from e-mails
  
- ▶ No other charges apply
  - Paper records do not qualify for any labor charge



# Deposits and Bonds

- ▶ Section 552.263(a) of the Government Code
  - Governmental body may require a deposit or bond if:
    - You have provided a proper written itemized statement as required by section 552.2615, and
    - The charge for providing the requested information exceeds
      - \$100 if you have more than 15 full-time employees, or
      - \$50 if you have fewer than 16 full-time employees



# Do the ruling deadlines change?

- ▶ Section 552.2615(g) of the Government Code
  - Sending a cost estimate does not affect a governmental body's deadlines to request a ruling.
  
- ▶ Section 552.263 of the Government Code
  - A governmental body is considered to receive a request on the date it receives the deposit or bond.
  
  - If a requestor modifies, a governmental body is considered to receive a request on the date it receives the modification.



# Cost Complaints

- ▶ Section 552.269(a) of the Government Code
  - A requestor may file a written complaint with the Office of the Attorney General if the requestor believes that he/she has been overcharged.
  
- ▶ Generally, as part of its investigation the OAG will send written questions in order to determine if the charges are appropriate.
  - Note: Governmental body must respond to these questions within 10 business days of receiving them.
  
  - The burden is on the governmental body to explain how it determined the charges.



# Questions we may ask?

- ▶ Was a certain step necessary?
- ▶ What is the technological capability of the governmental body?
- ▶ If the estimate includes programming: Who is performing the programming and what tasks does it involve?



# Additional Resources

- ▶ Cost Rules: 2016 Public Information Handbook at:
  - [https://www.texasattorneygeneral.gov/files/og/PIA\\_handbook\\_2016.pdf](https://www.texasattorneygeneral.gov/files/og/PIA_handbook_2016.pdf)
  
- ▶ Public Information Cost Estimate Model Letter
  - <https://www.texasattorneygeneral.gov/og/public-information-cost-estimate-model>
  
- ▶ Open Government Hotline: (877) OPEN TEX
  
- ▶ Cost Hotline: (888) OR COSTS