



# **Public Information Act Cost Rules 101**

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# Before You Calculate Costs

- ▶ Copies or inspection?
  - Requestor's choice
  
- ▶ How does the information exist?
  - Paper records, electronic records, or both



# Let's Compare

	<b>Copies</b>	<b>Inspection</b>
Labor	✓	sometimes
Programming/ Manipulation of Data	✓	✓
Overhead	✓	x
Computer resources	✓	x
Paper copies	✓	sometimes
Miscellaneous supplies	✓	x



# Copies

- ▶ 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.
  
- ▶ Exception:
  - Less than 50 pages of paper records
    - Then only the cost of the copies
  
    - No labor or overhead
      - UNLESS records are kept in two or more separate buildings or a remote storage facility



# Copies – Flow Chart

Is the requested information maintained in paper or electronic form?

**Paper**

**Electronic**

Do you have more than 50 pages of paper records?

**No**

May charge \$0.10 per page (unless an exception applies).

**Yes**

May charge \$0.10 per page + Labor and overhead.

Labor and overhead  
+

Cost of the medium to provide the information (CD, DVD, Flash Drive, etc.).



# Allowable Charges for Copies

- ▶ \$0.10 per page for paper copies
- ▶ \$1.00 per CD
- ▶ \$3.00 per DVD
- ▶ Actual Costs for a USB or hard drive
- ▶ \$15.00 per hour for labor
- ▶ Twenty percent of the labor as overhead
- ▶ \$28.50 per hour for programming



# When Labor Charges Apply

## Texas Administrative Code § 70.3(d)

- ▶ 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 electronic information
- ▶ Reproduce information
  - Time spent copying the responsive records.



# When Labor Charges Do Not Apply

- ▶ 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





# Programming Definition

- ▶ Section 552.003(4) of the Government Code
  - "Programming" means the process of producing a sequence of coded instructions that can be executed by a computer.



# Programming Examples

- ▶ Ariel, IT Analyst, codes a script to create a query in order for the computer to search for responsive e-mails based on certain parameters.

**✓ Meets the definition of programming**

- ▶ Eric, legal intern, types a keyword into his Outlook search bar to locate responsive e-mails.

**X Does not meet the definition of programming**



# Inspection of Paper Records (Slide 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 (Slide 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.

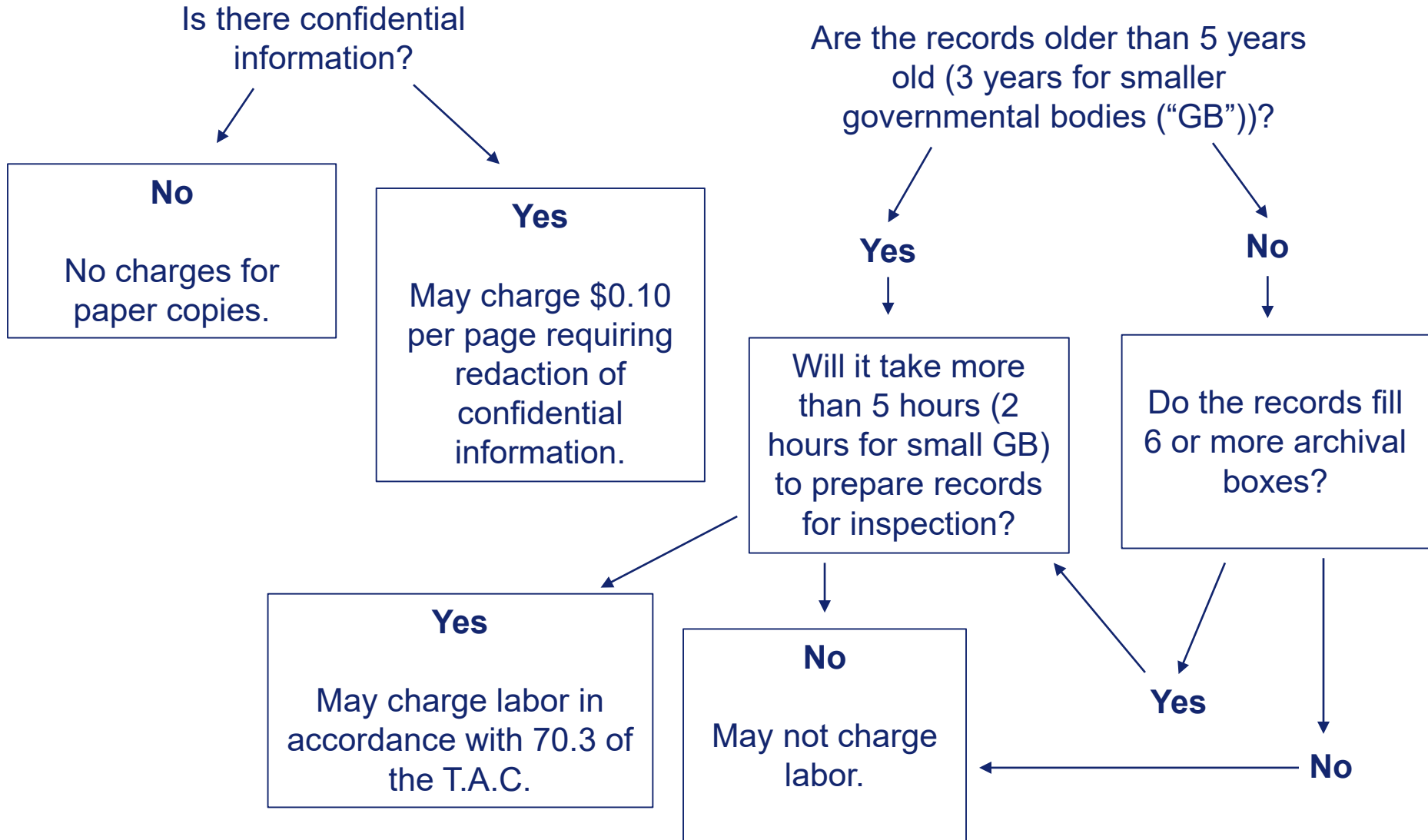


# Inspection of Electronic Records

- ▶ 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.



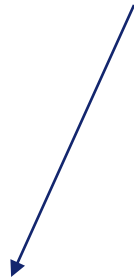
# Inspection Flow Chart - Paper





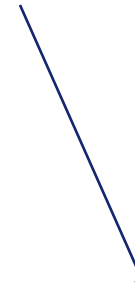
# Inspection Flow Chart - Electronic

Does the request require programming or manipulation of data?



**Yes**

May charge only for the time necessary to complete the programming or manipulation.



**No**

No charges applicable.



# 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
  - Must provide a cost estimate prior to work being completed.
  - May request a deposit.





# Estimated Charges - Less than or equal to \$40.00

- ▶ If the estimated charges are less than, or equal to \$40.00, a cost estimate is not required prior to beginning work on the request.
- ▶ An invoice may be provided upon completion of the work.
- ▶ A governmental body's deadlines under the Act will not be affected.
- ▶ A governmental body may not require a deposit before beginning work on the request for information.
- ▶ **Note:** If the estimated charges include labor, the requestor may ask for a written statement as to the amount of time required.



# Estimated Charges - Exceed \$40.00 but less than or equal to \$100.00

- ▶ If the estimated charges exceed \$40.00, but are less than or equal to \$100.00, a governmental body must provide a cost estimate with the proper notices prior to beginning work on the request.
  - May not require a deposit.
- ▶ A governmental body's deadlines under the Act will not be affected.
- ▶ If the requestor does not properly respond to a cost estimate provided under section 552.2615 within 10 business days, the request is considered withdrawn by operation of law.
  - Notify OAG in writing if your agency has requested a ruling.



# Estimated Charges - Exceed \$100.00

- ▶ If the estimated charges exceed \$100.00 (\$50.00 for a small GB), a governmental body must provide a cost estimate with the proper notices prior to beginning work on the request.
  - May require a deposit.
- ▶ A governmental body's deadlines under the Act will not be affected unless the governmental body requires a deposit.
  - If a deposit is required, the request is considered received on the date the governmental body receives the deposit.
- ▶ If the requestor does not properly respond to a cost estimate provided under section 552.2615 within 10 business days, the request is considered withdrawn by operation of law.
  - Notify OAG in writing if your agency has requested a ruling.



# Cost Estimate Requirements (Slide 1 of 2)

- ▶ Pursuant to section 552.2615(a) of the Government Code, the statement of estimated charges must contain certain notices.
  - You must inform the requestor that he or she may contact you regarding a less costly alternative of viewing the records (inspection is almost always less costly).
  - You must inform a requestor that they must respond within 10 business days and the manners in which he or she may respond.
- ▶ Note: You cannot withdraw a request by operation of law unless the written itemized statement contains the proper notices.



# Cost Estimate Requirements (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.



# Deposits and Bonds

- ▶ Section 552.263(a) of the Government Code
  - A 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:
      - \$100.00 if you have more than 15 full-time employees, or
      - \$50.00 if you have fewer than 16 full-time employees.



# Cost Estimates: Scenario 1

**Request:** K. Triton, a former employee, seeks a copy of his personnel file from the City of Atlantica and all e-mails related to a complaint he made against Ursula Devine.

Sebastian T. Crab, the City Secretary, conducted a sample test and determined the estimated charges were **\$99.00**.

Is the city required to provide the requestor with a cost estimate prior to producing the requested information? **Yes.**

May the city require a deposit? **No.**

If the city needs to seek a ruling to withhold information, will its deadlines to request a ruling be affected by the cost estimate? **No.**



## Cost Estimates: Scenario 2

**Request:** Adella Triton seeks a copy of the entire investigation file related to a theft report filed by Ariel.

Chief Scuttle conducted a sample test and determined the estimated charges were **\$626.50**.

Is the city required to provide the requestor with a cost estimate prior to producing the requested information? **Yes.**

May the city require a deposit? **Yes.**

If the city needs to seek a ruling to withhold information, will its deadlines to request a ruling be affected by the cost estimate?

**Depends.**





## Cost Estimates: Scenario 3

**Request:** Max Shephard seeks a copy of all requests for information filed with the city on July 28, 2020.

Fin Flounder, record clerk, located two requests consisting of a total five paper pages.

Is the city required to provide the requestor with a cost estimate prior to producing the requested information? **No.**

May the city require a deposit? **No.**

If the city needs to seek a ruling to withhold information, will its deadlines to request a ruling be affected? **No.**



# 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	
<b>Government Body's Information</b>	<b>Requestor's Information</b>
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



# Example Cost Estimate

7/29/2020

Public Information Cost Estimate Model Letter

## Public Information Cost Estimate Model Letter

Ms. Adella Tritan  
555 Seashell Drive  
Atlantica, Texas 78777

Dear Ms. Tritan:

We have received your request for information dated: 07/29/2020.

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

### Itemized List of Charges:

Description	Qty x Price	Total
Standard sized copies	65 x \$0.10	\$6.50
Other electronic media		\$65.00
Labor minutes (\$15/hour)	1800 x \$0.25	\$450.00
Overhead charges	20% of \$450.00	\$90.00
Postage cost		\$15.00
<b>Total cost</b>		<b>\$626.50</b>

There is a less expensive way for you to obtain this information. You may view the information in person at our offices. If you choose to view the information in person, please provide me with three dates and times when it will be convenient for you to come.

The estimated charges exceed \$100.00; therefore, as allowed by section 552.263(a) of the Government Code, we require a deposit of 50% (\$313.25) before starting work on your request.

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 to 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,

Sebastian T. Crab  
City of Atlantica  
101 Mermaid Way  
Atlantica, Texas 78777



# Remember: Inspection is Almost Always Less Costly

	<b>Copies</b>	<b>Inspection</b>
Labor	✓	sometimes
Programming/ Manipulation of Data	✓	✓
Overhead	✓	x
Computer resources	✓	x
Paper copies	✓	sometimes
Miscellaneous supplies	✓	x



# When are Charges Different? (Slide 1 of 3)

- ▶ Pursuant to section 552.262(a), a non-state agency may charge up to 25% more than these established rules.
- ▶ A governmental body may request an exemption pursuant to section 552.262(c).
- ▶ If more specific rules govern:
  - For example: Charges for a CR-3 are governed by section 550.065 of the Transportation Code and are \$6.00 each.



# When are Charges Different? (Slide 2 of 3)

## ▶ Section 552.275

- A governmental body may adopt a monthly or yearly time limit.
- Requires timely notices to requestor.
- Once requestor reaches limit, labor charges may apply when they normally would not.



# When are charges different? (Slide 3 of 3)

- ▶ Section 552.261(e)
  - A governmental body may combine requests received in one calendar day for cost purposes.



# 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.





# Additional Resources

- ▶ Website: <http://www.texasattorneygeneral.gov/open-government>
- ▶ Cost Rules: 2020 Public Information Handbook
- ▶ Public Information Cost Estimate Model Letter
- ▶ Open Government Hotline: (877) OPEN TEX