



THE OPRA ALERT

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CHANGES TO OPRA'S COPY FEES BECOME EFFECTIVE TUESDAY NOVEMBER 9, 2010

The Government Records Council (GRC) has published several issues of *The OPRA Alert* regarding the changes to OPRA's copying fees. In its most recent issue dated September 2010, the GRC informed the OPRA community that Governor Christie signed into law new fee legislation that will dramatically change the copy fees established under N.J.S.A. 47:1A-5.b. These changes to the copy fee schedule become effective for all New Jersey public agencies on **Tuesday November 9, 2010.**

Previously, the OPRA fee schedule set forth in N.J.S.A. 47:1A-5.b. provided that "the fee assessed for the duplication of a government record embodied in the form of printed matter shall not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page."

Said provision of OPRA has since been amended to provide that:

"[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs." (Emphasis added). N.J.S.A. 47:1A-5.b.

To fully understand the impact of this amendment to OPRA's copy fee schedule, the GRC interprets each sentence of the amended fee provision below:

1. "[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation."

This sentence means that custodians are to charge OPRA requestors any copy fees that are established by other New Jersey laws or regulations, if said fees exist. For example, N.J.S.A. 22A:4-1a sets forth specific fees for certain records filed with the New Jersey Department of Treasury (and requested from the Department of Treasury). Specifically, said statute provides that "[i]f a roll of microfilm images is requested, the State Treasurer shall collect a fee of \$1.00 for each image on the microfilm roll." Thus, if a requestor seeks access to a microfilm roll from the Department of Treasury, the Department's custodian must charge the fees established in N.J.S.A. 22A:4-1a. The same applies for any other records that have specific fees established in other New Jersey laws or regulations.

2. “Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger.”

For records that do not have a specific fee established by statute (like the Treasury example above), custodians must charge a flat rate of \$0.05 per letter size (8 ½” x 11”) page or smaller, and \$0.07 per legal size (8 ½” x 14”) page or larger, *if providing a requestor with paper copies*. For example, a custodian providing access to 3 pages of printed meeting minutes on letter size pages would charge a requestor \$0.15 (\$0.05 per page for 3 pages = \$0.15).

3. “*If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section.*” (Emphasis added).

It is possible that the actual cost to produce paper copies will exceed \$0.05 per letter size page or smaller and \$0.07 per legal size page or larger for some public agencies. In these instances, the OPRA amendment allows custodians to charge the actual cost of duplication, which is limited to the cost of materials and supplies used to make the copy. The GRC has previously provided the OPRA community with an actual cost calculation which should be used to determine the actual cost of providing paper copies. See *OPRA Alert* Volume 2, Issue 3 (June 2010).

How to Calculate Actual Costs (only if copies exceed the \$0.05 and \$0.07 rates)

- Custodians should contact their supplier to determine the cost of paper and toner. A supplier is wherever the agency obtains those materials – paper and toner (i.e. central purchasing unit, Staples, Office Depot, etc).
- Calculate or contact copying company to determine the agency’s annual copying volume (calendar or fiscal year, however the agency operates). This does NOT only include copies pertaining to OPRA requests – this is ALL copying on all copy machines in the agency for all purposes.
- Contact copying company to determine the average paper life of one toner/ink cartridge (i.e. how many pieces of paper the ink or toner should be able to copy).
- Custodians must maintain documentation of all information provided by copying company or office supplier (i.e. contracts or correspondence from purchasing agent or copying company) regarding this calculation.
- **Actual calculation is the total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume.**
- This calculation can be averaged for all copy machines in an agency that produce letter and legal copies. Special copiers, such as for color printing or blueprints copied in house, should be calculated separately.

4. “*If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section.*” (Emphasis added).

The reference to “subsection c.” pertains to OPRA’s special service charge provision, which is applicable in instances when fulfilling an OPRA request requires an extraordinary amount of time and effort. For guidance on how and when to apply a special service charge to an OPRA request, please refer to the GRC’s “Special Service Charge” handout online at <http://www.nj.gov/grc/meetings/present/>.

The GRC strongly encourages every public agency to clearly identify its per page copy fee on its OPRA request form, whether it be the flat rates established in N.J.S.A. 47:1A-5.b., or the actual cost calculated by the agency.

5. "Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs."

Records provided via e-mail and facsimile are free of charge. Custodians must charge the actual cost to provide access to all other electronic materials such as CD-ROMs, DVDs, videotapes, audiotapes, etc. No specific calculation is required to determine the actual cost of these supplies. The actual cost is the specific fee the agency paid to purchase the materials. For example, if the GRC purchased a package of 100 CD-ROMs for \$100 and provided records to a requestor on 1 CD-ROM, the actual cost of said CD-ROM is \$1.00 ($\$100 \div 100 = \1.00).

CHANGES TO FEES FOR MOTOR VEHICLE ACCIDENT REPORTS

The same legislation that amended the OPRA copy fees also amended the fee schedule for motor vehicle accident reports. The Motor Vehicle and Traffic Regulation previously provided that:

"Every citizen of this State shall have the right, during regular business hours and under supervision, to inspect and copy such reports and shall also have the right in person to purchase copies of the [accident] reports at the same fee established by [OPRA]. If copies of reports are requested other than in person, an additional fee of up to \$5.00 for the first three pages and \$1.00 per page thereafter may be added to cover the administrative costs of the report..." N.J.S.A. 39:4-131.

This regulation allowed custodians providing access to motor vehicle accident reports pursuant to an OPRA request to charge the OPRA copying fees *plus* the additional fees described above when reports were not requested in person. The GRC held that the additional fees applied to cover the administrative costs of mailing the requested motor vehicle accident reports. See Donato v. Jersey City Police Department, GRC Complaint No. 2005-251 (April 2007).

However, as of Tuesday November 9, 2010, the fees for providing access to motor vehicle accident reports pursuant to an OPRA request are changed as follows:

"Every citizen of this State shall have the right, during regular business hours and under supervision, to inspect and copy such reports and shall also have the right in person to purchase copies of the [accident] reports at the same fee established by [OPRA]. If copies of reports are requested other than in person, an additional fee of up to \$5.00 may be added to cover the administrative costs of the report..."

The amendment removes the subsequent charge of \$1.00 for each page after the third page and sets a flat fee of an additional \$5.00 (in addition to the new OPRA fees) when reports are requested other than in person. For example, if a requestor sought access to a 5 page motor vehicle accident report via regular mail, a custodian may charge a total of \$5.25 (OPRA fee of \$0.05 per page for 5 pages = \$0.25; an additional fee of \$5.00 to cover the administrative costs of mailing the report).

All changes in fees discussed in this *OPRA Alert* issue become effective on **Tuesday November 9, 2010**.

Please note that neither OPRA nor the GRC administer the fee schedule for discovery requests. Thus, the GRC cannot provide any guidance as it relates to any fees associated with discovery requests. Requests for discovery are guided by the Rules of Court.

The Government Records Council (GRC) is committed to making the Open Public Records Act (OPRA) work for the citizens of New Jersey. Since the law's inception, the GRC has worked hard to make government records more easily accessible to the public. The GRC is committed to being the facilitator of open government in New Jersey.

Created under OPRA, the Government Records Council:

- Responds to inquiries and complaints about the law from the public and public agency records custodians
- Issues public information about the law and services provided by the Council
- Maintains a toll-free help-line and Web site to assist the public and records custodians
- Issues advisory opinions on the accessibility of government records
- Delivers training on the law
- Provides mediation of disputes about access to government records
- Resolves disputes regarding access to government records



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