

Response to Subcommittee Chair email to the Office of Legislative Counsel about how that agency handles records requests

Response from Miles Cameron, Staff Attorney

I have attached the legislature's two policies that touch on fee reductions and waivers. PAP 142-112 is the one that determines whether a fee reduction or waiver is granted. The important part is that in order to get a complete fee waiver, the request must be narrowly tailored to preserve public resources. Transparency is crucial to democracy. However, public records request law gives the public the opportunity to demand work of their government without the government being able to say no. Fee reductions and waivers is how we promote transparency without wasting public funds. Absent that tool, we would likely have to add another employee or two to process public records requests.

To provide some perspective, I receive about 130-150 public records requests per year and charge for about 5 or 6 per year. The average amount charged is in the \$100-200 range. Another 10-20 are dropped by the requester once they find out how much work is required to get the records they want. Email searches make the math easier and are easier for people to understand the complexity. A good search that collects all of the responsive records and is limited in the number of unresponsive records will contain about 50% unresponsive records. We do the initial sort at the \$25 rate and can go through about 6 emails per minute or 360 per hour. If the requester provides the search terms, we skip this step as all records found are now responsive whether or not they actually reflect what the requester wanted. Once we have only responsive records, we convert them to pdf and review the records for content at the \$40 per hour rate. We estimate that the average email with attachments will have 10 pages, which is consistent with the attached page count estimates from LexisNexis. We estimate that we can review 900 pages per hour or 15 pages per minute (about 4 seconds per page). We also add in the IT search time and a token amount for attorney time at the \$75 rate for the estimate. Our estimates are generally fairly conservative, so the majority are charged at the estimate amount (we almost always waive any amount above the amount we estimated). A smaller number get charged the actual amount because the estimate was too high.

The public interest is also figured in to when we start charging for requests. The first hour is always free - billing costs make charging for smaller amount worthless to the legislature. For commercial requests, we start charging for email searches at about 100 potentially responsive emails with the estimated cost being about \$50. For private citizen requests, we start charging when the search yields about 300 potentially responsive records with the estimated cost being about \$150. Finally, for media requests we start charging at about 2,000 potentially responsive records with the estimated cost being about \$750. Of course, for private citizens the fee is reduced if it is in the public interest and for media requests the request is assumed to be in the public interest. However, with stronger public interest in the records, the threshold amount to begin charging will go up if it is necessary to gather those public records for which there

is a public interest. Very rarely do we ever charge someone that is not a commercial requester.

For those unwilling to work with us to preserve public funds and those who prepare public records requests in bad faith, we charge full price for requests. Thus our fee policy has checks and balances. Otherwise, either a small number of frequent requesters or very large requests would throw off the whole system. As an example, and not because these individuals are acting in bad faith, I have received over 100 public records requests from my five most frequent requesters over the last four years. Sometimes a normal request will blow up and we will have to work together to scale it back. If you want all emails discussing Richard Smith and you have me search two years' worth of emails for "Richard" or "Smith," you will find out just how common those two names are. So how frequent are really large requests? I get 5-10 per year that yield at least 10,000 potentially responsive records with an estimated cost of over \$3500 each. Although that is only about 5% of my requests, completing those requests would more than double our public records request workload. I get 3-4 per year that yield over 50,000 potentially responsive records with an estimated cost of over \$18,000 each. I will also generally get one or two that has over 100,000 potentially responsive records with an estimated cost of over \$36,000.

Attachments:

PAP 142-109

PAP 142-112

Page counts