

Access: In most cases, fees imposed are at the agency’s discretion

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growing threat to expanding openness at all levels of government, a cornerstone of Sunshine Week. The week-long open government initiative is celebrating its 10th anniversary beginning March 15.

“It’s incredibly easy for an agency that doesn’t want certain records to be exposed to impose fees in the hopes that the requester is dissuaded,” said Adam Marshall, a fellow with the Reporters Committee for Freedom of the Press, which sponsors Sunshine Week with the American Society of News Editors. “If the people don’t know what’s going on, either because they don’t have direct access to information or because the media isn’t able to provide them with access to information about what their government is doing, it’s impossible for the people to exercise any sense of informed self-governance.”

Fees can be charged for searching for records, making copies, paying a lawyer to redact certain parts of the information or hiring technical experts to analyze the data.

In most cases, the fees imposed are at the agency’s discretion; those agencies sometimes waive the costs or requesters can appeal them to an administrative board. But in other cases, Marshall said news organizations and private citizens are faced with the “ridiculous choice” of weighing the costs and benefits of being a responsible public steward.

In Florida, the Broward Sheriff’s Office told Jason Parsley, executive editor of the South Florida Gay News, last year that it would cost \$399,000 and take four years to provide every email for a one-year period that contained certain derogatory words for gays. The reason, according to officials: The email system could not perform a keyword search of all accounts at once.

Parsley says he has talked to computer experts who disagree and say a modern email system could handle the request easily, but he doesn’t have the money or the time to take the matter to court.

“It would be their word against ours,” he said. “Even if we could pay that amount, it would be four years. What good would that do me at that point, anyway?”



AP Photo/Alan Diaz

Jason Parsley, executive editor of the South Florida Gay News, poses for a photo at his office in Wilton Manors, Fla. The public’s right to see government records is coming at an ever-increasing price, as authorities set fees and hourly charges that often prevent information from flowing. Broward Sheriff’s Office told Parsley last year that it would cost \$399,000 and take four years to provide every email for a one-year period that contained certain derogatory words for gays.

If the goal was to keep him from learning that deputies used such terms, authorities won, Parsley said.

Broward County Sheriff’s Lt. Eric Caldwell said the department was not trying to be evasive. He said each employee’s email is stored on a tape and kept at a remote archive facility. It has to be retrieved physically and then converted into a Microsoft Outlook file, which can then be searched.

“If we have it, we have to provide it,” he said. “The reason this cost so much is that this person had a very vague request.”

Virginia law allows reasonable charges not to exceed the actual cost of accessing, duplicating, supplying, or searching for the requested records. But to get electronic copies of Virginia Gov. Terry McAuliffe’s daily calendar for nearly 10 months, officials told the AP that it would need to pay about \$500 upfront. That’s because McAuliffe’s counsel said staff would have had to search, review and possibly redact certain calendar entries. Meanwhile, in California, daily calendar entries for Gov. Jerry Brown are routinely provided at no cost to the AP.

Another example: Iowa’s newly created Public Information Board ruled in December that the state Department of Corrections could charge the Marshall Project, a nonprofit that reports on the criminal justice system, \$2,020 for access to its federally mandated reports on sexual violence against inmates. Iowa officials said it would take an employee

108 hours at \$15 per hour to review, redact and copy 2,672 records, plus a 15-cents-per-page charge for copies. Some larger states charge nothing or just a nominal fee for access to those reports.

“I think there’s a genuine effort to be responsive, but there is a higher cost to fulfill these requests,” said Dan Bevarly, acting executive director of the National Freedom of Information Coalition, a nonprofit based at the University of Missouri-Columbia that works to protect the public’s right to open government. “There are other times where there’s a deliberate effort to circumvent the system.”

Lawmakers in several states have proposed or passed laws seeking to address those fees.

Michigan lawmakers recently approved a law mandating that agencies cannot charge more than 10 cents a page for documents. Further, people can file a lawsuit if they believe they are being overcharged and can try to get the amount reduced. If a court agrees, it must assess \$1,000 in punitive damages.

In February, Maryland lawmakers introduced a bill that would establish a compliance board to handle complaints and cap the fees agencies can charge for public documents.

Yet other states are considering actions that could restrict access or deter those making requests.

Following complaints from Tennessee’s school boards association, a proposal in the state Legislature would allow agencies to charge for anything

ACCESS IN OREGON

Some recent developments regarding the cost of seeking access to information: Journalists in Oregon say high fees charged by government agencies are one of the biggest obstacles to obtaining public records.

Last fall, the Register-Guard newspaper in Eugene asked the University of Oregon for records related to a nonprofit group trying to bring a major track meet to campus. The university demanded \$2,163 to produce them. After the newspaper complained the fees hindered news coverage in the public interest, interim University President Scott Coltrane waived the fee, but much of the information was blacked out. The newspaper has appealed the redactions to the district attorney.

After a teacher sued for the right to carry a concealed handgun into class for personal protection in 2007, The Mail Tribune newspaper in Medford wanted to know how many other teachers could potentially do the same. The Jackson County Sheriff’s Office refused to supply a database of concealed weapons permits, saying the information was personal, despite the words “This is a public record,” printed on the permit. After the Oregon Court of Appeals ruled in the newspaper’s favor in 2010, the county demanded more than \$18,000 for staff and attorney time to review and redact the documents. By then, the teacher had lost her lawsuit; the newspaper dropped the request.

The Oregonian newspaper asked the Oregon Department of Energy for emails and documents about business energy tax credits awarded to solar energy projects between 2003 and 2013. The agency demanded \$9,830 for 170 hours of attorney and staff time to produce the documents. The reporter reduced his request to a database at a cost of less than \$500.

The Associated Press asked state police for records pertaining to their 2012 investi-

gation of the director of a commission regulating boxing and martial arts after \$22,000 in cash and checks was found lying around his office. Last December, the state police demanded \$4,000 for 25 hours of staff time to prepare, review and redact materials. The AP dropped the request. State police said they found no evidence of wrongdoing.

ACCESS IN WASHINGTON

State law dictates that only “reasonable” charges may be imposed for providing copies of public records and that no agency can charge more than the actual cost of copying, an amount not to exceed 15 cents a page.

Toby Nixon, president of the Washington Coalition for Open Government, said most state agencies provide electronic records free by email or at a nominal cost if provided on CD.

Earlier this year, the Legislature considered a bill that would allow state agencies to charge for digital public records.

House Bill 1684 passed one committee but failed to get a vote in another, meaning it is likely dead for the year. Under the bill, the first 10 megabytes of digital public records would be free, but the cost would increase to 15 cents per megabyte thereafter. For videos, the first five minutes would be provided free of charge, with additional footage costing 10 cents per minute. Those charges would be capped at \$50 for the first batch of digital records, increasing to \$100 for additional batches.

Nixon says he is not opposed to agencies charging something for providing digital records, but he said the costs in the bill language were unreasonable.

“There’s no rational relationship between 15 cents a megabyte and the actual cost of copying electronic records,” he said.

Agencies can be allowed to charge something, Nixon said, “but they should not be making a profit off of it.”

more than one hour of time fulfilling records requests. Current law allows them to charge for copies, but not for the time they spend collecting and redacting documents. A legislative analysis of a similar proposal that failed in 2011 estimated that local governments would collect about \$1.6 million in fees under the change.

“If someone can’t afford the fees, they can’t see the records,” said Deborah Fisher, executive director of the Tennessee Coalition for Open Government. “There is nothing yet to safeguard against abuse by government officials who may want to block access by inflating fees.”

An Indiana proposal would allow a searching fee for record requests that take longer than two hours to fulfill. After that time, an agency could charge up to \$20 an hour and require payment up front. The search time would not include time

spent redacting confidential information, but opponents said the fee will discourage more in-depth records requests and give officials another tool to fight transparency.

Most agencies in Washington state provide electronic records free by email, and state law caps charges for copies at 15 cents a page. But earlier this year, the Legislature considered a bill that would allow agencies to charge for digital public records, raising concerns among good-government advocates. The bill passed one committee but failed to get a vote in another, meaning it is likely dead for the year.

Agencies can be allowed to levy charges, says Toby Nixon, president of the Washington Coalition for Open Government, “but they should not be making a profit off of it.”

Some government officials say they are unable to waive fees because their budgets are

tight. Complicating matters further is a larger number of records being generated and the inability of agencies to maintain and process them, leading to more time and resources dedicated to researching requests.

In most instances, the price to fulfill requests comes down to what’s being sought and the costs associated with responding to them, said Chuck Thompson, executive director of the International Municipal Lawyers Association, a nonprofit group representing local government attorneys across North America.

“There’s probably a fairly low percentage of governments that are attempting to provide barriers to the release of information,” Thompson said. “It’s really important that the public have the ability to find out what their government’s doing, but they can’t bring their government to their knees.”

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