

Section 5.00 FEES

- A. Reasonable fees may be imposed for providing public access to electronic case records pursuant to this policy.
- B. A fee schedule shall be in writing and publicly posted.
- C. A fee schedule in any judicial district, including any changes thereto, shall not become effective and enforceable until:
 - 1. a copy of the proposed fee schedule is submitted by the president judge to the Administrative Office of Pennsylvania Courts; and
 - 2. the Administrative Office of Pennsylvania Courts has approved the proposed fee schedule.

COMMENTARY

The Committee first considered whether to charge a fee for fulfilling public access requests. It was noted that public access requests are often for information that is not readily available and require staff and equipment time to fulfill the same. The Committee asserts that these costs incurred by courts and offices in fulfilling a request should be passed on to the requestor. Clearly, absent the request, the court or office would not incur these costs.

The Committee noted that the MDJS policy provides that “[c]osts shall be assessed based on the actual costs of the report medium, a pro-rata share of computer and staff time, plus shipping and handling.”²¹³ The RTKA also provides that fees may be charged by agencies in fulfilling RTKA requests.²¹⁴ The Committee reviewed the RTKA fee schedules of the Governor’s Office, Lieutenant Governor’s Office, and the Executive Offices²¹⁵ and the Department of Environmental Protection.²¹⁶ Outside of Pennsylvania, the Committee also noted that several states charge a fee to a requestor when responding to a public access request (which will be discussed in greater detail below). Therefore, the Committee opines that the current practice of charging public access requestors a fee for fulfilling their requests should continue.

The Committee reviewed the costs charged by various state courts in responding to public access requests. In general, it appears that most court systems charge a fee that is intended to recoup from the requestor the costs incurred by the court in responding to the

²¹³ See MDJS Policy, Section II.B.5.

²¹⁴ See PA. STAT. ANN. tit. 65, § 66.7 (West 2006).

²¹⁵ See *Commonwealth of Pennsylvania Governor’s Office, Lieutenant Governor’s Office, and Executive Offices – Right-To-Know Request Policy*.

²¹⁶ See *DEP and the Pennsylvania Right-To-Know Law Schedule of Charges for Public Access*.

request. These court systems include Colorado,²¹⁷ New York,²¹⁸ Vermont,²¹⁹ Maryland,²²⁰ Idaho,²²¹ California,²²² and Florida.²²³ However, some court systems, such as Minnesota,²²⁴ Arizona,²²⁵ and Utah²²⁶ appear to permit a cost/fee that is in excess of the costs incurred in responding to the request. The Committee also noted that the RTKA and FOIA differ on this issue as well. Specifically, the RTKA provides that fees must be reasonable and based on the prevailing fees for comparable services provided by local business entities, except for postage fees which must be the actual cost of postage.²²⁷ However, FOIA provides that only the direct

²¹⁷ Colo. DJD. 05-01 Section 6.00 – Fees for Access – “Clerks of Court and the State Court Administrator’s Office may charge a fee for access to court records pursuant to § 24-72-205(2) and (3) C.R.S. and Chief Justice Directive 96-01. The costs shall include: administrative personnel costs associated with providing the court records; direct personnel costs associated with programming or writing queries to supply data; the personnel costs associated with testing the data for validity and accuracy; maintenance costs associated with hardware and software that are necessary to provide data as expressed in Computer Processing Unit (CPU), network costs, and operating costs of any reproduction medium (i.e. photocopies, zip disks, CD, etc). To the extent that public access to electronic court records is provided exclusively through a vendor, the State Court Administrator’s Office will ensure that any fee imposed by the vendor for the cost of providing access is reasonable. The authorization to charge fees does not imply the service is currently available.”

²¹⁸ *Report to the Chief Judge of the State of New York* by the Commission on Public Access to Court Records (February, 2004), p. 7-8. The Report provides that “records over the Internet [should] be free of charges; if the [court] determines that a charge is advisable we recommend that the charge be nominal and that it in no event should exceed the actual cost to provide such record.”

²¹⁹ 1 VT. STAT. ANN. § 316(b)-(d) and (f) provides that if any cost is assessed it is based upon the actual cost of copying, mailing, transmitting, or providing the document.

²²⁰ Maryland Rule of Procedure 16-1002(d) provides that “Reasonable fees means a fee that bears a reasonable relationship to the actual or estimated costs incurred or likely to be incurred in providing the requested access. Unless otherwise expressly permitted by these Rules, a custodian may not charge a fee for providing access to a court record that can be made available for inspection, in paper form or by electronic access, with the expenditure of less than two hours of effort by the custodian or other judicial employee. A custodian may charge a reasonable fee if two hours or more of effort is required to provide the requested access. The custodian may charge a reasonable fee for making or supervising the making of a copy or printout of a court record.”

²²¹ IDAHO ADMIN. R. 32(1). This Rule provides the clerk should charge \$1.00 a page for making a copy of any record filed in a case (per Idaho Stat. § 31-3201) and for any other record the clerk shall charge the actual cost of copying the record, including personnel costs.

²²² CAL. CT. R. 2076 provides that the court may impose fees for the cost of providing public access to its electronic records as provided by Government Code section 68150(h) (which sets forth that access shall be provided at cost).

²²³ See FLA. J. ADMIN. R. 2.051(e)(3) and FLA. STAT. ANN. § 119.07 which appears to permit the charging for cost of duplication, labor and administrative overhead.

²²⁴ MN ST ACCESS TO REC RULE 8(6) (WEST 2006). “When copies are requested, the custodian may charge the copy fee established by statute but, unless permitted by statute, the custodian shall not require a person to pay a fee to inspect a record. When a request involves any person’s receipt of copies of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies.”

²²⁵ Arizona Rule 123 Public Access to the Judicial Records of the State of Arizona, Subsection (f)(3) provides different levels of fees for requestors for non-commercial purposes and commercial purposes. For non-commercial requestors “[i]f no fee is prescribed by statute, the custodian shall collect a per page fee based upon the reasonable cost of reproduction.” See Rule 123(f)(3)(A). For commercial requestors, “the custodian shall collect a fee for the cost of: (i) obtaining the original or copies of the records and all redaction costs; and (ii) the time, equipment and staff used in producing such reproduction.” See Rule 123(f)(3)(B)(i) and (ii).

²²⁶ UTAH J. ADMIN. R. 4-202.08 establishes a uniform fee schedule for requests for records, information, and services.

²²⁷ See PA. STAT. ANN. tit. 65, § 66.7 (West 2006).

costs incurred by the agency can be charged to the requestor.²²⁸

If fees are based on the prevailing market rate, then fees will not only recoup the actual costs incurred by the particular court of office but also result in a profit. The objective of courts or offices in responding to public access requests is not to make a profit; rather it is to foster the values of open court records without unduly burdening court resources. Put simply, fees should not be financial barriers to accessing case record information. Fees assessed by courts or offices in satisfying public access requests must be reasonable, fair and affordable. To aid in defining the parameters of reasonable, fair and affordable fees, the Committee finds the definition for charges in the Vermont²²⁹ and New York²³⁰ policies instructive. Generally, the public access request fees should not exceed the actual costs associated with producing the requested information for copying, mailing or other methods of transmission, materials used and staff time.

In the judgment of the Committee, it would be beneficial to both the public and AOPC if all courts or offices were required to promulgate their fee schedules. Therefore, the Committee recommends that a court's or office's fee schedule be in writing and publicly posted (preferably so as to permit viewing both in person and remotely via the Internet). This method is similar to the procedures adopted for the promulgation of local rules.²³¹

Subsection C provides that the Administrative Office of Pennsylvania Courts must approve all judicial district fee schedules – to include adoption of any new fees or fee increases -- before the same are effective and enforceable.²³² The purpose of this provision is to further a unified approach to fees associated with case record access in the Pennsylvania Judiciary – with an eye toward avoiding inconsistent and unfair charges amongst the various jurisdictions. This type of approach is not novel, as it is quite similar to the procedure set forth in Rule of Judicial Administration 5000.7(f) pertaining to the approval of court transcripts.

²²⁸ 5 U.S.C. § 552(a)(4)(a)(iv) (2006). In addition, the Committee noted that for certain types of requestors FOIA provides that the first two hours of search time or the first 100 pages of duplication can be provided by the agency without charging a fee. 5 U.S.C. § 552(a)(4)(a)(iv)(II) (2006).

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²³⁰ *Report to the Chief Judge of the State of New York* by the Commission on Public Access to Court Records (February, 2004), p. 7-8. The Report provides that “records over the Internet [should] be free of charges; if the [court] determines that a charge is advisable we recommend that the charge be nominal and that it in no event should exceed the actual cost to provide such record.”

²³¹ See PA.R.J.A.103(c), PA. R. CRIM. P. 105(c) and PA. R. C. P. No. 239(c).

²³² See Pa. Const. Art. V, § 10(c); Pa.R.J.A. 501(a), 504(b), 505(11), 506(a); 42 Pa.C.S. § 4301.