

Questions & answers from the July 17 webinar – New public records laws and what you need to know

These are the questions asked during the July 12, 2017 webinar on the new public records laws. The answers provided are the opinions of the presenters and are not intended to be regarded as specific legal advice. We recommend that you consult with your own legal counsel about these questions as well.

Q: Clarification on emails or records that are in electronic formats. I was under the understanding that you can only charge the 10 cents if you actually scan or print out the electronic document but no charge is allowed say for example you turn the email into a pdf?

The ten-cent scanning charge applies when scanning a paper record into electronic format. There is no charge allowed for converting one electronic record into another type of electronic record.

Q: If you do change the format, do you only get to charge for the number of files that are then produced, and not the number of files that were converted? Example: Turning 500 emails into a single PDF, versus providing 500 individual PDFs.

The charges allowed in this scenario are for uploading and transmitting electronic copies or records. The law directs agencies to use “the most reasonable and cost-efficient method available”; so, in this scenario, it appears that the most reasonable, cost-efficient method is to turn the 500 emails into one PDF, not 500 individual PDFs. Thus, you would base your charge on the number and volume of files transmitted, not their original volume.

Q: Can't agencies charge for scanning non-electronic records (hard copies) when the requestor wants them sent electronically? Then the \$.10 per scanned would apply - correct?

The ten-cent scanning charge applies when scanning paper copies into electronic format when the requestor has asked for them electronically. Scanning fees should only be assessed when the original record is in paper format.

Q: Will the State ever consider allowing us to charge for our time similar to Oregon and Alaska?

No, that is not likely to happen in Washington. Washington has a strong transparency focus and elected officials are unlikely to support such a large scale change. Additionally, stakeholders in the requestor community and news media would strongly oppose such a proposal.

Q: What happens with requestors that insist on using their own scanner, which compromising the record?

Your policies and procedures should address when and why you allow or do not allow a requestor to use their own equipment. Many agencies prohibit a requestor from bringing in their own equipment like a thumb drive or CD due to security concerns. An agency's policies and procedures should address security concerns as well as protecting the integrity of records. An example would be: during records inspection, all records are to be left as originally organized and returned in the same condition as they were provided. .

Q: Can you clarify what "description of records produced" means? Can you just say documents requested or do you have to describe each separate record provided.

There is not a specific definition. The general guidance would be to make sure your own procedures are clear and then be consistent in applying your definition. It is probably acceptable to provide a general summary of what records were produced and not a specific inventory.

Q: Can we start with default fees then go to actual costs later if we find it is more after we do the research and calculations?

Yes, we believe that is acceptable. An agency may at first find that a cost study would be an undue burden and then over time develop the resources to be able to complete one.

Q: How do other cities collect the fees?

Some agencies allow for online fee payment, other require payment be made in person. Ideally, you should use whatever forms of payment are available to citizens for other services.

Q: can someone come to our agency to do this training?

There will likely be other training opportunities on this topic; however, at this time, neither AWC nor MRSC can provide on-site training. The [Attorney General Open Government Ombuds](#) is developing a local government consultation program, which may be of use; private companies and law firms may be able to provide these services as well. AWC, WSAC and MRSC all post information on their websites about training opportunities as they become available.

Q: We are in the midst of a large request. Would it be wise to implement fees after this request has been fulfilled rather than charge the requestor mid-process?

Whenever your agency decides to implement these policy changes, they should apply to all requests. The decision to implement policy changes should be made independent of a specific request. If you do implement policy changes and have open on-going requests, be sure to notify the requestors. The best practice would be to prepare a letter to all requestors explaining the changes and why they are necessary, and add it as an enclosure to the next communications you have about their request.

Q: Please obtain and post Shoreline's cost study

[View Shoreline's cost study.](#)

Q: To Clarify on fee: You cannot go between \$2.00 flat fee and the per gigabyte fee?

Yes, if you opt to use the flat fee, then you cannot charge any additional fees.

Q: Will model policies be available?

The Attorney General's Office is working on an update to the [Model Rules](#), which will provide additional assistance for developing model policies. As well, MRSC will post policy examples on its webpage.

Q: Please obtain Seattle's cost study and post as well too, please

[View Seattle's cost study.](#)

Q: Will JLAC be providing a tracking module to use?

JLARC is working on developing definitions and a standard reporting methodology. JLARC has posted additional information about the tracking methodology on its [webpage](#).