

OFFICE OF THE ATTORNEY GENERAL



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Honorable Tim Parker, Jr.
Member, House of Representatives
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Public Records – Fees – Attorney
Fees

A public entity may recoup reasonable costs incurred in providing public documents, including staff research, preparation, and time, but not costs for an attorney's time in reviewing potentially confidential documents.

Dear Representative Parker:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS 1, 2, AND 3

May the public entity that is the custodian of that record charge the citizen an attorney's fee for review and evaluation of the requested record to determine whether the record is subject to disclosure?

May the custodian charge the citizen an attorney's fee for review and evaluation of the requested record even when the custodian has

access to an attorney who is employed by the public entity to provide legal services, and who is paid for those services with taxes that are collected from the citizens?

May the custodian charge the citizen an attorney's fee for review and evaluation of each and every public record that is requested by the citizen?

FACTS AND ANALYSIS

Section 36-12-40 of the Code of Alabama states that every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. ALA. CODE § 36-12-40 (1991). The term "public writing" has been broadly defined by the Supreme Court to mean "such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens." Stone v. Consolidated Publishing Co., 404 So. 2d 678, 680 (Ala. 1981). The Supreme Court explicitly recognizes, however, that there are certain documents that are not subject to public disclosure:

Recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure. Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference. MacEwan v. Holm, 226 Or. 27, 359 P. 2d 413 (1961).

Over the years questions have arisen concerning whether public officials may charge the public for the cost of making public writings

available. In 1981 Attorney General Charlie Graddick wrote to this issue. Attorney General Graddick stated:

If possible, a public agency should provide free copies of public records. However, if budgetary constraints prevent this, then a public agency may charge a nominal fee, if necessary, to cover its costs of providing copies of public records. One may inspect public records without a fee unless a substantial amount of the employer's time is required.

184 Op. Ala. Att'y Gen. 27 (August 25, 1981). In 1995, Attorney General Sessions issued two opinions, both of which contained the following statement:

There is statutory authority for the collection of fees to defray costs of providing a citizen with information retained by public officers. Further, this office has issued several previous opinions that a reasonable fee may be charged for providing copies of records. A "reasonable fee" has been interpreted to mean the actual cost incurred in providing information to the public. Thus the fee charged should be limited to the actual cost of providing information to the public, so long as those costs are reasonable. An excessive fee should not be charged as the public's right to a copy of public records should not be restricted.

240 Op. Ala. Att'y Gen. 16 (July 17, 1995), 240 Op. Ala. Att'y Gen. 17 (July 20, 1995).

Custodians for public records must provide free access to public records. If copies of records are requested, when necessary due to budgetary constraints, a reasonable charge may be assessed based upon a recoupment of actual costs of providing copies or for retrieving the information. Such charges cannot be imposed to restrict public access.

The duty to comply with the State's public record statutes falls upon a custodian of public records. In the ordinary course, custodians of public records will not need legal advice when a record request is made.

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Most records are open to the public. The exceptions are rare and should be strictly construed in favor of public access. Blankenship v. City of Hoover, 590 So. 2d 245, 248 (Ala. 1991). The relatively rare decision to incur legal expenses to determine if an exception applies is a ministerial function, the costs of which should be born by the public as a whole. Assessing legal fees against a citizen to enable the custodian to decide whether his or her records are public would seriously restrict access to public records.

Accordingly, it is the opinion of this Office, in response to Questions 1 and 2, that a public entity holding public records may recover the reasonable cost involved in providing that record to a citizen, including preparation and copying, but not attorney's fees.

In view of our response to Questions 1 and 2, no response to Question 3 is needed.

CONCLUSION

A custodian of public records may recoup reasonable costs incurred in providing public documents to a citizen, including, where necessary, costs for preparation of the records, and the actual cost of copying the records, but may not recoup the cost of attorney's fees incurred in determining whether the public writings are subject to an exception that would prevent their release to the public.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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