

HOW TO DO A TEST FOR A VOLUMINOUS REQUEST

This example uses one week as the measurable unit.

1. Take a measurable unit taking into consideration how your records are filed and what information is wanted. For example:
 - If your records are filed alphabetically, your measurable unit is a letter of the alphabet;
 - If your records are filed chronologically, your measurable unit may be one day, one week, one fortnight, one month, etc.
 - If you have trouble determining your measurable unit, **CALL ME** (512-475-2497), **FAX ME** (512-481-1992) or **EMAIL ME** (hadassah.schloss@oag.state.tx.us)
2. Prepare the records for inspection or for copies (this depends on what the requestor wants).
 - This means that you may have to compile some records;
 - Determine if any of the information needs to be sent to the Office of the Attorney General for a ruling on its release;
 - Delete some information for which you already have a “previous determination.” To ascertain if you have a “previous determination” refer to ORD-673;
 - Delete information pursuant to a mandatory exception, such as SSNs, emails of members of the public communicating with the gb by email, etc.
3. Time yourself while preparing the sample records.
 - Be accurate and fair;
 - Count only the actual time doing it;
 - If you get interrupted more than a minute or two, stop the clock;
 - This time will be in minutes.
4. Multiply the time in # 3 by the number of weeks entailed in the request (for example, if one year of information has been requested, then the number of weeks is 52). This amount will be in minutes; divide by 60 to make it hours.
5. Multiply the result of # 4 above by \$15.00 (the amount allowed per hour).
6. Multiply the result of # 5 above by 20% (the amount allowed for overhead).
7. **FOR LOCAL GOVERNMENTAL BODIES ONLY:** If the sum of # 5 + # 6 is not enough to cover the actual cost of making the copies, multiply the sum of # 5 + # 6 by 25% (the amount of variance allowed for local governmental bodies)
CAVEAT: THE 25% IS NOT AUTOMATIC
8. If applicable, add the result of # 7 above to the sum of # 5 + # 6.

NOTE: Deletions are allowed only in accordance with OAG rulings, previous determinations, or as specified in the law.

9. The resulting amount (# 5 + # 6 or #5 + # 6 + # 7) is your estimate.
10. You may request a bond for the entire amount or a deposit if the request qualifies under §552.263. If the requestor wants access (view, inspect) to the records rather than copies, the deposit can only be 50% of the estimate.
11. Even when requestors want only to inspect, it's a good idea to do the test and provide the estimate for "informational purposes." If after inspecting the requestor chooses to take pages, he would know what the charges may be.

NOTE: Deletions are allowed only in accordance with OAG rulings, previous determinations, or as specified in the law.

TEN THINGS WORTH REMEMBERING

1. IF THE REQUEST IS VOLUMINOUS, PERFORM A TEST ON PART OF THE INFORMATION. EXAMPLE: (A) KEEP A TIME LOG FOR “LOCATING, COMPILING, AND REPRODUCING.” (B) COUNT THE PAGES. (C) EXTEND THE NUMBERS TO THE TIME PERIOD THAT WAS REQUESTED.
2. MAKE SURE YOUR ESTIMATED CHARGES ARE ITEMIZED, AND IN WRITING. ADDITIONALLY, DO NOT START MAKING COPIES UNTIL YOU GET A WRITTEN RESPONSE FROM THE REQUESTOR.
3. WHEN ESTIMATING PERSONNEL TIME, THINK IN TERMS OF “HOW MUCH TIME IT TOOK TO LOCATE IT, COMPILE IT, AND REPRODUCE IT” RATHER THAN IN TERMS OF “QUANTITY OF INFORMATION GIVEN.”
4. ESTIMATE PERSONNEL TIME REASONABLY AND FAIRLY. DO NOT MAKE REQUESTORS RESPONSIBLE IF YOUR RECORDS ARE NOT WELL ORGANIZED, OR IF YOUR PERSONNEL IS NEW OR SLOW.
5. WHEN ESTIMATING COMPUTER TIME, FIRST FIND OUT WHAT TYPE OF SYSTEM YOU HAVE.
6. WHEN A CONTRACTOR WILL DO THE WORK FOR YOU, ASK FOR A WRITTEN QUOTE AS IF YOU NEEDED THE INFORMATION OR THE ADDITIONAL WORK FOR YOUR OWN ENTITY’S USE.
7. YOU MAY ASK FOR EXEMPTIONS, BUT THEY ARE NOT AUTOMATIC, MANDATORY, OR RETROACTIVE.
8. DO NOT GET INTO A “POWER PLAY” WITH REQUESTORS.
9. TREAT ALL REQUESTORS UNIFORMLY. WHETHER OR NOT YOU LIKE THEM IS IRRELEVANT.

10. WHEN IN DOUBT, CONTACT ME!!!

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UPDATE ON COSTS:

TRANS. CODE, § 550.065 **AUTO ACCIDENT REPORTS ARE \$6.00/REPORT OR THE ACTUAL COST OF PREPARING A COPY (WHICHEVER IS LESS) AS OF SEPTEMBER 1, 2001.**

GOV. CODE §552.265 **HARD COPIES MADE BY COUNTY OR DISTRICT CLERK'S OFFICE IS \$1.00/PAGE. CHARGES FOR ELECTRONIC COPIES MUST BE CALCULATED IN ACCORDANCE WITH GOV CODE §§ 552.231 & 552.262 AS OF SEPTEMBER 1, 2001.**

HOW TO CALCULATE CHARGES FOR FORMATTED DATA

- 1) Determine the kind of computer system you will be using. In some cases, more than one system is used in processing and copying the information. If you don't know what kind of system you have, you may use the definitions in the OAG rules to assist you.
- 2) Once you have determined the system, you can use the cost stated in the OAG rules for that kind of system. If the costs in the rules plus the 25% variance allowed for local governments is not enough to cover your costs, you may request an exemption.
- 3) To request an exemption you must find your annual cost. Computer systems are usually amortized in five years. Even if your system has been completely amortized, there may be upgrades that were done, which can also be amortized. Additionally, if you have an annual cost for maintenance and software licenses, that can be added.
- 4) Next you must determine what steps are necessary to produce a copy of your data. In some cases, the data can be copied directly from the system into a CD or other electronic media.
- 5) Sometimes the information must be manipulated before it can be released or downloaded. If manipulation must be done, a log of time should be kept. Additionally, the statement pursuant to §552.231 must be sent to the requestor any time that a request will require programming and/or manipulation of data.
- 6) Searching for records or copying to electronic media is neither programming nor manipulation of data. However, regular labor charges may be assessed in some cases.
- 7) You are also allowed to charge for providing the blank CD, diskette, or other electronic media.
- 8) You are not allowed to charge for collecting the information, or for any manipulation that was done with the information that is not pursuant to the request at hand.
- 9) If you prepare several copies of the same material, charges such as labor and computer time must be allocated among all the copies, unless you use the total amount of time for every single copy.
- 10) The amount of information released is irrelevant. Charges are calculated on the time it takes to produce a copy, not how much information is given.

PLEASE NOTE THAT THESE ARE ONLY EXAMPLES. THE AMOUNTS REFLECTED ARE FOR INFORMATIONAL PURPOSES AND DO NOT MEAN THAT THIS IS THE MAXIMUM YOU CAN CHARGE.

EXAMPLES (using a CD as the electronic media used)

(A) Using the charges authorized in the OAG rules plus the 25% variance for local governmental bodies

Computer time, client-server, 15 minutes
 Personnel time, 20 minutes
 Overhead, Personnel time x .20
 CD, one each

Computer time, 15 minutes @ \$2.20/hr.	\$0.88
Personnel time, 20 minutes @ \$15/hr.	\$5.00
Overhead, \$5 x .20	\$1.00
CD, \$1.00 ea.	<u>\$1.00</u>
Subtotal	\$7.88
25% Variance	<u>\$1.97</u>
TOTAL	\$9.85

(B) Using an exemption granted by OAG (for computer charges)

Computer time, 15 minutes @ \$12.89/hr.	\$3.22
Client-server, 3 yrs. old, paid \$100,000 ($\$100,000 / 5 / 2,080$) = \$9.62/hr.	
Maintenance agreement, 5 yrs., \$14,000 ($\$14,000 / 5 / 2,080$) = \$1.35/hr.	
License agreements, \$4,000/year ($4,000 / 2,080$) = \$1.92/hr.	
Personnel time, 20 minutes @ \$15/hr.	\$5.00
Overhead, \$5 x .20	\$1.00
CD, \$1.00/ea.	<u>\$1.00</u>
TOTAL	\$10.22

The above totals are per CD, regardless of the amount of information on them.

DETERMINING WHEN AND HOW TO CHARGE FOR RETRIEVING EMAILS

A request has been received for “any and all emails regarding the XYZ company.” The request doesn’t have a time parameter.

What to do?

Ask the requestor to narrow the request to a specific time or time range. (Should the requestor refuse to do that, which is his right, you may consider the request to be for as long a period as you have been dealing with XYZ company and/or as long as the records have been retained - CAVEAT! even if the retention time has been reached, if you got’em, you must retrieve’em! This would include emails already in back up.)

SPECIAL NOTE: If the estimate will exceed \$40, send the estimate even if the request is only for inspection. Advise the requestor that the estimate, in this case, is “for informational purposes.” You want them to know what they may have to pay if, AFTER the inspection, they want copies.

Scenario # 1:

The emails are still active in your employees’ hard drives, and can be accessed by creating a “Search” box in which you can put the language that will bring those emails up (in this case, XYZ, XYZ Company, etc.).

THIS IS NOT CONSIDERED PROGRAMMING AND/OR MANIPULATION OF DATA!!

(a) If the request is for copies of these emails, you may charge for the copies (\$.10/page) as well as the labor (\$15.00/hr.) and overhead (20% of labor) to retrieve and print the emails. Labor may also be charged for redacting confidential information pursuant to a mandatory exception.

(b) If the request is for inspection, you may charge \$.10 for any page that requires the redaction of mandatory confidential information. No other charges are allowed.

An estimate needs to be sent only if the request will exceed \$40.00

Scenario # 2:

Some of the emails are still active in employees’ hard drives, while others have been “deleted.” (Software keeps track of files by storing the location of data in the “file allocation table”, or FAT, of a computer hard disk. The software shows the specific location of the file. Generally, a “deleted” file is not actually deleted. Rather, the display of its location resides in a “trash bin” or “recycle bin.” When the “trash” or “recycle” bins are emptied, the data is still there, but the

location of the data is no longer able to be recovered. This office has determined that such files would no longer be responsive to a request if no backups are kept).

RETRIEVING DELETED FILES IS CONSIDERED PROGRAMMING AND/OR MANIPULATION OF DATA!! (Whether or not it's programming depends on what needs to be done to restore the records)

(a) If the requestor wants copies of all the emails, you may charge for the copies, as well as the labor and overhead for restoring the records from the "trash" and/or "recycle" bins, and the time to locate and print the emails. Also, if redactions need to be done, you may charge for that labor.

(b) If the requestor wants to inspect the emails, you may charge labor to restore the records, as well as \$.10/page for any page that needs to be redacted. You may not charge for printing the emails.

The estimate to be sent here is the one required by §552.231, regardless of amount. If it will also exceed \$40, you need to add the requirements of §552.2615

Scenario # 3:

All the emails are in backup tapes, which are kept only for 90 days, and then reused (the information on them gets "written over") In order to bring up the information from the backup tapes, special space needs to be "built" in a server, some information needs to be moved to another server, etc.

THIS IS CONSIDERED PROGRAMMING AND/OR MANIPULATION OF DATA!!

(a) If the requestor wants copies of all the emails, you may charge for the copies as well as labor for programming the server, manipulation of data, locating and printing the specific emails.

(b) If the requestor wants to inspect the emails, you may charge the programming and/or manipulation of data, as well as \$.10 for any page that needs to be redacted. You may not charge for printing the emails.

The estimate to be sent here is the one required by §552.231, regardless of amount. If it will also exceed \$40, you need to add the requirements of §552.2615

Additional hints to make the process easier

- Remember that §552.231 has different timelines than §552.2615. This is because it is understood that a request that requires programming and/or manipulation of data also requires more time to produce an estimate.
- Do a test! You are required to produce an estimate. It needs not be perfect, and it won't be, but it must be realistic.
- Always keep in mind that records are kept pursuant to their content, not their media. Train your personnel on your retention schedule, how to archive emails, etc.
- Always keep an open line of communication with the requestor. Requestors don't know how you keep the information or even for how long. Educate them, it will pay in the long run.
- If you don't have something, say it upfront! Nothing makes people more suspicious than evasiveness.
- Always remember that these are not your records, or your agency's. They are the public's records, and the public should be able to access or have copies at reasonable prices.
- Come to terms with the fact that we operate in an imperfect world. Smile and go on!

WHAT EVERY PUBLIC INFORMATION COORDINATOR NEEDS TO KNOW
REGARDING CHARGING FOR COPIES OF PUBLIC INFORMATION
(OR HOW TO AVOID SOME HEARTBURN)

Note: “gb” is used to denote “governmental body.”

1. A gb is ALWAYS allowed to charge for copies.

TRUE

FALSE

TRUE. Regardless of how many copies there are, where the records were, how old the records are, charges for copies are always allowable.

2. A gb MUST ALWAYS charge for copies of public information; it says so in the applicable state law.

TRUE

FALSE

FALSE. Though the law states that the charges “shall be an amount that reasonably includes all costs related to reproducing the public information” (§ 552.261(a)), the same law also states that “if the cost of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge.” (§ 552.267(b))

3. The best way to handle a request is to make all the copies immediately, then inform the requestor that the copies are ready and how much is owed.

TRUE

FALSE

FALSE. Doing this may limit the amount the gb can recover. Keep reading...

(a) If the estimated charges will exceed \$40, the gb must provide a “written statement of **estimated** charges.” (§ 552.2615) The statement must give the requestor all the information necessary to respond to the estimate appropriately, and must inform the requestor that the request will be considered withdrawn if a response is not received within ten business days from the date of the estimate. What does “all the information necessary to respond ...appropriately” mean? It means that you have to give the requestor a good faith estimate, preferably with enough detail to be able to narrow the request. It means that you have to tell the requestor what are the three ways to avoid having the request considered withdrawn. The law mandates the gb to inform the requestor of the requirements of the law; whether or not the requestor knows or should know the law IS IMMATERIAL.

(b) An “estimate” must be given **BEFORE** you do the work. It is, by its own definition, something you think will be, not something that already was. The best way to avoid doing all the work (just to have requestor say “At that price, I don’t want it”) is to do a sample test.

Understand what is requested, get a rough idea of how much information there is, where it is, how long will it take to make copies or prepare for inspection. **CALL ME!!!** (512-475-2497) or email me (hadassah.schloss@oag.state.tx.us)

(c) If the charges will not exceed \$40, it is still a good policy to let the requestor know in advance what the charges might be.

(d) You may find it beneficial to pick an amount (\$1, \$2, \$5, etc.) under which you don't charge. This is a decision that a gb must make with ALL requestors in mind; it can't be changed arbitrarily depending on how the staff at the gb feels towards specific requestors.

4. Labor charges are applicable regardless of the number of pages a requestor takes.

TRUE

FALSE

FALSE. If a request results in fewer than 50 pages, labor charges can only be assessed if the records fall under the criteria set by § 552.2615(a)(1) or (2). Please note that this criteria applies **ONLY** to paper records, that is, records that are originally in paper.

5. A charge may be imposed for making available for inspection paper records that contain confidential information mixed with information that must be released.

TRUE

FALSE

TRUE. If a paper record contains information that must be redacted before the requestor may be allowed to inspect the rest, a per copy charge may be imposed for each page that requires a redaction. This charge applies only to pages that contain information confidential pursuant to a mandatory exception, and no other charges may be assessed, except as stated in § 552.271(c) and (d).

6. A gb may charge labor for preparing paper records for inspection even if a requestor doesn't want copies. **(TRICK QUESTION!)**

TRUE

FALSE

TRUE, with a caveat. In order to charge labor for preparing records for inspection, the records must fall into the criteria set by § 552.271(c) or (d). Essentially, the criteria depend on the age of the records **and** the time it will take to prepare them for inspection **OR** the volume of the records **and** the time it will take to prepare them for inspection. **BOTH** conditions in the "and" clause must be met for charges to apply. And be careful! You may charge labor, but not overhead.

7. If information is kept electronically, a gb is allowed to charge labor for making the information available for inspection. **(ANOTHER TRICK QUESTION!)**

TRUE

FALSE

TRUE, with a caveat. In order to charge labor for making electronic records available for inspection, the records must require programming and/or manipulation of data before the records can be inspected. Printing electronic records, searching electronic records, or downloading them to another electronic medium **IS NOT** considered programming and/or manipulation of data. Again, only labor is allowed, not overhead.

8. Labor charges are allowable for the following tasks:

- (a) Locating, compiling, and reproducing responsive documents that are in the gb's premises, and the result is fewer than 50 pages.
- (b) Locating, compiling, and reproducing responsive documents that are in the gb's premises, and the result is more than 50 pages.
- (c) Locating, compiling, and reproducing responsive documents that are located in two or more separate buildings, or in a remote storage facility.
- (d) Determining which documents will be released, and which documents will be sent to the OAG for a ruling regarding their disclosure.
- (e) Preparing the brief and the records to go to the OAG pursuant to a request for ruling.
- (f) Redacting information pursuant to a mandatory exception.
- (g) Redacting information pursuant to a discretionary exception.

TRUE

FALSE

TRUE. For letters (b), (c), and (f). **FALSE** for letters (a), (d), (e), and (g)

9. If a request requires programming and/or manipulation of data, the governmental body must send the requestor a statement pursuant to § 552.231, regardless of the amount.

TRUE

FALSE

TRUE. The statement must have the elements detailed in § 552.231. Additionally, the gb is not obligated to fulfill the request until it receives a written response from the requestor regarding the charges and the request. This section does not have a specific amount above which a statement is required; therefore, it must be sent anytime that the request requires programming and/or manipulation.

10. A requestor that does not respond to a written statement of itemized charges, whether sent under § 552.231 or § 552.2615, still owes the specified amounts and must pay them before requesting more information.

TRUE

FALSE

FALSE. A requestor is not responsible for any amounts the requestor has not agreed to pay, or any work that was performed for a request **BEFORE** an answer from the requestor was received. If a requestor agrees to pay, and then reneges, then the charges are still owed, and if they are more than \$100 (either singly or cumulatively), the requestor must paid the amounts owed, and pay for the next request in advance before getting additional information.

11. A gb that fails to send the statements required by the law regarding estimated charges, but fully complies with the request, may still collect all amounts owed to it for fulfilling the request.

TRUE

FALSE

FALSE. Failure to provide the required statements limits the gb to recovery of no more than \$40.

12. Only the gb can make a determination of “public benefit” for reduction or waiver of charges pursuant to § 552.267.

TRUE

FALSE

TRUE. The law leaves that determination entirely up to the gb.

13. A written itemized statement is invalid if it doesn't provide the requestor all the information required to respond. An invalid statement limits the gb's ability to recover all charges. It also prevents a gb from considering a request withdrawn.

TRUE

FALSE

TRUE. The law requires a gb to advise a requestor of § 552.2615 in its entirety. Additionally, the mandatory elements of the written itemized statement are enumerated in the charge rules. (1, T.A.C., §111.67)

14. Multiple requests from one requestor may be combined and labor may be charged.

TRUE

FALSE

FALSE. Each request stands on their own, so charges must be contemplated as they apply to each request. (Exception: when the requestor ties them together, e.g. # x of x, etc.)

15. Any time spent on a request is recoverable through charges.

TRUE

FALSE

FALSE. Time may not be recovered for creating the itemized statement, for communicating with the requestor, for meetings to determine what is requested, etc. Only the time spent “locating, compiling, and reproducing the public information” or time spent programming or manipulating data.

16. Manipulation of data applies to information kept in any format, whether in hard or soft copy.

TRUE

FALSE

FALSE. Manipulation of data refers only to information kept in soft format. Searching for electronic records, printing electronic records is not considered manipulation of data.

17. “Compiling public information” means that I can create a new record using information from paper records, and charge for the time it took to do it. (Programming or manipulating electronic data IS NOT considered “creating a new record”)

TRUE

FALSE

FALSE. Don’t even go there!

18. A requestor wants information that exists in paper, but he wants it in .pdf, and sent to him by email. We can do it by scanning the records and then charge him for the time. **(TRICK QUESTION!!!)**

TRUE

FALSE

TRUE, with a caveat. The law doesn't require you to do this, but if you start, you better treat everybody the same...you may be starting on a slippery slope...

19. A gb may consider a request withdrawn if it provided an appropriate written itemized statement, with all the required elements that such statement must have, and after ten business days did not hear back from the requestor.

TRUE

FALSE

TRUE. The operative words here are “written itemized”, and “with all the required elements.” If you follow the law when you sent the estimate, then you can follow the law to consider the request withdrawn.

20. You just received the request from that place down below where nobody wants to go (do I have to spell it for you????)...Who you gonna call?