

11. Discussion and possible recommendation pursuant to Section 2001.039, Texas Government Code regarding rule review and changes to 37 TAC, Chapter 405, Charges For Public Records, including, but not limited to, §405.1, General Provisions Regarding Charges for Public Records, §405.3, Definitions, §405.5, Charges For Providing Copies of Public Information, §405.7, Access to Information Where Copies Are Not Requested, §405.9, Format for Copies of Public Information, §405.11, Estimates and Waivers of Public Information Charges, and §405.15, The Texas Commission on Fire Protection Charge Schedule.

Chapter 405

CHARGES FOR PUBLIC RECORDS

~~§405.1. General Provisions Regarding Charges for Public Records.~~

- ~~(a) State agencies, including the Texas Commission on Fire Protection, are subject to the Texas Public Information Act, codified at Texas Government Code, Chapter 552. The Act gives the public the right to request access to government information. The Texas Building and Procurement Commission has adopted rules for use by each state agency in determining charges for public records. When a request for public records is made for more than 50 pages of readily available information, the Commission is authorized to establish charges up to the full cost to the Commission of providing the copies.~~
- ~~(b) The Texas Commission on Fire Protection has considered and conformed its rules to the Texas Building and Procurement Commission's rules in 1 TAC, Chapter 111, for charges for public records. These rules may also be used to determine what the Commission may charge another state agency for public information.~~
- ~~(c) Utilization of standard charges, as determined by the Texas Building and Procurement Commission, enhances the public's understanding of how costs for public information have been calculated. The charges for public information may not be excessive and should be reasonable and not effectively bar access to information.~~
- ~~(d) These rules adopted in this chapter supersede any other rules applicable to charges for public records adopted by the Texas Commission on Fire Protection or its predecessors and are intended to apply to all of the Commission's programs and divisions.~~

~~§405.3. Definitions.~~

~~The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.~~

- ~~(1) Actual cost—The sum of all direct costs plus a proportional share of overhead or indirect costs. Actual cost should be determined in accordance with rules adopted by the Texas Building and Procurement Commission.~~
- ~~(2) Commission—The Texas Commission on Fire Protection.~~
- ~~(3) Nonstandard copy—A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Diskettes, magnetic tapes, and CD-ROM are examples of nonstandard copies. Paper copies larger than 8 1/2 by 14 inches (legal size) are also considered nonstandard copies.~~
- ~~(4) Readily available information—Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming. Information that requires a substantial amount of time to locate or prepare for release is not readily available information. The Commission may compile and maintain information, especially information that is likely to be the subject of repeated requests for access or copies, in a manner that maximizes the ready availability of the information. In determining whether to charge for providing copies of public records, the Commission may take into account not only whether the information is in fact readily available, but also whether, in the exercise of efficient recordkeeping, it could or should have been readily available.~~
- ~~(5) Standard paper copy—A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.~~

~~§405.5. Charges for Providing Copies of Public Information.~~

- ~~(a) Basis for Charges. The charges stated in this section to recover costs associated with providing public information are based on estimated average costs to state agencies.~~
- ~~(b) Copy charge.~~

~~(1) Standard size paper copy The charge for standard size paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.~~

~~(2) Nonstandard copy The charges for nonstandard copies are:~~

~~(A) Diskette \$1.00/each;~~

~~(B) Audio cassette \$1.00/each;~~

~~(C) Oversize Paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper see 1 TAC §111.69) \$.50/each;~~

~~(D) Rewritable CD (CD RW) \$1.00/each;~~

~~(E) Non rewritable CD (CD R) \$1.00/each;~~

~~(F) Magnetic tape actual cost;~~

~~(G) Data cartridge actual cost;~~

~~(H) Tape cartridge actual cost;~~

~~(I) Digital video disc (DVD) \$3.00;~~

~~(J) JAZ drive actual cost;~~

~~(K) VHS video cassette \$2.50;~~

~~(L) Specialty paper (e.g., Mylar, blueprint, blue-line, map, photographic) actual cost; and~~

~~(M) other electronic media actual cost.~~

~~(3) The charges in this section are to recover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.~~

~~(c) Personnel charge.~~

~~(1) The charge for personnel costs incurred by the Commission in processing a request for public information is \$15 per hour, including fringe benefits. The personnel charge includes the actual time spent to take requests, locate and compile documents, and reproduce requested information. Where applicable, the personnel charge is prorated to cover the cost for personnel time spent.~~

~~(2) A personnel charge may not be billed in connection with complying with requests that are for 50 or fewer pages of readily available information.~~

~~(3) Personnel time may not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:~~

~~(A) to determine whether the Commission will raise any exceptions to disclosure of the requested information under Subchapter C of the Public Information Act; or~~

~~(B) to research or prepare a request for a ruling by the Attorney General's Office pursuant to Texas Government Code, §552.301 (the Public Information Act).~~

~~(d) Overhead charge.~~

~~(1) In response to a request for information that is not readily available or for in excess of 50 pages of readily available information, the Commission may include in the charges direct and indirect costs, in addition to the personnel charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair,~~

utilities and administrative overhead. If the Commission chooses to recover such costs, a charge may be made in accordance with the methodology described in paragraph (3) of this subsection.

(2) — An overhead charge should not be made for requests for readily available information of fewer than 50 pages.

(3) — The overhead charge may be computed at 20% of any charge made to cover personnel costs associated with a particular request. This is the standard methodology as set out in the Texas Building and Procurement Commission rules (1 TAC, §111.63), which state that the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(e) — Remote document retrieval charge.

(1) — Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort will be made by the Commission to store such documents with the Texas State Library, which is equipped to provide such a service free of charge. To the extent that charges for retrieval of documents result in a charge to the Commission to comply with a request, it is permissible for the Commission to recover costs of such services. Where a charge is made for document retrieval, no additional personnel charge will be factored in for time spent locating documents.

(2) — Such charge may be waived if the request is for 50 pages or fewer of readily available information.

(f) — Computer resource charge.

(1) — The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) — These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to open records requests.

(3) — The charges in this subsection are averages based on a survey of state agencies with a broad range of computer capabilities. The Commission has determined that the category of computer type which most closely fits its existing system is a personal computer or LAN and has set its charge accordingly at \$1.00 per clock hour in accordance with Texas Building and Procurement Commission rules.

(4) — The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time frame most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (g) of this section. No charge should be made for computer print-out time.

(g) — Programming time. If a particular request requires the services of a programmer to enter data in order to execute an existing program or to create a new program so that the requested information may be accessed and copied, the Commission may charge for the programmer's time. The average hourly salary of a programmer for the State of Texas is currently \$28.50 an hour, including fringe benefits, which is the charge to be used in these rules. Any charge for programming should be prorated. Only programming services should be charged at this hourly rate. Any personnel time spent in performing services other than programming should be charged at the rate for personnel as described in subsection (e)(1) of this section.

(h) — Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, binders and other supplies used to produce the requested information may be added to the total charge for public information.

(i) — Postal and shipping charges. The Commission may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(j) — Fax charge. The charge for a fax transmitted locally is \$.10 per page. The charge for a long distance transmission is \$.50 per page for a fax sent within the Commission's area code, and \$1.00 per page for a fax transmitted to a different area code.

(k) — Sales tax. Sales tax shall not be added on charges for public information.

~~(l) Updating of Charges. The Commission shall reevaluate and update these charges as necessary.~~

~~§405.7. Access to Information Where Copies Are Not Requested.~~

- ~~(a) Access to information in standard form. The Commission may not charge for making available for inspection information maintained in standard form, with the following exceptions:~~
- ~~(1) if the information is located at a remote document storage center and the Commission will incur a retrieval charge in order to make the information available, the Commission may charge the requesting party the actual cost of retrieval; or~~
 - ~~(2) if the information requested takes more than five hours to prepare for inspection; and~~
 - ~~(A) is older than five years; or~~
 - ~~(B) completely fills, or when assembled will completely fill, six or more archival boxes.~~
- ~~(b) Access to information in other than standard form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard form, the Commission may charge the requesting party the cost of preparing and making available such information if complying with the request will require programming or the manipulation of data.~~

~~§405.9. Format for Copies of Public Information.~~

~~To the extent possible the Commission will attempt to accommodate a requesting party by providing information in the format requested. The extent to which a requestor can be accommodated will depend largely on the technological capability of the Commission. The Commission is not required to acquire software or programming capabilities that it does not already possess to accommodate a particular kind of request. However, the Commission will take into account in its data processing planning the public's interest in obtaining access to information and the ways in which such access can be facilitated through acquisition of improved technology.~~

~~§405.11. Estimates and Waivers of Public Information Charges.~~

- ~~(a) In accordance with 1 TAC, Chapter 111, the Commission will provide to the party requesting copies of public information an itemized statement of estimated charges if charges for copies of public information or if charges for making public information available for inspection will exceed \$40. The itemized statement will contain the following information:~~
- ~~(1) the itemized charges, including any allowable charges for personnel time, overhead, copies, etc; and~~
 - ~~(2) whether a less costly or no cost way of viewing the information is available.~~
- ~~(b) The requestor must respond to the itemized statement in writing by mail, in person, by facsimile or email within 10 business days after the date the statement is sent, or the request will be considered to have been automatically withdrawn by the requestor. The written response must contain one of the following statements:~~
- ~~(1) that the requestor will accept the estimated charges; or~~
 - ~~(2) that the requestor is modifying the request in response to the itemized statement; or~~
 - ~~(3) that the requestor has sent to the Texas Building and Procurement Commission a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.~~
- ~~(c) If the Commission cannot produce the requested public information and/or duplication within 10 business days after the date the written response from the requestor has been received, the Commission will certify to that fact in writing and set a date and hour within a reasonable time, as to when the information will be available.~~
- ~~(d) The Commission will furnish public records without charge or at a reduced charge if it determines that a waiver or reduction is in the public interest because providing the copy of the information primarily benefits the general public.~~

- (e) ~~If the estimated charges are \$100 or more, the Commission may require a bond for the entire estimated amount or a deposit not to exceed 50 percent of the entire estimated charges.~~
- (f) ~~Where a particular request will involve considerable time and resources to process, the Commission staff will advise the requesting party of what may be involved and an estimated date of completion. All efforts will be made to process requests as efficiently as possible so that requested information will be provided at the lowest possible charge. When the Commission charges for public information, full disclosure will be made to the requesting party as to how the charges were calculated.~~

~~§405.15. The Texas Commission on Fire Protection Charge Schedule.~~

~~The following are the charges for copies of public information according to the type of service rendered. No sales tax shall be applied to copies of public information.~~

- (1) ~~Standard paper copy \$.10 per page.~~
- (2) ~~Nonstandard copy.~~
- (A) ~~Diskette \$1.00 each.~~
- (B) ~~Audio cassette \$1.00 each.~~
- (C) ~~Oversize Paper copy \$.50 each.~~
- (D) ~~Rewritable CD (CD-RW) \$1.00 each.~~
- (E) ~~Non-rewritable CD (CD-R) \$1.00 each.~~
- (F) ~~Magnetic tape Actual cost.~~
- (G) ~~Data cartridge Actual cost.~~
- (H) ~~Tape cartridge Actual cost.~~
- (I) ~~Digital video disc (DVD) \$3.00.~~
- (J) ~~JAZ drive Actual cost.~~
- (K) ~~VHS video cassette \$2.50.~~
- (L) ~~Specialty paper (e.g., Mylar, blueprint, blue-line, map, photographic) Actual cost.~~
- (M) ~~other electronic media Actual cost.~~
- (3) ~~Personnel charge.~~
- (A) ~~Programming Personnel \$28.50 per hour.~~
- (B) ~~Other Personnel \$15 per hour.~~
- (4) ~~Overhead charge 20% of personnel charge.~~
- (5) ~~Remote document retrieval charge Actual cost.~~
- (6) ~~Computer resource charge, PC or LAN \$1.00 per clock hour.~~
- (7) ~~Computer resource charge, Midsize computer \$1.50 per CPU minute.~~
- (8) ~~Computer resource charge, Client/Server \$2.20 per clock hour.~~
- (9) ~~Miscellaneous supplies Actual cost.~~

~~(10) — Postage and shipping — Actual cost.~~

~~(11) — Fax charge.~~

~~(A) — Local — \$.10 per page.~~

~~(B) — Long distance, same area code — \$.50 per page.~~

~~(C) — Long distance, different area code — \$1.00 per page.~~

~~(12) — Outsourced/Contracted Services — Actual cost (may not include development costs).~~

~~(13) — Other costs — Actual cost.~~