New public records laws and what you need to know

July 2017 webinar | Questions & answers

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: I was under the impression that an agency can charge 10 cents for every email or other electronic record it needs to scan or print, but we cannot charge to, for example, turn the electronic record into a PDF… Can you clarify?
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 my agency does change the format, are only allowed to charge for the number of files we then produce – not the number of files that were converted? For example, we might convert 500 emails into a single PDF versus 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." 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 cent per scan charge 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 when requestors insist on using their own scanner – potentially 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. For example, 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 an agency simply say documents requested, or must we 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 and then move to actual costs 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 while others 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 provide this training?
Yes, the Washington State Office of the Attorney General has created the Local Government Public Consultation Program to assist local governments in improving their public records management practices. Based upon the needs of the requesting agency, consultation may be via telephone, email, or in-person. As they become available AWC, WSAC and MRSC will continue to link in-person and online training opportunities on their websites. Private companies and law firms may also be able to provide support for your public records management needs.

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, ongoing requests, then 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: Can an agency go between the $2.00 flat fee and the per gigabyte fee?
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 has updated their Model Rules, which provides additional assistance for developing model policies. MRSC has also posted policy examples on their webpage.

Q: Will JLARC be providing a tracking module to use?
JLARC has developed a reporting tool for agencies to report their public records data on a yearly basis. The reporting portal and additional information can be found on the JLARC webpage.