



## Fees and Copying

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee  
Municipal Technical Advisory Service  
1610 University Avenue  
Knoxville, TN 37921-6741  
865-974-0411 phone  
865-974-0423 fax  
[www.mtas.tennessee.edu](http://www.mtas.tennessee.edu)

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## Fees and Copying

**Reference Number:** MTAS-445

Municipal records must be accessible to the public during regular business hours. A municipality has no legal authority to charge any fee for viewing/ inspecting public records, unless state law requires a fee to be assessed. T.C.A. § 10-7-503(a)(7)(A)(i). If a requestor wants to merely view a public document, generally, no fee can be assessed.

More often, however, the requestor will want a copy of the requested records or information. If the record is public and not covered by an exemption, the requestor has a right to inspect the requested record and a right to obtain a copy or duplicate. T.C.A. § 10-7-506(a). Municipalities may adopt and enforce reasonable rules governing the making of copies of public records and those rules should be included in the municipality's public records policy.

If a municipality assesses fees for copies and duplicates, the municipality's public records policy should also include how those fees are assessed. The OORC established the Schedule of Reasonable Charges (hereinafter "the Schedule") in 2008 that municipalities can adopt; however, municipalities are not required to adopt the Schedule. Any municipality assessing fees for copies or duplicates that are higher than those set out in the Schedule must prove and document through a cost analysis that the actual cost to the municipality for copying or duplicating records exceeds the fees in the Schedule. MTAS strongly encourages every municipality to establish and assess its fees in accordance with the Schedule <sup>[1]</sup>. The Schedule sets the following as reasonable charges:

- Black and white copy, 8 ½ X 11 or 8 ½ X 14                      \$0.15
- Color copy, 8 ½ X 11 or 8 ½ X 14                                      \$0.50

Duplication of other materials such as DVDs, CDs, audio tapes, maps, plats, etc., should be reproduced at actual cost. If a municipality lacks the means to reproduce a requested record, the PRRC may use a private vendor. When doing so, the PRRC must use the most cost efficient method of reproducing the requested record.

The Schedule also provides that after one hour of labor is expended on a request for copies, the requestor can be assessed a labor fee that includes the total time that was required to locate, retrieve, review, redact and copy the requested records. The one free hour of labor is to be deducted from the labor provided by the highest paid employee. When calculating the labor fee, a municipality may multiply the total time that each employee spends on the request by the employee's hourly wage. The Schedule is included as Appendix D.

It is important to remember that a municipality is not required to assess a fee for labor and copies; however, if fees are going to be assessed, a municipality is statutorily required to provide the requestor an estimate of the fees. T.C.A. § 10-7-503(a)(7)(C)(ii). <sup>[2]</sup> It is imperative that the PRRC confer with staff after a request for copies is made to determine the estimated cost of the copies and labor. That estimate should then be provided to the requestor in writing, as soon as possible and the requestor should be asked to agree to the payment of the estimate in writing. Also, a municipality has the authority, through its public records, to require all or a portion of the estimate to be paid upfront.

If a requesting party is not physically present and the requested records must be physically sent to the requestor, case law states that cities may recover actual costs associated with delivery of the records. *Waller v. Bryan*, 16 S.W. 3d 770 (Tenn. Ct. App. 1999).

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[1] Municipalities that establish and assess copying and duplication fees in accordance with the Schedule are covered by the OORC's Safe Harbor Policy.

[2] A municipality also has the authority to waive fees for copies and labor. However, if fees are going to be waived, there should be explicit language in the municipality's public records policy that addresses when waiver will occur.

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