



THE OPRA ALERT

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GOVERNOR CHRISTIE SIGNS OPRA FEE LEGISLATION

In June 2010, the Government Records Council (GRC) issued two *OPRA Alerts* advising the OPRA community about the Appellate Division's decision in Smith v. Hudson County Register, 411 N.J. Super. 538 (App. Div. 2010). In said decision, the Appellate Division held that beginning July 1, 2010, unless and until the Legislature amends OPRA to specify otherwise or some other statute or regulation applies, public agencies must charge requestors of government records no more than the reasonably approximated "actual costs" of copying such records. The GRC's *OPRA Alert* Volume 2 Issue 3 (June 2010) provided guidance on how public agencies are to calculate their actual costs pursuant to the Smith decision.

Further, in the GRC's *OPRA Alert* Volume 2, Issue 4 (June 2010), the GRC informed the OPRA community about Assembly Bill 559 and Senate Bill 1212 – legislation that passed both houses which amends N.J.S.A. 47:1A-5.b., OPRA's fee provision, to set flat rates for paper copies provided to requestors under OPRA. Specifically, the legislation provides that:

"[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs."

However, the legislation also stated that "[t]his act shall take effect immediately but shall be inoperative until the 60th day following enactment." *This means that the fees described above DO NOT take effect until 60 days AFTER the Governor signs this Legislation. From July 1, 2010 until the 60th day after the Governor signs the Legislation, the OPRA fee schedule set forth in the Smith decision applies, which is the actual cost of duplicating the record.*

On Friday September 10, 2010, Governor Christie officially signed this legislation into law. As such, the fees described above DO NOT take effect until 60 days AFTER September 10th, which is Tuesday November 9, 2010.



KEY POINTS & IMPORTANT DATES

- **Current OPRA fee schedule is actual cost of duplication.**
- **All public agencies must charge actual cost of duplication through close of business on November 8, 2010.**
- **New OPRA fee schedule becomes effective on Tuesday November 9, 2010.**
- **Beginning Tuesday November 9, 2010 all public agencies must charge the fees set forth in Assembly Bill 559 and Senate Bill 1212.**

OPRA FEE LEGISLATION CONTINUED

Therefore, **beginning Tuesday November 9, 2010 all public agencies in New Jersey are to charge the fees established in the amended legislation.** These fees are outlined below:

- Every public agency must charge \$0.05 per page for letter sized pages and smaller;
- Every public agency must charge \$0.07 per page for legal sized pages and larger;
- Any public agency whose actual costs to produce paper copies exceed the \$0.05 and \$0.07 rates may charge the actual cost of duplication;
- Every public agency must provide electronic records FREE OF CHARGE (i.e. records sent via e-mail and fax); and
- Every public agency must charge the actual cost to provide records in another medium (i.e. computer disc, CD-ROM, DVD).

Until November 9th, all public agencies must continue to charge their actual costs of duplication pursuant to the Smith decision.

How to Calculate Actual Costs

- Custodians should contact their supplier to determine the cost of paper and toner. A supplier is wherever the agency obtains those materials – paper and toner (i.e. central purchasing unit, Staples, Office Depot, etc).
- Calculate or contact copying company to determine the agency's annual copying volume (calendar or fiscal year, however the agency operates). This does NOT only include copies pertaining to OPRA requests – this is ALL copying on all copy machines in the agency for all purposes.
- Contact copying company to determine the average paper life of one toner/ink cartridge (i.e. how many pieces of paper the ink or toner should be able to copy).
- Custodian must maintain documentation of all information provided by copying company or office supplier (i.e. contracts or correspondence from purchasing agent or copying company) regarding this calculation.
- **Actual calculation is the total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume.**
- This calculation can be averaged for all copy machines in an agency that produce letter and legal copies. Special copiers, such as for color printing or blueprints copied in house, should be calculated separately.

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