

MITCHELL LAW OFFICE

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May 8, 2009

Mr. Tim Ford
Assistant Attorney General
Public Records Ombudsman
Washington State Attorney General
PO Box 40100
Olympia, Washington 98504-0100

RE: PUBLIC RECORDS COPY COST INCREASE--CITY OF SPOKANE

Dear Mr. Ford:

On April 14, 2009, the City of Spokane increased its fees for public records. I am enclosing for your review, a copy of the documents associated with the new charges.

On Friday, April 30, 2009, I picked up twenty-two pages of records from the Spokane City Clerk. I was advised that the cost per page had increased from fifteen cents to fifty cents. I wrote a check for \$11, but told the City Clerk that I would write to you regarding the recent increase in costs.

When I returned to the office I reviewed the applicable statutes and Washington Administrative Code sections, as well as the comments thereto. Under the comment to WAC 44-14-070, I found the following:

(2) **Standard photocopy charges.** Standard photocopies are black and white 8x11 paper copies. An agency can choose to calculate its copying charges for standard photocopies or to opt for a default copying charge of no more than fifteen cents per page.

If it attempts to charge more than the fifteen cents per page maximum for photocopies, an agency must establish a statement of the "actual cost" of the copies it provides, which must include a "statement of the factors and the manner used to determine the actual per page cost." RCW 42.17.260(7)/42.56.070(7). An agency

MITCHELL/FORD

May 8, 2009

Page 2

may include the costs "directly incident" to providing the copies such as paper, copying equipment, and staff time to make the copies. RCW 42.17.260 (7)(a)/42.56.070 (7)(a). An agency failing to properly establish a copying charge in excess of the default fifteen cents per page maximum is limited to the default amount. RCW 42.17.260(7)(a) and (b), 42.56.070 (7)(a) and (b) and 42.17.300/42.56.120.

If it charges more than the default rate of fifteen cents per page, an agency must provide its calculation and the reasoning for its charges. RCW 42.17.260(7)/42.56.070(7) and 42.17.300/42.56.120. A price list with no analysis is insufficient. An agency's calculations and reasoning need not be elaborate but should be detailed enough to allow a requestor or court to determine if the agency has properly calculated its copying charges. *An agency should generally compare its copying charges to those of commercial copying centers.* (Emphasis added)

At the City's *CALCULATION OF ACTUAL PER PAGE COSTS*, it is stated:

Reprographics Charges	\$0.03/page
(wages, paper, toner and photocopier lease)	

Copy charges

2009 Clerk III Wages / Benefits	
Wages	\$42,148.00
Benefits	<u>\$20,049.00</u>
	<u>\$62,197.00</u>

2080 work hours per year = 124,800 minutes per year

\$62,197.00 divided by 124,800 = \$0.498 per minute

Average Copy Times

Average copy time for first page is three (3) minutes.

Average copy time for subsequent pages is one (1) minute.

MITCHELL/FORD

May 8, 2009

Page 3

Actual Costs

Actual costs for first page is \$1.58

Actual costs for subsequent pages is \$0.528 per page

I believe that the City is has intentionally used the highest possible pay grade for the person who will be making the copies. Instead of using a cost-analysis for a Clerk I or Clerk II, the City has calculated the cost based on a Clerk III's wages and benefits.

It is clear that the City is making a concerted effort to recoup the costs of researching public records by over-estimating the time it takes to make copies. In my case, it defies logic to think that it would take 24 minutes copy 22 pages of documents, unless the copy machine were to break down during the process. (The manner in which I computed the time is as follows: according to the City, the first page takes three minutes to copy; the remaining 21 pages take one minute. (3 minutes + 21 minutes = 24 minutes total))

At our office we have a copier, so I ran an experiment to determine how long it would take me to copy the same 22 pages of records I obtained from the City. Being an attorney, I am neither very fast nor very efficient at making copies. My skill level is probably average. A person whose job it is to make copies all day long would probably be more efficient than I am.

Although our copier has an automatic document feeder, when conducting the experiment, I manually fed the pages into the copier's feeder individually to find out just how long it would take me to copy all 22 pages. I used my kitchen timer, which is accurate to the second.

It took me one minute and forty-eight seconds to copy all the pages. I believe that the estimate of three minutes for the first page and one minute for each subsequent page grossly overstates the amount of time it would take any person who has even passing familiarity with a copy machine to make copies.

I then ran a second experiment by copying the same 22 pages, this time by manually inserting lifting the copier lip and placing the copy face down on the glass. I then pushed the "start" button and made the copy. I then lifted the copier's cover and removed the document. I repeated this process for all twenty-

MITCHELL/FORD

May 8, 2009

Page 4

two pages. This process took me four minutes and twenty-eight seconds, well below the City's estimate of 24 minutes.

With regard to copies of records other than black and white photo copies, the City has implemented the following costs. (See page 17, Attachment C, the City's Basic Fee Schedule [effective April 14, 2009], which provides the cost for Audio/Visual copies, as follows:

Audio tapes	\$15.00 per audio tape
CD/DVD's	\$4.00 per CD
	\$11.00 per DVD

The City has not provided any rationale for the charges associated with audio tapes, CDs and DVDs.

Last year I made a public records request for copies of all of a City Councilman's e-mail messages for a period of approximately one year. Initially, I received about 20 pages of records. When I contacted the City Clerk again, I was told that there were more records. It took more than six months for me to receive approximately 600 e-mail messages. At that time, I was charged \$15.00 for the CD containing the messages.

After several more contacts with the City Clerk's office, I obtained the requested documents eleven months after my initial public records request. I was not charged for the records because of the delay.

I have checked with two local commercial businesses that provide copying services. Staples did not have a price list, but the lady with whom I spoke advised me that the cost for black and white copies is nine cents per page. FedEx/Kinkos charges ten cents per page; there is a volume discount if many copies are made.

My reason for writing is to request that you review the enclosed documentation and let me know if you believe that the City of Spokane is charging an amount that is in compliance with Washington State law.

MITCHELL/FORD

May 8, 2009

Page 5

As a person who makes several public records requests each year, I believe that the City of Spokane is attempting to force the citizens of Spokane to pay for the research that is required to provide public records, and not the actual costs of photocopying. The cost of fifty cents per page will certainly be a deterrent to many individuals.

Please feel free to contact me if you have any questions or if I can provide you with additional information.

Yours truly,

Cheryl C Mitchell

CHERYL C. MITCHELL

Attorney at Law

Enclosures: City of Spokane information regarding public records requests

(3 pages) ✓

City of Spokane Administrative Policy and Procedure (18 pages) ✓

pc: Ms. Terri Pfister, Spokane City Clerk w/o enclosures *Mailed 5/8/09 CW*

Mr. Pat Dalton, Assistant City Attorney, City of Spokane w/o enclosures

Mr. Bob Anderlik, President, Animal Advocates of the

Inland Northwest *Mailed 5/8/09 CW*

*Mailed 5/8/09
CW*

CLERK III

SPN: 003

NATURE OF WORK:

Performs difficult and independent, or supervisory, general clerical work in a variety of offices. Work requires the application of independent judgment based on considerable knowledge of the functions within a section of a department. Most work is subject to checks and controls; but if not detected, errors could result in a significant loss of time or money. Employee has regular contact with outside sources to obtain or supply factual information. Duties are sedentary in nature, performed under normal working conditions, and require normal attention to prevent errors.

SUPERVISION:

Work is performed under general supervision, with questionable cases referred to the supervisor. Supervises a small group of employees performing similar work, assumes the duties of chief clerk in the supervisor's absence, and may be assigned as chief clerk in a small office or a division within a department.

ESSENTIAL JOB FUNCTIONS:

Maintains or checks complex records not requiring technical training or specialized techniques. Reviews or audits less complex records prepared by other employees (such as personnel and payroll records) and prepares related reports.

Explains departmental policies and regulations to other employees and the public. Answers complaints, and independently composes correspondence. Maintains office files and supervises filing procedures as necessary. May order and maintain office supplies.

Types forms, statements, letters, receipts, reports, and other material from rough drafts or general instructions, which frequently require independent action and discretion on the difficulties encountered. Composes routine letters. Operates a personal computer or visual display terminal. May perform secretarial work in a small office where stenographic ability is not required.

Accepts payment of utility and other City fund accounts, reconciles cash, and makes deposits.

Instructs new employees in their duties and supervises subordinate employees as directed.

Operates standard office machines incidental to assignment.

Performs related work as required.

REQUIREMENTS OF WORK:

Considerable knowledge of modern office practices and procedures and of business English and arithmetic.

Considerable knowledge of office management principles and supervision, and of records maintenance procedures.

Considerable knowledge of Departmental Policies and related regulations and ordinances.

Knowledge of personal computers and applicable office production software.

Clerk III
Page two

REQUIREMENTS OF WORK (continued):

Ability to learn rapidly the policies, procedures, and activities of the Department to which assigned.

Ability to maintain complex records and prepare reports there from.

Ability to perform difficult clerical work with little supervision, and the ability to supervise other employees.

Ability to establish and maintain effective public and working relationships.

PHYSICAL REQUIREMENTS:

Ability to see, with or without corrective lenses, well enough to read fine print.

Ability to hear, with or without the use of a hearing aid, and speak well enough to converse on the telephone.

Enough manual dexterity to operate office machines and write legibly.

Enough mobility to move from one machine and one place to another.

Enough stamina to sit and stand alternately for up to four hours at a time with only one fifteen minute break.

MINIMUM EDUCATION AND EXPERIENCE:

Promotional Requirements: Completion of at least one year of experience with the City at the Clerk II, or higher clerical classification. Must be able to type accurately at a rate of 250 keystrokes (50 words) per minute.

Revised: 4/73, 1/80, 1/83, 1/85, 2/91, 12/92, 6/95, 7/97, 5/98, 7/03

Reviewed: 3/75, 1/77, 1/82, 1/85, 1/87, 1/89, 1/91, 7/93, 10/01, 6/05, 1/08

Union/FLSA: 270/hourly

Range: 26

Census code: 3

EEO code: 6