

## **Fees**

Copies of records must be made available on request. Except when a different fee is prescribed by statute (an act of the State Legislature), an agency may not charge for inspection, certification or search for records, or charge in excess of 25 cents per photocopy up to 9 by 14 inches (§87(1)(b)(iii)). Fees for copies of other records may be charged based upon the actual cost of reproduction. There may be no basis to charge for copies of records that are transmitted electronically; however, when requesting electronic data, there are occasions when the agency can charge for employee time spent preparing the electronic data.

## **Fees for Electronic Information**

A new section 87(1)(c) for the first time defines the basis for determining the actual cost of reproducing records maintained electronically. For many years, section 87(1)(b)(iii) of FOIL stated that unless a different fee is prescribed by statute, an agency could charge a maximum of twenty-five cents per photocopy when records are made available, or the actual cost of reproducing other records, i.e., those that are not or cannot be photocopied. The new provisions balance the public interest in gaining access to computerized records at low cost with the tasks carried out by agencies when making those records available.

In most instances, gaining access to those records can be realized without a financial hardship, for the actual cost relating to most requests involves only the cost of the storage medium in which the information is made available, i.e., a computer tape or disk. However, in those instances in which substantial time is needed to prepare a copy, at least two hours of an employee's time, the legislation permits an agency to now charge a fee based on the cost of the storage medium used, as well the hourly salary of the lowest paid employee who has the skill needed to do so. This change in FOIL for the first time authorizes agencies to determine and assess a fee to be charged on the basis of an employee's time.

In rare cases, those in which an agency's information technology equipment is incapable of preparing a copy, an agency can charge the actual cost of engaging a private professional service to do so. In analogous circumstances, it has been advised that a fee based on actual cost may include all expenditures incurred by an agency associated with preparing a copy, such as postage, transportation, and the like. Expenditures of that nature may, in our view, be included as part of the actual cost and the fee that an agency could charge. An applicant must be informed of the fee in advance if more than two hours of employee time or an outside professional service is needed to prepare a copy of a record. With advance knowledge of the amount of the fee that would be assessed, applicants in many situations may narrow the scope of their requests.