



# THE OPRA ALERT

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## OPRA FEE SCHEDULES

Earlier this month, the Government Records Council (GRC) issued an *OPRA Alert* regarding the Appellate Division's decision in Smith v. Hudson County Register, 411 N.J. Super. 538 (App. Div. 2010). In said case, 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 based on the Smith decision.

However, on Monday June 28, 2010 the Legislature passed a bill (Assembly Bill 559; Senate Bill 1212) that sets standard copying fees for paper copies made pursuant to an Open Public Records Act (OPRA) request. Specifically, the bill amends N.J.S.A. 47:1A-5.b. to state:

"[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."

Thus, the legislation sets the OPRA fee schedule in the following ways:

- 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. (Note: the actual cost calculation is included on page 2 of this issue).
- Every public agency must provide electronic records FREE OF CHARGE (i.e. records sent via e-mail and fax).
- Every public agency must charge the actual cost to provide records in another medium (i.e. computer disc, CD-ROM, DVD).

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## OPRA FEE SCHEDULE CONTINUED

The legislation also states 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 60<sup>th</sup> 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.* A summary of that calculation is below:

### 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.

Again, from July 1, 2010 until the 60<sup>th</sup> day after the Governor signs the Legislation, custodians are to charge the actual cost of duplicating records.

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