



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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October 13, 2006

Ms. Penny Baugrud
N3790 Blackhawk Road
Pine River, WI 54965

Dear Ms. Baugrud:

Attorney General Peggy A. Lautenschlager has asked me to respond to your September 4, 2006 letter inquiring as to the appropriateness of a \$10.00 fee charged by the Town of Poy Sippi for a one-page copy of its annual budget. According to your attached July 31, 2006 letter to the town clerk, you requested a one-page sheet of budget information that was distributed at a November 2005 budget hearing. The town's \$10.00 charge is inconsistent with Wisconsin public records law.

Under the Wisconsin public records law, a governmental authority may charge a public records requester certain fees to cover the costs incurred in the fulfillment of his or her request. Fees for photocopying a record "may not exceed the actual, necessary and direct cost of reproduction and transcription of the record." Sec. 19.35(3)(a), Wis. Stats. The statute specifically allows an authority to charge a per page copying fee. *See* sec. 19.35(3)(b), Wis. Stats. This office has concluded that such fees should generally be \$.15 a page, and that any charge of more than \$.25 per page is excessive unless the higher charge can be specifically justified. A reasonable charge usually includes the copier cost, overhead charges and the staff time to make the copy, since those kinds of expenses are included in the actual, necessary and direct costs of reproduction. However, in determining actual and necessary costs, our office advises that the personnel cost of clerical staff to make copies should be considered rather than professional staff whose personnel costs are higher.

An authority is also permitted to charge a fee for locating a record if the "actual, necessary and direct cost of location . . . is \$50 or more." Sec. 19.35(3)(c), Wis. Stats. The location fee compensates the authority for the labor involved in compiling the records responsive to the request. The fee is calculated by multiplying the number of hours expended by the person locating the records by that person's hourly rate. If the actual, necessary and direct cost of locating the records is less than \$50.00, the authority is not permitted to charge any location fee.

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Finally, an authority may impose a mailing or shipping fee, which may not exceed the actual, direct and necessary cost of mailing or shipping. *See* sec. 19.35(3)(d), Wis. Stats.

The burden of justifying any charge is plainly on the authority, in this case the town. It is difficult to see how the town could justify a \$10.00 fee as the actual, necessary and direct cost of producing the one-page budget. Location fees may only be charged if the actual, necessary and direct cost of finding the record was over \$50.00. Unless the town can show that the actual, necessary and direct cost of staff time to find the budget sheet was over \$50.00, and the town charged you the difference between the location cost and \$50.00, the \$10.00 fee is not a valid location fee.

The \$10.00 charge could not feasibly be for the cost of mailing the document, because the only cost associated with mailing one page in an envelope provided by you is one \$.39 stamp.

This leaves us to consider whether the \$10.00 charge was the actual, necessary and direct cost of providing a copy of the budget sheet. It is unlikely that the town would be able to prove its flat fee of \$10.00 is the actual, necessary and direct cost of a photocopy of one page, even if the costs of equipment and labor are included. The town should be charging for the more inexpensive time of clerical staff to make copies, rather than professional staff. Further, the town should be charging the per page cost. Its fees are not per page if it charges the same \$10.00 fee for every request, regardless of length.

The only situation in which a governmental authority may charge copy fees in excess of the actual, necessary and direct cost of reproduction is when "a fee is otherwise specifically established or authorized to be established by law." Sec. 19.35(3)(a), Wis. Stats. The Attorney General has concluded that municipalities are not authorized to establish their own public records fee schedules, and they are therefore bound by section 19.35(3)(a) of the Wisconsin Statutes, unless a state statute sets a different fee. *See* 72 Op. Att'y Gen. 150, 151-52 (1983). I am not aware of any state statute authorizing a \$10.00 charge for a one-page budget sheet. Thus, unless the town can prove a state statute authorizes its \$10.00 fee, the town may not charge more than its actual cost for copies. The fee charged by the town appears to bear no relationship to the actual cost of copies, and it is therefore impermissible under the public records law unless the town can otherwise justify it.

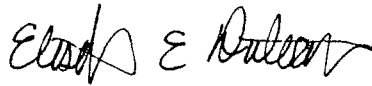
I am copying the Town of Poy Sippi on this letter. The public records law should not be a source of revenue for governmental authorities; the law authorizes only the recoupment of the actual, necessary and direct costs of providing records. I would recommend that you request a refund for the amount of the fee that does not represent the actual, necessary and direct cost of producing the record and I would urge the town to grant that request. If you wish, you may also bring this matter to the attention of the Waushara County District Attorney, requesting that she

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bring an action or simply counsel the Town of Poy Sippi in setting permissible fees for providing public records.

I hope you find this discussion helpful. Thank you for your interest in compliance with the public records law. Please contact this office if we can be of further assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Elisabeth E. Dieterich". The signature is fluid and cursive, with the first name "Elisabeth" being more prominent.

Elisabeth E. Dieterich
Assistant Attorney General

EED:kdh

c: Sue Albright
Clerk, Town of Poy Sippi

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