



What does GRAMA say about fees for records requests?

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The opening statement in the GRAMA section on fees states that:

63G-2-203. Fees.

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record.

The law recognizes that records requests can be time consuming and take employees away from their regular responsibilities. It therefore provides for government to recoup the *actual cost* of providing records in response to GRAMA requests.

How is *actual cost* determined?

The law specifically identifies things for which fees can be assessed when a governmental entity compiles a record in a form other than it normally maintains:

63G-2-203. Fees.

(2) (a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:

- (i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
- (ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and
- (iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).

Since these charges are basically for labor to complete records related tasks, the law identifies how much can be charged per hour for work done:

63G-2-203. Fees.

(2)(b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.

Even though a person with a higher salary may have completed the work, a governmental entity can still charge only at the hourly rate of the lowest paid employee who would be capable of doing the work. The law does not say whether the fee should be based on net or gross salary. Actual cost can also include copy costs or the cost of any materials used to fill the request.

The law specifically identifies some things that cannot be considered when calculating actual cost and for which the governmental entity cannot charge. Fees cannot be charged for allowing someone to view a public record. Fees cannot be charged for reviewing records to determine whether or not they are subject to disclosure.

63G-2-203. Fees.

....

- (5) A governmental entity may not charge a fee for:
- (a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); or
 - (b) inspecting a record.

63G-2-201. Right to inspect records and receive copies of records.

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections [63G-2-203](#) and [63G-2-204](#).

When should fees be waived?

The law invites governmental entities to waive fees in certain circumstances:

63G-2-203. Fees.

(4) A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that:

- (a) releasing the record primarily benefits the public rather than a person;
- (b) the individual requesting the record is the subject of the record, or an individual specified in Subsection [63G-2-202](#)(1) or (2); or
- (c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

The language in this statute is permissive and not mandatory. Determining to waive fees is an expression of public good will. When a fee waiver is requested for the reason that releasing the record primarily benefits the public rather than an individual, a governmental entity should consider how the public will be benefited. Presumably, requests from journalists or the media are in the public interest.

63G-2-204. Requests – time limits for response and extraordinary circumstances.

(4) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

When a governmental entity decides not to waive fees, offering to provide records at a reduced cost may also be an option.

Does GRAMA provide additional guidelines on fees?

GRAMA includes a few provisions designed to protect governmental entities from abuse:

63G-2-203. Fees.

(8) (a) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:

- (i) fees are expected to exceed \$50; or
 - (ii) the requester has not paid fees from previous requests.
- (b) Any prepaid amount in excess of fees due shall be returned to the requester.

A governmental entity may require prepayment of fees for a large request; however it is good practice to at least notify the requester of the anticipated cost. Requesters may have no idea how much time it will take to fill a records request and, hence, no idea how much it will cost. Notification of anticipated cost before beginning compilation will allow the requester to confirm intent to pay or to modify or cancel a request if the cost is greater than anticipated. It will help prevent work being done to fill a GRAMA request that is not then purchased.

GRAMA has no provisions to protect the requester from unexpected fees, however, it does provide certain additional rights in respect to obtaining access to records.

63G-2-201. Right to inspect records and receive copies.

(9) (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

- (i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and
- (ii) the governmental entity provides reasonable safeguards to protect the public from the potential for

loss of a public record.

(b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

Who authorizes fees?

Once more the opening statement in the fees section of GRAMA states:

63G-2-203. Fees.

(1) ... This fee shall be approved by the governmental entity's executive officer.

It is important that fees for GRAMA requests are consistently defined so that costs will be predictable for both requesters and responders. In fact, all governmental entities are required to adopt fee schedules and to have them approved by a legislative or governing body:

63G-2-203. Fees.

(3) (a) Fees shall be established as provided in this Subsection (3).

(b) A governmental entity with fees established by the Legislature:

(i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and

(ii) may use the procedures of Section [63J-1-504](#) to set fees until the Legislature establishes fees through the budget process.

(c) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.

(d) The judiciary shall establish fees by rules of the judicial council.

What recourse is available when fees are in dispute?

In spite of the best intentions on everyone's part, misunderstandings or misaligned expectations can arise over fee issues. GRAMA has provided recourse for the resolution of disputes over fees:

63G-2-203. Fees.

(6) (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section [63G-2-205](#).

(b) The adjudicative body hearing the appeal has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

In twenty years the State Records Committee has heard thirteen appeals involving fee issues. Although the committee has on occasion ordered that records be provided without charge, its decisions generally have supported that granting fee waivers in the suggested instances is permissive but not mandatory. Even though there is no statutory requirement to provide the requester with prior notice of an amount, the committee has ruled on both sides of the dilemma of unexpected charges. The committee has also ruled on both sides of the issue of charging for time spent on segregation. In one instance the committee upheld a governmental entity's right to charge for time spent in this way. In another instance, the committee determined that segregation is part of determining whether a record is subject to disclosure and is therefore something for which a governmental entity may not charge a fee.

The state government records ombudsman is another resource to help with disputes over fees. Although the ombudsman does not have authority to make determinations, she can offer suggestions for resolution and facilitate conversation. The ombudsman can help with mediation which is designed to find a compromise solution which is agreeable to everyone.

Governmental entities can help prevent conflicts over fees by reviewing and updating adopted fee schedules to make sure they are equitable and current. Routinely notifying requesters of the anticipated cost before beginning to compile records in response to a request will enable the governmental entity and the requester to come to agreement about fees before time is unnecessarily spent on responding to requests.