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NEWS FOR IMMEDIATE RELEASE

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**Office of Open Government Advisory:
Charging Fees under the Wisconsin Public Records Law**

MADISON, Wis. – The Wisconsin Department of Justice (DOJ) Office of Open Government (OOG) routinely receives inquiries, from authorities and requesters alike, about fees that may be charged for records under the Wisconsin Public Records Law. Recently, there has been a noticeable and concerning increase of inquiries pertaining to high fees being charged for records. This fee advisory is being issued to notify all interested persons about permissible fee practices under the public records law.

An authority may only charge a fee for the actual, necessary, and direct costs of *four specific tasks*: (1) reproduction and transcription; (2) photographing and photographic processing; (3) locating; and (4) mailing or shipping. An authority may *not* charge for the time it takes to redact records, and an authority may not make a profit on its response to a public records request. As a general rule, the rate for an actual, necessary, and direct charge for staff time should be based on the pay rate of the *lowest* paid employee capable of performing the task. An authority also may require prepayment for the costs associated with responding to a public records request if the total amount exceeds \$5.00.

The OOG has recently received inquiries pertaining to the high fees that some authorities have charged for copying records. An authority may impose a fee for copies of a record that do not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law. Each authority's actual, necessary and direct costs of reproduction and transcription may vary, and an authority may, of course, adjust fees to account for inflation or increasing expenses.

In an effort to identify actual costs, and to account for a recently updated copier and servicing contract, DOJ recently undertook an analysis of its actual per-page costs. This analysis was based on DOJ's contract with the copier company and the price of printer paper.

DOJ's actual cost of a single black-and-white copy, including the cost of a paper, is \$0.0135. The cost of a color copy is \$0.0632. The OOG has accordingly adjusted DOJ's fee schedule to account for these new costs, although DOJ very rarely charges any fees, as explained below. DOJ's published fee schedule can be found on DOJ's website (<https://www.doj.state.wi.us/sites/default/files/office-open-government/fee-schedule-final.pdf>).

The OOG recommends that authorities re-evaluate their copying fees, especially if new copiers have been leased or purchased since the creation of a fee schedule. Copying fees should be based on the actual costs of the copy machine or contract, and the actual cost of paper. As a best practice, but especially when a requester requests it, authorities should itemize all expenses, including but not limited to copying, postage, and location costs (as discussed below).

The OOG has also recently received inquiries pertaining to the high fees that some authorities have charged for providing records in electronic format, such as digital files, DVDs, CDs, and flash drives. The amount of such fees may vary depending on the authority, but DOJ's published fee schedule, located on DOJ's website, can be used by authorities as guidance. Any authority that would like to develop a methodology for determining its per-page charges or charges for digital files may contact the OOG for assistance.

In addition to receiving inquiries regarding high costs for copying and digital records, the OOG has also received inquiries pertaining to the high fees that some authorities have charged for locating records. The law explicitly permits an authority to impose a fee for locating records if the cost is \$50.00 or more, but only actual, necessary, and direct location costs are permitted. "Locating" a record means to find it by searching, examining, or experimenting.

The law recognizes that specialized personnel may be needed to formulate and effectuate certain types of locating tasks, such as computer programming to search for electronic records. For example, a computer programmer or an IT professional may sometimes be required to create and execute an email search or other electronic search of a computer database, and those kinds of employees may have high hourly rates of pay. After the search is created and executed by the specialized employee, however, it is not necessary for that same high-paid employee to actually review the

results of the search in order to locate responsive records. A second employee capable of reviewing the records, at a substantially lower rate of pay, should be the person who actually reviews the documents resulting from the search.

Therefore, authorities should limit the amount of time spent by specialized personnel to *only* that time required to perform the specialized portion of the location task, thereby minimizing the time spent using specialized and costly personnel. Moreover, even if the lowest paid employee capable of reviewing and locating responsive records within the search result is *not* actually doing the reviewing and location, authorities should still always utilize *the rate of pay* of the lowest paid employee *capable* of reviewing and locating responsive records within the search results. Once responsive records are located within the search results, however, subsequent review and redaction of those responsive records are separate processes for which a requester may *not* be charged.

Requesters may also request a waiver or reduction of fees. Authorities should consider whether to grant the public records request without charge or at a reduced charge if they determine that a waiver or reduction of the fee is in the public interest, or if it becomes apparent that the cost of providing records will be prohibitive to the requester. DOJ routinely waives fees for requesters, and DOJ charged no fees at all for the vast majority of the more than 1,000 public records requests to which DOJ responded in 2017 and 2018.

For further information on fees, interested persons may refer to DOJ's Public Records Compliance Guide, located on our website (<https://www.doj.state.wi.us/office-open-government/office-open-government-resources>) and may also call the Office of Open Government at 608-267-2220.