



MEMORANDUM

From: Mayor Diane Wolfe Marlin *DM*
To: Urbana City Council
Re: FOIA Policy
Date: July 10, 2020

As noted in the attached Memorandum from the City Attorney, we have received questions recently regarding the City's policy related to charging for certain FOIA requests.

Pursuant to FOIA, the City has been charging fees related to FOIA requests for many years. Most frequently, the City has charged for requests that produced more than 50 photocopied pages of records. As noted in Mr. Simon's memo, the City may charge \$0.15 per page for each page more than 50. The City has also charged where requests have produced voluminous numbers of records in electronic form. The City has statutory authority to charge and has been charging for voluminous requests based on the numbers of megabytes downloaded on the electronic storage media used to produce the records to the requester. Starting around April 2020, for the first time in Urbana, two individuals qualified as recurrent requesters. FOIA permits the City to charge fees to recurrent requesters.

It is important for the Council to understand the amount of work involved in processing FOIA requests. In addition to the routine administrative work of identifying and gathering records, there can often be more complicated tasks including: developing search criteria where the request is unclear; conducting more than one search, depending on the scope and complexity of the request and the location(s) of the records; and determining which FOIA exemptions apply to the information in question and then redacting or withholding the records accordingly.

The cost of managing the process overall has become increasingly resource-intensive over time. As the City Attorney summarized in his memo, the number of FOIA requests have been steadily increasing over at least the past five years. About 13% of the requests this year have come from the two individuals designated as recurrent requesters. Many of the requests from these two individuals have included multiple separate and, on occasion, complex parts. The second attachment to this memo summarizes the requests from these recurrent requesters over the past 30 months. The 57 total requests actually contained 88 different parts. The City has made a good faith effort to comply with FOIA when processing all requests, regardless of who the requester is and what the subject may involve.

I approve of the City charging fees authorized by FOIA. Presumably, the State Legislature understands the burdens on local governments related to these types of requests by authorizing these fees. I consider it to be responsible stewardship of the City's resources to recoup these costs where authorized.

Attachments: 1. City Attorney Memo Re: Statutory Authority to Charge Fees for Producing Records Pursuant to FOIA and to Withhold Certain Information from FOIA Requesters
2. Summary of FOIA Requests from Recurrent Requesters



LEGAL DIVISION
400 S. Vine Street
Urbana, IL 61801-0219
(217) 384-2464
Fax: (217) 384-2460

DATE: July 6, 2020
TO: Mayor Diane Wolfe Marlin
CC: City Administrator Carol Mitten
FROM: James L. Simon

RE: Statutory Authority to Charge Fees for Producing Records Pursuant to FOIA and to Withhold Certain Information from FOIA Requesters.

In public comment during recent City Council and Committee of the Whole meetings, several individuals have raised questions about the City's policy to charge fees to requesters and to withhold information from them under the Freedom of Information Act ("FOIA"). As discussed below, FOIA allows public bodies to charge requesters fees under certain circumstances and in amounts (in most instances) prescribed by the statute. Likewise, FOIA authorizes public bodies to withhold (redact) information that falls within one or more statutory exemptions. The rationale for each exemption is readily apparent from the nature of the exemption.

A. THE CITY HAS STATUTORY AUTHORITY TO CHARGE FEES FOR PROCESSING CERTAIN FOIA REQUESTS.

Regarding the specific concerns raised during public comment, FOIA authorizes the City to charge fees in two general situations including where a request is deemed "voluminous request." (5 ILCS 5/5(a-5)) and when a requester qualifies as the "recurrent requester." 5 ILCS 140/3.2(a).

FOIA provides authority to charge fees to all requesters who seek records in hardcopy. However, the City may not charge for the first 50 pages produced but, thereafter, can charge \$0.15 per copy for records that are black and white and in letter or legal size. 5 ILCS 140/6(b). The City can also charge its actual cost of producing records in color or that are oversized. *Id.*

Voluminous Records in Electronic Form.

FOIA defines a voluminous request as:

a request that: (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or (ii) requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages.

5 ILCS 140/2(h). Sections 3.6(a) and 3.6(c) provide a series of steps the City must follow for processing voluminous requests.

Fees for hardcopies of voluminous requests are described above.

FOIA Section 6(a-5) provides two metrics for charging fees for records produced in electronic form – i.e., records that the City maintains in non-PDF and in PDF form. (i) \$20 for up to and including 2 megabytes of data; (ii) \$40 for more than 2 megabytes up to and including 4 megabytes of data; and (iii) \$100 for more than 4 megabytes of data. 5 ILCS 140/6(b). For records that are maintained in PDF form, the City can charge up to: (i) \$20 for not more than 80 megabytes of data; (ii) \$40 for more than 80 megabytes up to and including 160 megabytes of data; and (iii) \$100 for more than 160 megabytes of data. *Id.*

Recurrent Requesters.

FOIA defines a “recurrent requester” as a requester who has submitted a minimum of (i) 50 requests in a 12-month period; (ii) 15 requests within a 30-day period; or (iii) seven requests within a seven-day period. 5 ILCS 140/2(g). Once a requester has been designated as a recurrent requester, that designation remains for a 12-month period. *Id.* If during that period, the requester again satisfies the recurrent requester definition, a new 12-month period recommences.

FOIA Sections 3.2(a) and (b) provide the steps the City must follow when processing a request from a recurrent requester. FOIA Section 3.2(a) authorizes the City to charge recurrent requesters for production of records. 5 ILCS 140/3.2(a). Unlike a “voluminous request”, FOIA does not prescribe the fees that the City may charge. Thus, the City can charge whatever it deems reasonable. However, the City has chosen to use the same metrics when charging fees to recurrent requesters that apply voluminous requests described above – i.e., those described in Section 6(a-5) dealing with records produced in electronic form and Section 6(b) dealing with records produced in hardcopy form.

It is worth noting that the first classification in recent City history of a requester as a “recurrent requester” occurred in April 2020 when the City so designated two individuals.

Certification of Records.

The City can charge requesters \$1.00 for each record they request be certified by the City Clerk’s Office. 5 ILCS 140/6(b).

History of Charging Fees

The City’s practice of charging of fees to FOIA requesters is not new. Recovering costs as allowed per the statute reflects, in part, the substantial amount of City staff time spent responding to FOIA requests. The City Clerk’s Office advises that the City has been charging fees for processing certain FOIA requests at least as early as 1993. The fees charged have been and remain in conformance with FOIA, as amended. 5 ILCS 140/3.2, 3.6, 6.

The number of FOIA requests and their complexity have increased over the last five and one-half (5½) years. Below is a table showing the number of requests the City has received and the percent by which the numbers of requests have increased.

YEAR	NUMBER OF REQUESTS	YR OVER YR INCREASE
2015	590	
2016	619	4.9%
2017	651	5.2%
2018	672	3.2%
2019	702	4.5%
2020 -thru June 30	359 (2020 annualized - 718)	2.3%
Total	3,593 (2020 annualized - 3,952)	21.7% (2020 annualized)

B. THE CITY HAS RIGHT TO WITHHOLD INFORMATION PURSUANT TO FOIA.

FOIA Section 7 provides 44 exemptions and Section 7.5 provides an additional 50 exemptions pursuant to which information in records or whole records can be withheld from requesters. The rationale for withholding exempt information is readily apparent from the respective exemptions.

The City typically relies on the following Section 7 exemptions when withholding information: (i) personal information; (ii) private information; (iii) certain law enforcement information including information in shared law enforcement databases; (iv) preliminary drafts of documents; (v) responses to requests for or invitations for bids; (vi) minutes of closed meetings; (vii) communications between the City and attorneys in the Legal Division and outside legal counsel and its auditors; (viii) matters involving of employee grievances or discipline; (ix) information concerning collective bargaining; (x) consideration of sales and purchases of real estate by City; and (xi) information about minors. 5 ILCS 140/7. The Section 7.5 exemptions that would be relevant to the City include: (i) Library Records Confidentiality Act; (ii) Personnel Records Review Act; (iii) the Law Enforcement Officer-Worn Body Camera Act; and (iv) Cannabis Regulation and Tax Act.

<u>Count</u>	<u>FOIA No.</u>	<u>Requester</u>	<u>Parts</u>	<u>Count</u>	<u>FOIA No.</u>	<u>Requester</u>	<u>Parts</u>
1	2018-F-670	Recurrent Requester #1	3	30	2020-F-159	Recurrent Requester #1	1
2	2019-F-052	Recurrent Requester #1	1	31	2020-F-160	Recurrent Requester #1	1
3	2019-F-085	Recurrent Requester #1	1	32	2020-F-161	Recurrent Requester #1	1
4	2019-F-101	Recurrent Requester #1	1	33	2020-F-165	Recurrent Requester #1	1
5	2019-F-187	Recurrent Requester #1	1	34	2020-F-168	Recurrent Requester #1	1
6	2019-F-265	Recurrent Requester #1	1	35	2020-F-170	Recurrent Requester #2	1
7	2019-F-369	Recurrent Requester #2	1	36	2020-F-171	Recurrent Requester #1	1
8	2019-F-387	Recurrent Requester #1	1	37	2020-F-173	Recurrent Requester #1	1
9	2019-F-407	Recurrent Requester #1	2	38	2020-F-174	Recurrent Requester #1	1
10	2019-F-439	Recurrent Requester #1	1	39	2020-F-178	Recurrent Requester #1	1
11	2019-F-441	Recurrent Requester #1	2	40	2020-F-180	Recurrent Requester #1	1
12	2019-F-442	Recurrent Requester #1	3	41	2020-F-181	Recurrent Requester #1	1
13	2019-F-563	Recurrent Requester #1	1	42	2020-F-187	Recurrent Requester #1	2
14	2019-F-566	Recurrent Requester #2	1	43	2020-F-188	Recurrent Requester #1	1
15	2019-F-600	Recurrent Requester #1	1	44	2020-F-189	Recurrent Requester #1	1
16	2019-F-682	Recurrent Requester #2	1	45	2020-F-190	Recurrent Requester #1	1
17	2019-F-700	Recurrent Requester #1	4	46	2020-F-203	Recurrent Requester #2	1
18	2020-F-003	Recurrent Requester #1	1	47	2020-F-204	Recurrent Requester #2	1
19	2020-F-063	Recurrent Requester #1	2	48	2020-F-204b	Recurrent Requester #2	1
20	2020-F-075	Recurrent Requester #1	2	49	2020-F-205	Recurrent Requester #2	1
21	2020-F-078	Recurrent Requester #1	1	50	2020-F-206	Recurrent Requester #2	1
22	2020-F-079	Recurrent Requester #1	2	51	2020-F-211	Recurrent Requester #2	1
23	2020-F-117	Recurrent Requester #1	1	52	2020-F-212	Recurrent Requester #2	1
24	2020-F-123	Recurrent Requester #1	1	53	2020-F-215	Recurrent Requester #2	1
25	2020-F-130	Recurrent Requester #1	1	54	2020-F-269	Recurrent Requester #1	5
26	2020-F-134	Recurrent Requester #2	2	55	2020-F-271	Recurrent Requester #2	5
27	2020-F-137	Recurrent Requester #1	1	56	2020-F-276	Recurrent Requester #1	4
28	2020-F-140	Recurrent Requester #1	2	57	2020-F-286	Recurrent Requester #2	5
29	2020-F-158	Recurrent Requester #1	2				
				Total			88