



# **Advanced Cost Rules: Avoiding Common Pitfalls when Charging for Public Information**

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# Common Mistakes

- ▶ Providing a deficient cost estimate.
- ▶ Charging to review the requested information to determine if exceptions apply.
- ▶ Providing a cost estimate that doesn't reflect the request.
- ▶ Charging for tasks that do not meet the definition of labor.
- ▶ Completing all or a portion of the work before the requestor accepts the estimated charges.



# Providing a Deficient Cost Estimate

- ▶ Cost Estimate Requirements (Section 552.2615):
  - Applies when the estimated charges exceed \$40.00.
  - Statement must be itemized.
  - Statement must provide the required the notices:
    - Less costly method **of viewing** the records (if available)
    - Manner in which the requestor may respond
    - Deadline to respond (10 business days)



# Providing a Deficient Statement - Poll

- ▶ What is the most common reason the OAG finds a cost estimate to be deficient?
  - A. The cost estimate was not provided to the requestor within 10 business days of receiving the request.
  - B. The cost estimate does not provide a notice regarding inspection as a less costly alternative.
  - C. The cost estimate does not provide notice regarding the manner in which the requestor may respond.
  - D. The cost estimate was not itemized.



# Charging to Review the Requested Information (1 of 3)

- ▶ 1 T.A.C. § 70.3(d)(3) states, in part:

A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

- ▶ (A) To determine whether the governmental body will raise any exceptions to disclosure of the requested information under [the Act.]



# Charging to Review the Requested Information (2 of 3)

## Example:

In order to produce the requested information, Arthur Fleck must review twenty e-mails to determine if the e-mails contain confidential information.

**X Does not meet the definition of labor.**



# Charging to Review the Requested Information (3 of 3)

## Compared with:

In order to produce the requested information, Bruce Wayne must review twenty e-mails to determine if the information is responsive because the requestor is only seeking e-mails that match specific keywords and are related to a certain road construction project.

✓ **Meets the definition of labor.**



# Redacting Confidential Information

- ▶ 1 T.A.C. § 70.3(d)(4) states, in part:

When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for **time spent to redact, blackout, or otherwise obscure** confidential information in order to release the public information.





# Cost Estimate Does Not Match the Request

- ▶ Carefully review requests for specific instructions on how the requestor wants the information.
  - “I wish to inspect the requested information.”
  - “I will pick up the information when it is available.”



# Labor Tasks (1 of 2)

- ▶ 1 T.A.C. § 70.3(d) provides the definition of labor.
  - Time necessary to:
    - Locate,
    - Compile,
    - Manipulate data, and
    - Reproduce public information.
- ▶ A governmental may also charge labor to redact **confidential** information.



## Labor Tasks (2 of 2)

- ▶ Tasks that do not meet the definition of labor:
  - Organizing responsive information.
  - Providing a “clean copy” of responsive information.
  - Preparing a request for ruling or researching exceptions to disclosure.
  - Converting electronic information into a different format unless it’s necessary to produce the information.



# Completing Work Prior to the Acceptance of the Cost Estimate

- ▶ If the estimated charges exceed \$40.00, section 552.2615 requires that an itemized statement that includes certain notices be provided to the requestor.
- ▶ This statement is provided before a governmental body begins work on a request to allow the requestor the opportunity to make the choices allowed by the Act.

**So how does one provide an estimate without completing work on the request?**



# Sample Tests

- ▶ Use a sample test to provide a good faith estimate of the estimated charges.
- ▶ Sample tests do not have to be 100% accurate.
- ▶ Keep track of the actual labor time.
  - If your final costs are less than the estimate, you must refund the requestor the difference.
  - You must notify the requestor in an amended cost estimate if you believe the costs will exceed 20% of initial estimate prior to completing the work.
- ▶ Information gathered in a sample test could serve as a representative sample of information if the governmental body needs to request a ruling.



# Request

- ▶ I am seeking all information regarding the robbery of Gotham City Bank on August 4, 2020.



# Cost Estimate

9/25/2020

Public Information Cost Estimate Model Letter

## Public Information Cost Estimate Model Letter

Mr. Dick Grayson  
38 Wonder Way  
Gotham, TX 78711

Dear Mr. Grayson:

We have received your request for information dated: 09/25/2020.

We have determined that complying with your request will result in the imposition of a charge that exceeds \$40. Therefore, we are providing you with this cost estimate as required by section 552.2615 of the Texas Government Code.

### Itemized List of Charges:

Description	Qty x Price	Total
Standard sized copies	45 x \$0.10	\$4.50
DVD	2 x \$3.00	\$6.00
Labor minutes (\$15/hour)	750 x \$0.25	\$187.50
Overhead charges	20% of \$187.50	\$37.50
Postage cost		\$5.00
<b>Total cost</b>		<b>\$240.50</b>

There is a less expensive way for you to obtain this information. You may view the information in person at our offices. If you choose to view the information in person, please provide me with three dates and times when it will be convenient for you to come.

The estimated charges exceed \$100.00; therefore, as allowed by section 552.263(a) of the Government Code, we require a deposit of 50% (\$120.25) before starting work on your request

Your request will be considered automatically withdrawn if you do not notify us in writing within ten business days from the date of this letter that you either:

- (a) accept the charges;
- (b) wish to modify your request; OR
- (c) have sent to the Open Records Division of the Office of the Attorney General a complaint alleging that you are being overcharged for the information you have requested.

Sincerely,

Police Commissioner Gordon  
Gotham Police Department  
PO Box 1941  
Gotham, Texas 78711



# Modified Request

- ▶ I would like to modify my request. I wish to inspect the dashboard camera recordings related to the robbery of Gotham City Bank on August 4, 2020.





# Modified Cost Estimate

9/25/2020

Public Information Cost Estimate Model Letter

## Public Information Cost Estimate Model Letter

Mr. Dick Grayson  
38 Wonder Way  
Gotham, TX 78711

Dear Mr. Grayson:

We have received your request for information dated: 09/25/2020.

We have determined that complying with your request will result in the imposition of a charge that exceeds \$40. Therefore, we are providing you with this cost estimate as required by section 552.2615 of the Texas Government Code.

### Itemized List of Charges:

Description	Qty x Price	Total
Labor minutes (\$15/hour)	500 x \$0.25	\$125.00
Overhead charges	20% of \$125.00	\$25.00
<b>Total cost</b>		<b>\$150.00</b>

The estimated charges exceed \$100.00; therefore, as allowed by section 552.263(a) of the Government Code, we require a deposit of 50% (\$75.00) before starting work on your request.

Your request will be considered automatically withdrawn if you do not notify us in writing within ten business days from the date of this letter that you either:

- (a) accept the charges;
- (b) wish to modify your request; OR
- (c) have sent to the Open Records Division of the Office of the Attorney General a complaint alleging that you are being overcharged for the information you have requested.

Sincerely,

Police Commissioner Gordon  
Gotham Police Department  
PO BOX 1941  
Gotham, TX 78711



# Cost Complaint

- ▶ Mr. Grayson believes he is being overcharged and files a complaint with the OAG regarding the modified cost estimate.
- ▶ After reviewing the complaint, the OAG asks the department the following questions:



# Questions on Labor Charges

- ▶ How did the department determine the number of personnel hours necessary to produce the responsive information? Please describe the process in a step-by-step manner, stating the time each step will take. If a sample test was performed, please provide a brief description of the results of the test.
- ▶ Does the information requested exist in paper form, electronic form, or both? Please explain which records exist in paper form, and which exist in electronic form.
- ▶ Where are the records physically located? If the records are in two or more separate buildings, please provide a simple map showing the location of the buildings, including thoroughfares.
- ▶ Will any information be redacted from the records? If so, what information will be redacted, and will the redaction be done manually, electronically, or a combination of both? Please state which exceptions to disclosure apply and if the department plans to seek a ruling for the requested information.



# Department Response

- ▶ The department responds:

The responsive information is maintained electronically. The labor time is based on the actual time it took to review the dashboard camera recordings and redact dates of birth, motor vehicle record information, and social security numbers. We will withhold dates of birth pursuant to our previous determination, OR2015-10101.

What can the department charge for?



# OAG Response

- ▶ The department's statement is deficient.
- ▶ The department may generally charge labor for the time necessary to redact confidential information.
- ▶ The department may not charge to review the records.
- ▶ The department may not charge to redact information subject to a discretionary exception (Section 552.147).
- ▶ The department is limited to \$40.00 because the work was completed prior to the requestor accepting the cost estimate.



Time for a . . .

Pop  
Quiz!



# Pop Quiz: Question 1

- ▶ True or False?
- ▶ A governmental body can charge overhead on a request to inspect information.

False



## Pop Quiz: Question 2

- ▶ Under what circumstances will a governmental body's deadlines to request a ruling be affected because the governmental body provided the requestor with a proper cost estimate pursuant to section 552.2615(c) of the Government Code?
  - A) If the estimated charges exceed \$40.00.
  - B) If the governmental body requires a deposit.
  - C) If the governmental body requires a deposit that meets the requirements of section 552.263 of the Government Code.
  - D) As long as the governmental body provides a proper cost estimate pursuant to section 552.2615, the governmental body's deadlines will be affected.





## Pop Quiz: Question 3

- ▶ If a governmental body requires a deposit pursuant to section 552.263 of the Government Code, how does the deposit affect a governmental body's deadlines to request a ruling?
  - A. The deadline to request the ruling is paused until the requestor pays the deposit.
  - B. The deadline to request a ruling is 10 business days from the date the governmental body receives the deposit.
  - C. The deadline to request a ruling is 10 business days from the date the requestor agrees to pay the deposit.
  - D. The deadline to request a ruling does not change regardless of whether the governmental body requires a deposit.



# Pop Quiz: Question 4

▶ True or False

Upon receiving a request for information, a governmental must provide the requestor with a cost estimate before requesting a ruling.

False



# Pop Quiz: Question 5

▶ True or False

A requestor can choose to inspect the requested information and request copies of information viewed during inspection.

True



# Additional Resources

- ▶ Website: <http://www.texasattorneygeneral.gov/open-government>
- ▶ Cost Rules: 2020 Public Information Handbook
- ▶ Public Information Cost Estimate Model Letter
- ▶ Open Government Hotline: (877) OPEN TEX