

Interpreting the Public Records Act

In another case interpreting the Vermont Public Records Act, the Washington Superior Court has clarified that the custodian of a public record is only authorized to charge the cost of producing copies of public records. The requestor cannot be charged expenses incurred by an agency in responding to a records request, if all that has been asked is the opportunity to inspect a public record. *Vt. State Employees' Assn. v. Vt. Agency of Natural Res.*, No. 517-7-10 Wncv.

The dispute arose when VSEA, the state employees' union, requested information from the Agency of Natural Resources (ANR) about the elimination of a position and the consequent layoff of a state employee. About the same time, VSEA also requested information about a decision by the Department of Human Resources (DHR) to install software to monitor employees' internet use. In both cases, VSEA requested the opportunity to inspect the State's records, but did not specifically request copies of those records.

The records in both requests existed mostly in electronic form as e-mails and various attachments. Rather than allow VSEA to inspect the records in electronic form, the agencies printed hard copies for VSEA's inspection. The two agencies kept track of the employee time spent in responding to the requests and followed procedures developed by the Secretary of State's office to guide agencies in responding to requests for copies of public records. The proposed time charges were \$462.60 for the ANR request and \$807.98 for the DHR request. VSEA objected to payment of these charges and appealed to the Washington Superior Court.

The Court held that VSEA could not be charged these costs because it had only asked to inspect the relevant records; it had not requested copies of them. The controlling statute – 1 V.S.A. § 316(c) – authorizes an agency to charge and collect “the cost of staff time associated with complying with *a request for a copy of a public record...*” [emphasis added] but does not allow an agency to charge for the cost of searching for, gathering, and producing records for inspection. As the Court noted:

“Unless the statute is amended further, the burden of inspection is part of the cost of government to be borne by the polity at large and not imposed upon individuals or organizations seeking information. This is not an unreasonable legislative decision. An individual – aggrieved, or a gadfly, or a visionary – is likely to be in a poor position to pay for the cost of her inquiries. But as taxpayers and members of the community, we all benefit from these inquiries because government (like the rest of us) behaves best in an open, public setting.”

Municipalities should keep in mind that under the Public Records Act, all of the expenses associated with making a record available for inspection must be borne by the municipality. A requestor may not be charged the cost of staff time arising from retrieving records from a file, computer, or electronic record keeping system, nor may a requestor be charged the cost of reviewing records prior to inspection, redacting exempt information from records, or printing electronic records for inspection.

Municipalities may charge for the cost of staff time in complying with a request for a copy of a public record, but only when that time exceeds 30 minutes. 1 V.S.A. § 316(c). A municipality may also charge the “actual cost of providing the copy.” 1 V.S.A. § 316(a). This actual cost charge is determined by the legislative body considering the cost of paper or electronic media onto which the record is copied, a prorated amount for maintenance of and replacement of equipment used to make the copy, and utility charges directly associated with copying a record. If the legislative body fails to establish actual cost charges, the municipality must use the schedule created by the Secretary of State for state agencies. 1 V.S.A. § 316(e). A municipality may also charge the cost of mailing or transmitting a record by facsimile or other electronic means, the cost of creating a record that does not exist, or producing a record in a non-standard format. 1 V.S.A. § 316(b), (c). A copy of the *VSEA* decision is available at www.vermontjudiciary.org/2006Present%20TCdecisioncvl/2011-1-11-5.pdf

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