



Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE **FROM:** Tom Manheim

SUBJECT: PUBLIC RECORDS FEES WAIVER **DATE:** November 10, 2011

Approved

Date

11/10/11

RECOMMENDATIONS

- 1) In responding to requests for public records, authorize City Council appointees or their designees to waive fees for (1) copying charges up to \$50; and (2) programming and computer services costs to produce electronic records up to two hours of time or \$200, whichever is greater.
- 2) Make this policy retroactive to November 10, 2011.

BACKGROUND

Under City Council Resolution No. 75091, Section 6.2.4(C), which approves certain Sunshine Reform Task Force recommendations, only the Rules and Open Government Committee (ROGC) has the authority to waive fees for photocopying or computer programming, as part of an appeal made to the ROGC.

At its September 28, 2011, meeting, the ROGC directed staff to analyze and make recommendations regarding the possible waiver of public records fees when the fees in question are less than a certain amount.

ANALYSIS

The California Public Records Act (CPRA) limits the circumstances in which a public agency can charge a requestor of public records. The City is specifically allowed to charge requestors for: (1) the direct cost of providing copies of records to requestors; and, (2) the cost of programming and computer services necessary to produce copies of electronic records. Currently, the City charges \$.22 per page for copying. This fee reflects the costs for staff time, photocopy supplies, and photocopy equipment maintenance. When the City is asked to produce an electronic record that requires data compilation, extraction, or programming services, the City calculates the cost based on the staff time necessary to ensure that an accurate record that is responsive to the request is produced. Because the two different circumstances under which the City is permitted to charge for producing a record are qualitatively different, the Administration recommends that different thresholds be established for each.

In the case of copying charges, the Administration recommends establishing a threshold of \$50 as the maximum amount an appointee could waive. The current schedule of fees and charges sets the fee for duplication at \$.22 per page. With a fee waiver of \$50, a requestor would receive 227 pages of documents. This is a far greater number of pages than is typically requested, but would still allow for recovery of costs for unusually voluminous requests. It should be noted that the staff time necessary to respond to such requests includes not only time for the actual copying or scanning, but also for removing staples, binders and other fasteners, flattening, unfolding, and rebinding unfastened documents. As a result, copying requests can be much more time intensive than one might think.

Production of electronic records that require data compilation, extraction, or programming services usually necessitates the skill of employees who are generally more highly paid. Because the hourly cost of those employees may differ significantly depending on the specifics of the request and the employees involved, the Administration recommends both a higher dollar threshold, but also a limit on the number of staff hours that can be waived. The recommendation is that the waiver amount be set at \$200 or two hours of staff time, whichever is greater. Under this approach, an appointee could waive the fee for a request that required two hours of a \$75/hour employee. However, if the employee's hourly rate was over \$100/hour, the waiver would be limited to two hours of time.

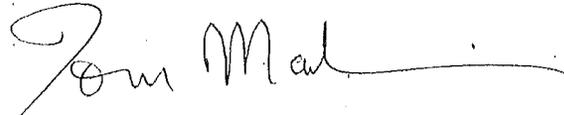
Criteria – Consistent with direction from the Rules Committee, with these changes appointees or their designees would be permitted, but not obligated, to waive fees that fell within either of the two thresholds. To address any concerns about the selective granting of waivers, staff also recommends that the City Council establish a standard to govern when a fee waiver might be granted. The proposed standard, which is based on a standard established in the federal Freedom of Information Act, would establish that a fee waiver could only be made "...upon a determination that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

Retroactive Implementation – As this memorandum is being written, the City has received a PRA request from a new organization that will require programming and computer services that staff estimates would incur a \$50 charge. As it was the clear intention of the Rules & Open Government Committee that a waiver be allowed without requiring consideration by the Committee, the Administration intends to waive the fee. As a result, as part of this action, the Administration recommends making this program retroactive to November 10, 2011.

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COORDINATION

This recommendation has been coordinated with the Office of the City Attorney.

A handwritten signature in black ink that reads "Tom Manheim". The signature is fluid and cursive, with a long horizontal line extending to the right.

Tom Manheim
Director of Communications

For questions please contact Tom Norris, Public Records Manager, at (408) 535-8120.

