

**PROPOSED DISCUSSION DRAFT TO
AMEND FOAA PAYMENT OF COSTS PROVISION:
Reflects proposal considered by RTKAC in 2019 and discussion at Nov. 6 meeting**

Sec. 1. 1 MRS §408-A, sub-§8 is amended to read:

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record as follows, of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

(1) The agency or official may not charge a fee for the first 3 hours of staff time per request.

(2). After the first 3 hours of staff time and between 4 and 6 hours of staff time per request, the agency or official may charge a fee of not more than \$25 per hour.

*One member (JM) does not support any option below

OPTION A: (3) After six hours of staff time per request, the agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record as long as the actual cost does not exceed a reasonable hourly rate for the staff time per hour necessarily incurred in searching for, retrieving and compiling the requested public record.

2 members (LR, VW) preferred Option A

OPTION B: (3) After six hours of staff time per request, the agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record as long as the actual cost does not exceed a reasonable hourly rate for the staff time per hour necessarily incurred in searching for, retrieving and compiling the requested public record and, prior to the date of receiving the request, an agency or official has posted on the agency or official's publicly accessible website or otherwise documented a written policy that specifies the applicable conditions concerning the searching for, retrieving and compiling the requested public record, including the maximum hourly rate.

5 members preferred Option B (AB, LC, LC, SG and ES); one member suggested possible revision for easier reading

OPTION C: (3) After six hours of staff time per request, the agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record as long as the actual cost does not exceed the lowest hourly rate for the staff time per hour for a person who has the necessary skill and training incurred in searching for, retrieving and compiling the requested public record.

5 members preferred Option C (TA, JC, JF, TH, CP); one member (JC) suggested adding language from Option B related to adoption and posting of written policy, including maximum hourly rate

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- C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.
- D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.
- E. The agency or official may charge for the actual mailing costs to mail a copy of a record.
- F. An agency or official may require payment of all costs before the public record is provided to the requester.

Sec. 2. **1 MRSA §408-A, sub-12** is enacted to read:

12. Retention of fees or costs. An agency may retain any fees or costs charged under this section.

SUMMARY

This draft makes the following changes.

1. It extends the time period for which an agency or official may not charge a fee for searching for, retrieving and compiling a requested public record from the first hour of staff time per request to the first 3 hours of staff time per request.
2. It limits the fee charged to no more than \$25 per hour of staff time for the staff time after 3 hours and between 4 and 6 hours.
3. After 6 hours of staff time, it authorizes an agency or official to charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record. The draft also sets forth the parameters for determining “actual cost.”
4. It specifies that an agency may retain any fee or cost charged.