

Fees for Government Data

This publication discusses when and how a government entity may charge a fee for responding to a data request under the Minnesota Government Data Practices Act (DPA). In situations where specific fees are set by statute or rule, those fees will apply rather than the general rules of the DPA.

There is no charge to inspect data

Inspection of data is always free. “Inspection” means visual review of data. A person is not entitled to free hard copies of data unless receiving hard copies is the only way for the government entity to allow access for purposes of inspection. Opinions issued by the commissioner of administration have held that a person may use a personal device such as a scanner or camera to record data during inspection.

Fees may be charged if a person requests copies of data

A government entity is permitted—though not required—to charge a fee when a person requests copies of data, except if providing a copy is the only way to allow for inspection of the data. “Copies” may refer to printing or photocopying data on paper, or the electronic transmittal of data. Fees charged for copies must be clearly related to the actual development cost of the copies, and the government entity must—upon request—provide documentation explaining and justifying the fee charged.

Copies of smaller amounts of public data cost 25 cents per page

Fees are only predetermined when a person is requesting copies of a smaller amount of public data. If the requested copies amount to 100 or fewer pages of black-and-white letter or legal size paper, the government entity may charge no more than 25 cents per page. No additional costs may be added to this fee amount. This predetermined fee only applies to public data; it does not apply to not public data that a person may request because he is the subject of that data. Data subjects may only be charged actual costs.

For all other copy requests, government entities may charge for the actual costs of making the copies

Unless the 25-cents-per-page rule applies, a government entity is only permitted to charge for the *actual costs* of retrieving the requested data and making the copies. Items that may be factored into a calculation of actual costs include: the cost of the media (paper, CD-ROM, etc.), mailing costs, costs associated with the need to use outside vendors (e.g., photo processing labs), and employee time spent responding to the copy request. A government entity may *not* charge for employee time spent separating public from not public data (i.e., redacting documents). By administrative rule, a government entity’s fee determination may be guided by a fee schedule of standard copying charges, but only insofar as the schedule reflects the actual copying costs.

The cost of employee time spent searching for and retrieving the data to be copied may only be charged when a person is requesting copies of *public* data. If a person’s access to the requested data is permissible only because that person is the subject of the data, the government entity cannot charge for employee search

and retrieval time, but only for employee time spent making and compiling the actual copies. Also, opinions issued by the commissioner of administration have held that, when calculating the cost of employee time spent preparing copies, the government entity must use the wage or prorated salary (may include the cost of benefits) of the lowest-paid employee who can perform those tasks.

Because an entity is only permitted to charge actual costs, the fee for a copy request must be calculated on a case-by-case basis. For this reason, predetermined fees are not permitted and costs may vary among different government entities.

Remote access to data is a form of inspection and is therefore free, except when enhanced access is provided

Remote access refers to a person's ability to inspect government data from a personal computer, typically through an online portal or the government entity's website. Government entities are not required to provide remote access to data, but may choose to do so for certain data sets. Remote access to data is considered a form of inspection and is therefore free of charge. However, a government entity may charge for remote access if it has specific statutory authority to do so or if the data retrievable or the access itself is in some way "enhanced." Enhancement is undefined, but could include instantaneous term-based searches of data, the ability to run tests or manipulate data, or other functions.

Fees may be charged to a person who requests copies of data that has commercial value

A government entity is permitted to charge additional fees to a person who requests copies of data that (1) has commercial value, and (2) is a substantial and discrete part of a formula, program, system, etc., that the government entity has developed using a significant expenditure of public funds. Any fee charged for this purpose must be reasonable and must be related to recapturing the actual costs associated with the initial development of the formula, program, system, etc. The government entity must—upon request—provide documentation explaining and justifying the fee charged.

Costs may be assessed when a person requests that the agency prepare summary data

Summary data are statistical records and reports that are derived from data on individuals, but which do not reveal any individual's identity. If a person requests that a government entity prepare original summary data from private or confidential data on individuals, the entity may require the person to pay the cost of preparing the summary data, including employee time. By administrative rule, the entity must provide the person an initial estimate of these costs, and the funds must be collected in advance of the preparation. Also, if the requested summary data also has value to the entity, the entity must appropriately reduce the costs assessed to the requesting person.

Money collected is deposited in the general fund or in a separate fund for the agency

Money collected by state agencies for copy costs under the DPA must be credited to the general fund and cannot be spent by the agency. If, however, an agency collects a sufficiently large amount of money (statutes do not provide a precise figure), the money must be deposited in a separate fund and the amount deposited is appropriated to the agency.

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