



FLORIDA'S SUNSHINE MANUAL
SUBPART 2-G: FEES FOR INSPECTING AND COPYING PUBLIC
RECORDS

Official Handbook on Public Records Laws

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Subpart 2-G
Fees for Inspecting and Copying Public Records

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FLORIDA SUNSHINE MANUAL

PART 2

PUBLIC RECORDS



FLORIDA'S SUNSHINE MANUAL

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DATE: March 9, 2023

PART: 2 PUBLIC RECORDS

SUBPART: G FEES FOR INSPECTING AND COPYING PUBLIC
RECORDS

SECTIONS: 2-G-1 through 2-G-11

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2-G-1 | INSPECTION OF PUBLIC RECORDS

Providing access to public records is a statutory duty imposed by the Legislature upon all record custodians and should not be considered a profit-making or revenue-generating operation. AGO 85-03. Thus, public information must be open for inspection without charge unless otherwise expressly provided by law. See State ex rel. Davis v. McMillan, 38 So. 666 (Fla. 1905). See also AGOs 84-03 and 76-34 (only those fees or charges which are authorized by statute may be imposed upon an individual seeking access to public records). Cf. AGO 75-50 (the fact that the record sought to be inspected is a tape recording as opposed to a written document is of no import insofar as the imposition of a fee for inspection is concerned).

Section 119.07(4)(d), F.S., however, authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require extensive use of information technology resources, or extensive clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the agency. See Board of County Commissioners of Highlands County v. Colby, 976 So. 2d 31 (Fla. 2d DCA 2008) (special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required).

In addition, an agency may adopt a policy imposing a reasonable special service charge based on the actual labor cost for clerical personnel who are required, due to the nature or volume of a public records request, to safeguard such records from loss or destruction during their inspection. AGO 00-11. For example, in AGO 00-11, the requested records were described as "original documents that have no recorded or maintained counterparts, such that, by their nature, they would need a heightened degree of protection from alteration or destruction." A determination of whether the nature or volume of the public records requires such extensive assistance must be made on a case-by-case basis; the special service charge may not be routinely imposed. Id.

Moreover, it would be difficult to justify the imposition of a fee for extensive clerical or supervisory assistance if the personnel providing such assistance were simultaneously performing regular duties. Id. And see Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, 189 So. 3d 120 (Fla. 2016) (affirming trial court finding that two conditions—an hourly photocopying fee and



an hourly supervisory fee—were imposed in violation of s. 119.07, F.S.) .

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2-G-2 | COPIES OF PUBLIC RECORDS

If no fee is prescribed elsewhere in the statutes, s. 119.07(4)(a)1., F.S., authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. Section 119.07(4)(a)2., F.S. And see s. 119.011(7), F.S., defining the term "duplicated copies" to mean "new copies produced by duplicating, as defined in s. 283.30," F.S. "Duplicating" means "the process of reproducing an image or images from an original to a final substrate through the electrophotographic, xerographic, laser, or offset process or any combination of these processes, by which an operator can make more than one copy without rehandling the original." Section 283.30(3), F.S.

A charge of up to \$1.00 per copy may be assessed for a certified copy of a public record. Section 119.07(4)(c), F.S.

For other copies, the charge is limited to the actual cost of duplication of the record. Section 119.07(4)(a)3., F.S. The phrase "actual cost of duplication" is defined to mean "the cost of the material and supplies used to duplicate the public record, but does not include the labor cost and overhead cost associated with such duplication." Section 119.011(1), F.S. An exception, however, exists for copies of county maps or aerial photographs supplied by county constitutional officers which may include a reasonable charge for the labor and overhead associated with their duplication. Section 119.07(4)(b), F.S. Cf. AGO 13-03 (while agency may charge "actual cost of duplication" if it sends public records via e-mail, agency did not identify any actual costs of duplication involved in forwarding copies of electronic mail in lieu of photocopying and "the definition [of actual cost of duplication] does not allow for the imposition of labor costs or associated overhead costs").

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2-G-3 | SPECIAL SERVICE CHARGE FOR EXTENSIVE USE OF CLERICAL OR SUPERVISORY LABOR OR EXTENSIVE INFORMATION TECHNOLOGY RESOURCES

Section 119.07(4)(d), F.S. provides that if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost actually incurred by the agency for such extensive use of information technology resources or personnel. When warranted, the special service charge applies to requests for both inspection and copies of public records. Board of County Commissioners of Highlands County v. Colby, 976 So. 2d 31 (Fla. 2d DCA 2008).

Thus, while an agency may not refuse to allow inspection or copying of public records based upon the amount of records requested or the span of time which is covered by the public records request, if extensive use of information technology resources or clerical or supervisory personnel is needed in order to produce the requested records, the agency may impose a reasonable special service charge that reflects the actual costs incurred for the extensive use of such resources or personnel. See AGOs 92-38 and 90-07. Cf. Trout v. Bucher, 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections authorized to charge a reasonable fee based on the labor costs "actually incurred" to comply with Trout's request to inspect ballots in accordance with s. 119.07[5], F.S.).

a. Meaning of the Term "Extensive"

Section 119.07(4)(d), F.S., "does not identify the Legislature's intent as to what may constitute 'extensive use' and provides no definition of that term." AGO 13-03. In 1991, a divided First District Court of Appeal upheld a hearing officer's order rejecting an inmate challenge to a Department of Corrections rule that defined "extensive" for purposes of the special service charge to mean that it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested material. Florida Institutional Legal Services, Inc. v. Florida Department of Corrections, 579 So. 2d 267 (Fla. 1st DCA 1991), review denied, 592 So. 2d 680 (Fla. 1991). The court agreed with the hearing officer that the burden was on the challenger to show that the administrative rule was invalid under Ch. 120, F.S., and the record did not indicate that the officer's ruling was "clearly erroneous" in this case.



In light of the lack of clear direction in the statute as to the meaning of the term "extensive," the Attorney General's Office has suggested that agencies implement the service charge authorization "in a manner that reflects the purpose and intent of the Public Records Act and that does not constitute an unreasonable infringement upon the public's statutory and constitutional right of access to public records." AGO 13-03. In addition, the Attorney General's Office also strongly encourages agencies to adopt a public records procedure that addresses imposition of special service charge. Id.

Moreover, the statute mandates that the special service charge be "reasonable." See *Carden v. Chief of Police*, 696 So. 2d 772, 773 (Fla. 2d DCA 1996), in which the court reviewed a challenge to a service charge that exceeded \$4,000 for staff time involved in responding to a public records request, and said that an "excessive charge could well serve to inhibit the pursuit of rights conferred by the Public Records Act." Accordingly, the court remanded the case and required the agency to "explain in more detail the reason for the magnitude of the assessment." Id. And see *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 129 (Fla. 2016), noting that "excessive, unwarranted special service charges deter individuals seeking public records from gaining access to the records to which they are entitled."

b. Meaning of the Term "Information Technology Resources"

"Information technology resources" is defined as data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance and training. Section 119.011(9), F.S. The term does not include a videotape or a machine to view a videotape. AGO 88-23. The fact that the request involves the use of information technology resources is not sufficient to incur the imposition of the special service charge; rather, extensive use of such resources is required. AGOs 13-03 and 99-41.

c. Cost to Review Records for Exempt Information

An agency is not ordinarily authorized to charge for the cost to review records for statutorily exempt material. AGO 84-81. However, the special service charge may be imposed for



this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task. See *Florida Institutional Legal Services v. Florida Department of Corrections*, 579 So. 2d at 269. And see *Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (prior court decisions as well as the language in s. 119.07[4], F.S., dictate that the requester, who had submitted several voluminous public records requests for records which included confidential information "should be required to pay for the cost of searching, review, and redaction of exempted information prior to production").

Accordingly, because "the Public Records Act requires a records custodian to determine whether the requested records exist, locate the records, and review each record to determine if any of those records are exempt from production," the agency may charge the special service charge as authorized under s. 119.071(4)(d), F.S. for the cost to review voluminous requested records for exempt material. *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799 (Fla. 2d DCA 2021). [Emphasis supplied by the court].

d. Calculation of Labor Cost

In *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008), the court approved a county's special service charge pursuant to s. 119.07(4), F.S., which included both an employee's salary and benefits in calculating the labor cost for the special service charge, recognizing, however, that the charge must be reasonable and based upon the actual labor costs incurred by or attributable to the county. See *Trout v. Bucher*, 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections not required to charge the lowest hourly rate of the employee capable of doing the work needed to comply with Trout's request to inspect ballots in accordance with s. 119.07[5], F.S., because s. 119.07[4][d] allows the agency to charge the labor cost of the personnel that is "actually incurred" by the agency where extensive assistance is required).

The term "supervisory assistance" has not been widely interpreted. See *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com, concluding that an appropriate charge for supervisory review



is "reasonable" in cases involving a large number of documents that contain some exempt information. In *State v. Gudinas*, No. CR 94-7132 (Fla. 9th Cir. Ct. June 1, 1999), available online in the Cases database at the open government site at myfloridalegal.com, the circuit judge approved a rate based on an agency attorney's salary when the attorney was required to review exempt material in a voluminous criminal case file. The court noted that "only an attorney or paralegal" could responsibly perform this type of review because of the "complexity of the records reviewed, the various public record exemptions and possible prohibitions, and the necessary discretionary decisions to be made with respect to potential exemptions."

e. Reasonable Deposit or Advance Payment

Section 119.07(4)(a)1., F.S., states that the custodian of public records shall furnish a copy or a certified copy of the record "upon payment of the fee prescribed by law...." See *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (if a requestor "identifies a record with sufficient specificity to permit [the agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record.") (e.s.); and *Promenade D'Iberville, LLC v. Sundy* 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (a records custodian may delay production "if the requesting party fails to remit the appropriate fees").

Accordingly, an agency's policy of requiring the payment of a deposit prior to redaction and delivery of hundreds of telephone recordings related to a criminal trial was determined to be "facially reasonable." *Morris Publishing Group, LLC v. State*, 154 So. 3d 528, 534 (Fla. 1st DCA 2015), review denied, 163 So. 3d 512 (Fla. 2015). *Accord Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31, 37 (Fla. 2d DCA 2008), noting that a "policy of requiring an advance deposit seems prudent given the legislature's determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records." "[T]he reasonableness of a policy and its application – based on the facts in a particular case – guides whether an abuse of discretion is shown." *Morris Publishing Group, LLC* at 534. And see *Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (lower court abused its discretion by



ordering the agency to produce a large number of responsive public records within 48 hours of the issuance of the order without requiring advance payment of the agency's invoices associated with production of the records); *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799 (Fla. 2d DCA 2021) (trial court erred in holding that the City's prepayment request constituted an unlawful interference with requester's right of access to public records). Compare *Miami Dade College v. Nader + Museu I, LLP*, 47 F.L.W. D1814 (Fla. 3d DCA August 31, 2022) (trial court properly denied agency's requested fees after production based on the agency's failure to provide the requester with an estimate of the anticipated costs to fulfill the public records request or an invoice prior to production, as required by agency policy, nor did the parties agree in advance to the charges).

An agency may refuse to produce additional records if the fees for a previous request for records have not been paid by the requestor. See *Lozman v. City of Riviera Beach*, 995 So. 2d 1027 (Fla. 4th DCA 2008) (s. 119.07[4], F.S., "does not require the City to do any more than what it did in this case," i.e., require Lozman to pay the bill for the first group of records he requested before the city would make any further documents available). And see AGO 05-28 (custodian authorized to bill the requestor for any shortfall between the deposit and the actual cost of copying the public records when the copies have been made and the requesting party subsequently advises the city that the records are not needed). Compare, *Smith v. State*, 335 So. 3d 795 (Fla. 2d DCA 2022) (Smith's failure to timely pay fees to obtain requested public records does not permit the agency to ban him from ever obtaining records in the future, provided Smith pays the amount owing for the first request).

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2-G-4 | REQUESTS FOR INFORMATION REGARDING COSTS TO OBTAIN PUBLIC RECORDS

In order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests for information as to copying costs. *Wootton v. Cook*, supra. See also *Woodard v. State*, 885 So. 2d 444 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total cost to copy the requested records. And see, *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com, in which the court said that if an agency is asked for a large number of records, the fee should be communicated to the requestor before the work is undertaken. "If the agency gives the requesting party an estimate of the total charge, or the hourly rate to be applied, the party can then determine whether it appears reasonable under the circumstances." Id.

In *Miami Dade College v. Nader + Museu I, LLP*, 47 F.L.W. D1814 (Fla. 3d DCA August 31, 2022), the court affirmed the trial court's refusal to grant an agency's motion to collect fees under s. 119.07(4)(d), F.S., because the agency failed to provide the requester with an estimate or invoice prior to production thereby violating both its own policies and procedures and the language of s. 119.07(4), F.S. And see AGO 13-03, in which the Attorney General's Office strongly encouraged agencies to adopt a public records procedure that addresses imposition of special service charge.

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2-G-5 | REQUESTS FOR FREE COPIES OF PUBLIC RECORDS

An agency is not precluded from choosing to provide informational copies of public records without charge. AGO 90-81.

However, chapter 119, F.S., does not contain a provision that prohibits agencies from charging indigent persons or inmates the applicable statutory fee to obtain copies of public records. See *Roesch v. State*, 633 So. 2d 1, 3 (Fla. 1993) (indigent inmate not entitled to receive copies of public records free of charge nor to have original state attorney files mailed to him in prison; prisoners are "in the same position as anyone else seeking public records who cannot pay" the required costs); *Potts v. State*, 869 So. 2d 1223 (Fla. 2d DCA 2004) (no merit to inmate's contention that Ch. 119, F.S., entitles him to free copies of all records generated in his case); *Bennett v. Clerk of Circuit Court Citrus County*, 150 So. 3d 277 (Fla. 5th DCA 2014) (authority providing indigent criminal defendants with free copies does not extend beyond the direct appeal of judgment and sentence and transcripts of evidentiary hearings held on postconviction claims); *Milner v. State*, 196 So. 3d 569 (Fla. 4th DCA 2016) (indigent prisoners are not entitled to free copies of records under the Public Records Act); and *Yanke v. State*, 588 So. 2d 4 (Fla. 2d DCA 1991), review denied, 595 So. 2d 559 (Fla. 1992), cert. denied, 112 S.Ct. 1592 (1992) (prisoner must pay copying and postage charges to have copies of public records mailed to him). And see *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382n.7 (Fla. 1st DCA 1994) (indigent person "is not relieved by his indigency" from paying statutory costs to obtain public records). Cf. *Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018) (Public Records Act does not require government officials to move records from where they are being maintained to a different place convenient to the requester, citing to *Roesch v. State*).

Similarly, a labor union must pay the costs stipulated in Ch. 119, F.S., for copies of documents it has requested from a public employer for collective bargaining purposes because "[a] labor union seeking information from the employer with whom it is locked in collective bargaining negotiations is not exempt from the Florida Public Records Act." *City of Miami Beach v. Public Employees Relations Commission*, 937 So. 2d 226 (Fla. 3d DCA 2006). And see *Inf. Op. to Garganese*, April 14, 1998 (authority to charge city council member for copies of public records).



A school district is under no statutory obligation to provide copies of public records free of charge to individual members of a school advisory council, but a school district may formulate a policy for the distribution of such records. AGO 99-46. If it is found that the advisory council needs certain school records in order to carry out its statutory functions, such records should be provided to the council in the same manner that records related to agenda items are provided to school board members. Id. Cf. Inf. Op. to Martin, November 21, 2006 (school board policy requiring that a request for information by an individual board member requiring more than sixty minutes of staff time to prepare must be presented to the school board for approval would be invalid if the school board member is asking under public records law; however, the school board member would be subject to any charges allowed by Chapter 119, F.S.).

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2-G-6 | AUTHORITY TO CHARGE FOR DEVELOPMENT, OVERHEAD, OR TRAVEL COSTS

An agency should not consider the furnishing of public records to be a "revenue-generating operation." AGO 85-03. See also AGO 89-93 (city not authorized to sell copies of its growth management book for \$35.00 each when the actual cost to reproduce the book is \$15.10 per copy; city is limited to charging only the costs authorized by Ch. 119, F.S.).

The Public Records Act does not authorize the addition of overhead costs such as utilities or other office expenses to the charge for public records. AGO 99-41. Similarly, an agency may not charge for travel time to obtain public records stored off-premises. AGO 90-07. For example, if municipal pension records are stored in a records storage facility outside city limits, the city may not pass along to the public records requester the costs to retrieve the records. Inf. Op. to Sugarman, September 5, 1997. Cf. *Cone & Graham, Inc. v. State*, No. 97-4047 (Fla. 2d Cir. Ct. October 7, 1997), available online in the Cases database at the open government site at myfloridalegal.com (an agency's decision to "archive" older e-mail messages on tapes so that they could not be retrieved or printed without a systems programmer was analogous to an agency's decision to store records off-premises in that the agency rather than the requester must bear the costs for retrieving the records).

An agency may not assess fees designed to recoup the original cost of developing or producing the records. AGO 88-23 (state attorney not authorized to impose a charge to recover part of costs incurred in production of a training program; the fee to obtain a copy of the videotape of such program is limited to the actual cost of duplication of the tape). And see *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382 (Fla. 1st DCA 1994) (once a transcript of an administrative hearing is filed with the agency, the transcript becomes a public record regardless of who ordered the transcript or paid for the transcription; the agency can charge neither the parties nor the public a fee that exceeds the charges authorized in the Public Records Act). Cf. s. 119.07(4)(b), F.S., providing that the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

Therefore, unless a specific request for copies requires extensive clerical or supervisory assistance or extensive use of information



technology resources so as to trigger the special service charge authorized by s. 119.07(4) (d), F.S., an agency may charge only the actual cost of duplication for copies of computerized public records. AGO 99-41. The imposition of the service charge, however, is dependent upon the nature or volume of records requested, not on the cost to either develop or maintain the records or the database system. Id.

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2-G-7 | FEES TO OBTAIN AGENCY RECORDS HELD BY PRIVATE COMPANIES

Although an agency may contract with private companies to provide information also obtainable through the agency, it may not abdicate its duty to produce such records for inspection and copying by requiring those seeking public records to do so only through its designee and then paying whatever fee that company may establish for its services. AGO 02-37. The agency is the custodian of its public records and, upon request, must produce such records for inspection and copy such records at the statutorily prescribed fee. Id. Accord AGO 13-03. And see AGO 05-34 (while the property appraiser may provide public records, excluding exempt or confidential information, to a private company, the property appraiser may receive only those fees that are authorized by statute and may not, in the absence of statutory authority, enter into an agreement with the private company where the property appraiser provides such records in exchange for either in-kind services or a share of the profits or proceeds from the sale of the information by the private company). Cf. s. 119.0701(2)(b)2., F.S., requiring that certain contracts contain a provision stipulating that upon request from the public agency's custodian of public records, the contractor must provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in ch. 119 or as otherwise provided by law.

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2-G-8 | SALES TAX

In AGO 86-83, the Attorney General's Office advised that the sales tax imposed pursuant to s. 212.05, F.S., is not applicable to the fee charged for providing copies of records under s. 119.07, F.S. See s. 5(a) of Department of Revenue Rule 12A-1.041, F.A.C., stating that "[t]he fee prescribed by law, or the actual cost of duplication, for providing copies of public records... under Chapter 119, F.S., is exempt from sales tax."

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2-G-9 | CONFIDENTIAL RECORDS

Unless another fee to obtain a particular record is prescribed by law, an agency may not charge fees that exceed those in Ch. 119, F.S, when providing copies of confidential records to persons who are authorized to obtain them. For example, in AGO 03-57, the Attorney General's Office advised that persons who are authorized by statute to obtain otherwise confidential autopsy photographs should be provided copies in accordance with the provisions of the Public Records Act, i.e., s. 119.07(4), F.S. The medical examiner is not authorized to charge a fee that exceeds those charges. Id.

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2-G-10 | REQUESTER MAKES HIS/HER OWN COPIES

Section 119.07(3)(a), F.S., provides a "right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records." This subsection "applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court" if the clerk can provide a copy of the microfilm. Section 119.07(3)(b), F.S.

The photographing is to be done in the room where the public records are kept. Section 119.07(3)(d), F.S. However, if in the custodian's judgment, this is impossible or impracticable, the copying shall be done in another room or place, as close as possible to the room where the public records are kept. *Id.* Where provision of another room or place is necessary, the expense of providing the same shall be paid by the person who wants to copy the records. *Id.* The custodian may charge the person making the copies for supervision services. Section 119.07(4)(e)2., F.S. In such cases the custodian may not charge the copy charges authorized in s. 119.07(4)(a), F.S., but may charge only the supervision service charge authorized in s. 119.07(4)(e)2., F.S. See AGO 82-23. *Cf. Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 122 (Fla. 2016) (affirming trial court finding that two conditions—"an hourly photocopying fee and an hourly supervisory fee"—were imposed in violation of s. 119.07, F.S.).

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2-G-11 | FEE ISSUES RELATING TO SPECIFIC RECORDS**a. Clerk of Court Records**

(1) County Records

Pursuant to s. 125.17, F.S., the clerk of the circuit court serves as the ex officio clerk to the board of county commissioners. Records maintained by the clerk which relate to this function (e.g., county resolutions, budgets, minutes, etc.) are public records which are subject to the copying fees set forth in Ch. 119, F.S., and not the service charges set forth in Ch. 28, F.S. AGO 85-80. Accord AGO 94-60 (documents such as minutes of public meetings, which are in the custody of the clerk as ex officio clerk of the board of county commissioners, are not subject to the \$1.00 per page charge prescribed in Ch. 28). See also AGO 82-23 (when members of the public use their own photographic equipment to make their own copies, the clerk is not entitled to the fees prescribed in s. 28.24, F.S., but is entitled only to the supervisory service charge now found in s. 119.07[4][e]2., F.S.).

(2) Judicial Records

When the clerk is exercising his or her duties derived from Article V of the Constitution, the clerk is not subject to legislative control. *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995). Thus, when the clerk is acting in his or her capacity as part of the judicial branch of government, access to the judicial records under the clerk's control is governed exclusively by Fla. R. Gen. Prac. & Jud. Admin. 2.420, Public Access to and Protection of Judicial Records. *Id.* See Fla. R. Gen. Prac. & Jud. Admin. 2.420(b)(2), defining the term "judicial branch" for purposes of the rule, to include "the clerk of court when acting as an arm of the court."

Florida Rule of General Practice and Judicial Administration 2.420(m)(3) states that "[f]ees for copies of records in all entities in the judicial branch of government, except for copies of court records, shall be the same as those provided in section 119.07, Florida Statutes." (e.s.). The fees to obtain copies of court records are set forth in s. 28.24, F.S. This statute



establishes fees that are generally higher than those in Ch. 119, F.S. For example, the charge to obtain copies of court records is \$1.00 per page, rather than 15 cents per page as established in s. 119.07(4)(a)1., F.S. And see s. 28.222(7), F.S., providing that the Official Records are open to the public, but the clerk is not required to perform any service in connection with the making of copies without payment of service charges as provided in s. 28.24, F.S. Cf. *WFTV, Inc. v. Wilken*, 675 So. 2d 674 (Fla. 4th DCA 1996).

b. Department of Highway Safety and Motor Vehicles Crash Reports

In the absence of statutory provision, the charges authorized in s. 119.07(4), F.S., govern the fees to obtain copies of crash reports from law enforcement agencies. However, there are specific statutes which apply to fees to obtain copies of reports from the Department of Highway Safety and Motor Vehicles. Section 321.23(2)(a), F.S., provides that the fee to obtain a copy of a crash report from the department is \$10.00 per copy. A copy of a homicide report is \$25 per copy. Section 321.23(2)(b), F.S. Separate charges are provided for photographs. Section 321.23(2)(d), F.S.

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APPENDIX



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