**Eliminating a Barrier to Access: Waiving or Reducing Fees for Public Records in Florida**

By Virginia Hamrick, Florida First Amendment Foundation

**Introduction**

When the nonprofit organization Coalition of Immokalee Workers asked a Florida agency for three months of keyword-specific emails between another nonprofit and state officials, the agency said it would cost $42,000 to produce them.[[1]](#footnote-1) The Coalition sought the records to better understand why state officials decided against participating in a COVID-19 contract tracing program with the international nonprofit, Partners in Health.[[2]](#footnote-2) By collaborating with Partners In Health, the Coalition argued that local and state governments could effectively trace and limit the spread of the virus among farmworkers.[[3]](#footnote-3)

When a VICE News reporter asked the Department of Health for correspondences between health officials during a two-and-a-half-month period, the Department estimated it would cost $17,000 to provide the records.[[4]](#footnote-4) The reporter sought the records to understand Florida’s COVID-19 vaccine prioritization and distribution plan.

Throughout the COVID-19 pandemic, as the public tried to acquire information on the spread of the coronavirus, state agencies withheld vital information related to cases in assisted living facilities, reports from the federal government, and information on virus variants.[[5]](#footnote-5) Even when agencies acknowledged that the information was public, high fees prevented non-profit organizations, journalists, and members of the public from accessing it.

Exorbitant fees are not limited to records related to coronavirus information. Department of Health records show a journalist was given an initial estimate of $914 for copies of inspections at public school kitchens and cafeterias.[[6]](#footnote-6) The Department of Business and Professional Regulation estimated that it would cost more than $1,900 to fulfill a reporter’s request for complaints against contractors and cosmetologists filed with the department in one county during a 26-month period.[[7]](#footnote-7) The Florida Department of Transportation (FDOT) sent a journalist an invoice for $2,000 for emails related to the structural integrity of a bridge.[[8]](#footnote-8) These records were meant to shed light on the stability of a heavily trafficked bridge.

 Excessive fees limit the media’s ability to report on government agencies and matters that affect the wellbeing of the community – from school safety to infrastructure. Charges prevent many members of the public from obtaining government information. As a result, public oversight of agencies is significantly impaired, and the public is less informed about the government.

When given a high invoice, requesters may go back and forth with the records custodian to narrow the request and reduce the costs. This process delays a requester’s access to information. Time spent debating over fees could be spent collecting and providing the records to the requester, who could then make the information known to the public at large. Meanwhile, for-profit businesses and requesters with the resources to pay for the records can immediately access the information.

Federal government agencies subject to the Freedom of Information Act (FOIA) and a majority of states allow for a fee waiver for requests made in the public interest by journalists and non-commercial requesters. Such a waiver would reduce excessive fees for nonprofit organizations and reporters in Florida.

 Research has already been done on the effect of a fee waiver on Florida municipalities.[[9]](#footnote-9) In fact, an analysis shows that a relatively small number of requests made to municipalities would be eligible for a fee waiver as requests made in the public interest.[[10]](#footnote-10) This article attempts to add to the discussion of fee waivers in Florida and assess the effect of a waiver on state agencies. While local government entities estimate high fees, it is not uncommon to see estimates reaching thousands of dollars for public records requests submitted to agencies.

This article will first address what causes expensive public records requests in Florida. Next, this article will explain fee waivers utilized in other states and by the federal government. Then it will analyze public record requests submitted to five state agencies to assess the number of requests that would be affected by a fee waiver. Finally, this article will argue for agencies to implement a waiver to make records more accessible to requesters seeking information in the public interest.

**Fees for Accessing Public Records**

 The Florida Supreme Court has held that access to public records is a “cornerstone of our political culture.”[[11]](#footnote-11) Access to public records is provided in statute – the Florida Public Records Act – and by the state constitution, which establishes a right for every person to inspect or copy any public record.[[12]](#footnote-12)

 Public records can shed light on agency spending and decision making. In an investigation of Florida’s Birth-Related Neurological Injury Compensation Association (NICA), an agency meant to provide medically necessary care to patients with severe birth injuries and lower obstetricians’ malpractice costs, *Miami Herald* and ProPublica journalists reviewed board meeting minutes, agency case management logs, and more than one thousand claims submitted to a state review board related to the agency.[[13]](#footnote-13) The investigation revealed that NICA protected physicians while denying or delaying help for patients and their struggling families and led to a legislative reform of the program.[[14]](#footnote-14)

Records can reveal the safety of roads, bridges, and buildings. In the days after the deadly Champlain Towers condo collapse in Surfside, Florida, the town released years-old records that revealed that an engineer had warned the town of an error in the building’s design that was causing “major structural damage.”[[15]](#footnote-15)

Public oversight of agencies is nearly impossible without access to public records. Despite the importance of public records, excessive fees can limit – or block – that access.

The Florida Public Records Act permits records custodians to charge for the cost of a certified copy of a record and for the duplication of records.[[16]](#footnote-16) An agency can charge up to 15 cents for copies of not more than 14-by-8 ½ inches.[[17]](#footnote-17) For all other copies, an agency may charge the actual cost of duplication.[[18]](#footnote-18)

 In addition, an agency can charge for the time needed to review the records for exempt information and redact it. This provision can result in fees of hundreds or thousands of dollars.

If the nature or volume of public records requested requires “extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both…,” the agency can also charge for that time.[[19]](#footnote-19) Fees must be reasonable and based on the labor actually incurred. Otherwise, the legislature provided little guidance for what is considered reasonable or how to calculate a special service charge. Agencies vary on what is considered extensive – some agencies start charging after fifteen minutes of work while others start charging after two hours of work.[[20]](#footnote-20)

Frequently, excessive service charges are based on the estimated time it will take to review and redact the records for exempt or confidential information. That can include charging the requester the hourly rate of the agency’s attorney or, in the case of FDOT records, an engineer.

The Florida Attorney General has advised that providing access to records should not be considered a revenue-generating operation.[[21]](#footnote-21) Similarly, the Florida Supreme Court has opined that excessive charges deter the public from seeking access to records to which they are entitled.[[22]](#footnote-22) In practice, though, there is little a requester can do when given a costly invoice, other than attempt to narrow the scope of the request – or give up entirely. A special service charge costing thousands of dollars can inhibit nonprofit organizations and journalists with limited spending budgets from accessing records – a right guaranteed to every person in the state constitution and statutes.

**Fee Waivers for Requests Made in the Public Interest**

 Fee waivers are mentioned in the public records laws of at least 26 states. While only a few states require agencies to waive fees, most permit an agency to waive or reduce fees for records requests made in the public interest. Even where statutes are silent as to fee waiver, courts have ruled that agencies still have discretion to waive or lessen fees to permit greater access to records.[[23]](#footnote-23)

 Federal agencies subject to FOIA are required to create rules for responding and providing public records. Agencies can charge specified standard fees for “document search, duplication, and review” only “when records are requested for commercial uses.”[[24]](#footnote-24) And only commercial users can be charged for the time it takes to review the document for information exempt from disclosure. (A frequently cited justification for invoices in the thousands in Florida.)

 If the records are not sought for the requester’s commercial interests and disclosure is in the public interest, a federal agency must waive or limit fees.[[25]](#footnote-25) Similarly, most states with fee waivers reduce fees only when requests are made for non-commercial purposes.[[26]](#footnote-26)

A request is in the public interest if disclosure “is likely contribute significantly to public understanding of the operations or activities of the government….”[[27]](#footnote-27) The burden is on the requester to show with reasonable specificity that disclosure is in the public interest.[[28]](#footnote-28) Many states use this or a similar definition for public interest.[[29]](#footnote-29) Some states provide further guidance. For example, Illinois Freedom of Information Act provides that waiver or reduction serves the public interest “if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public.”[[30]](#footnote-30)

Other state statutes detail the type of requesters that would qualify for a public interest fee waiver. Colorado specifically designates the following as public purposes: public agency program support, nonprofit activities, journalism, and academic research.[[31]](#footnote-31) Connecticut provides a fee waiver for certain elected officials and public defenders.[[32]](#footnote-32)

Under FOIA, requests from individuals seeking records on themselves generally do not qualify for a fee waiver.[[33]](#footnote-33) Some states also clarify that records sought for personal use or for the requester’s interest in litigation are not made in the public interest and, therefore, not entitled to a fee waiver.[[34]](#footnote-34)

**Fee Waiver and Florida Agencies**

 To assess how a fee waiver might affect Florida agencies, I requested the public records logs from a number of state agencies to determine how many requests were made by for-profit business and individuals seeking their own records compared to journalists, nonprofits, and others who may qualify for a non-commercial fee waiver. I analyzed the records of the Agency for Health Care Administration (AHCA), the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), and the Department of Lottery (Lottery). These agencies were selected because they provided the information in time and without charge. In addition, the logs contained enough information to determine the name and organization or business of the requester.[[35]](#footnote-35) The logs included the name and organization or business of the requester and the requester’s email address.

Except for the log provided by DACS, each log also included a description of the records requested. The DACS log contained more than 1,000 entries that included only a name. Without a description of the requested records, an email, or organization, it was difficult to verify the requester. While I initially labeled these entries “individual/uncoded”, I removed these entries to keep the category of “individual/uncoded” from being skewed due to the lack of information in the log.

 Instead of providing a log, the Executive Office of Governor (EOG) provided completed requests, including the name and organization of the requester, the requester’s email or phone number, and information sought. The results may not reflect all requests received by the agency. The information from the EOG shows the number of requests the office has answered that would qualify as in the public interest.

The information included in the logs is from the perspective of the agency, not a requester who may contend the information will be used for non-commercial purposes and disclosure will benefit the public. Nonetheless, the data indicates how many requests are made by journalists and nonprofit organizations compared to lawyers, lobbyists, and for-profit businesses. The information can be used to determine the percentage of requests that could qualify for a fee waiver and how an agency would be burdened by a fee waiver because it could not impose a special service charge for extensive labor.

A final note on the records provided: DEP’s log included the amount paid, and Lottery’s log included the agency’s cost to produce the record. The highest amount paid to DEP was $2,973 by Earthjustice Florida, a nonprofit organization seeking records related to permits and the state’s assumption of permitting under the federal Clean Waterways Act. Lottery’s charges were lower than other agencies. The most expensive request cost $484 for information on lottery games and was submitted by an individual. The next two most expensive requests cost $383 and $282 for department contracts and internal audits sought by reporters.

Request entitled to Waivers

Using the FOIA definition that a request is in the public interest if disclosure will likely contribute to the public understanding of the operations of government, I noted when requests were made by reporters. The label “media” includes requests from journalists at newspapers, public radio stations, television news stations, websites such as Politico, nonprofit news outlets such as ProPublica and The Center for Investigative Reporting. I did not include bloggers with few followers because these requesters may not be able to make the information available to the public at large.

I also noted requests made by 501(c)(3) nonprofit organizations, academic institutions, and governmental agencies. These entities all have non-commercial interests and responsibilities to educate and serve the public.[[36]](#footnote-36)

I did not consider non-profit organizations seeking their own records – such as a nonprofit hospital seeking complaints about the facility submitted to AHCA – because this information could be used for the entity’s internal use. While business associations and unions are tax exempt organizations, I did not categorize them as nonprofits because their purpose is to promote the interest of members.

 I did not consider a fee waiver for the following requesters: lobbyists, for-profit businesses, consulting firms, insurance companies, unions, individuals seeking their own records, anonymous requests, and requests with insufficient information to make a determination regarding the requester’s identity or purpose. I based these categories on the fact that records would be for the commercial interests of the requester (or their client) or the personal interests of an individual.

 The category “legal” includes lawyers and paralegals in private practice. “For-profit business” includes for-profit companies based on filings available with Florida Department of State or other state business records sites. “Insurance” includes businesses primarily providing insurance. “Lobbyists” includes individuals or firms with the primary purpose of influencing legislation and government policy. “Individual/uncoded” indicates that the requester did not fit into a specific category or sought records about themselves.

Results

 **ACHA**

|  |  |
| --- | --- |
| Legal | 2,468 |
| Individual/uncoded | 2,306 |
| For-profit business  | 510 |
| Insurance | 311 |
| Nonprofit | 170 |
| Media | 153 |
| Government  | 90 |
| Academic | 27 |
| Lobbyists | 11 |
| Union | 3 |
| **Total** | **6,049** |

 **DEP**

|  |  |
| --- | --- |
| For-profit business | 3,955 |
| Individual/Uncoded | 930 |
| Legal | 453 |
| Government | 153 |
| Nonprofit | 91 |
| Media | 58 |
| Academic | 33 |
| Insurance | 5 |
| Lobbyists | 4 |
| **Total** | **5,682** |

**DACS**

|  |  |
| --- | --- |
| Individual/uncoded | 1,309 |
| Government | 914 |
| For-profit business | 450 |
| Legal | 346 |
| Media | 67 |
| Nonprofit | 46 |
| Academic | 22 |
| Insurance | 8 |
| Lobbyists | 4 |
| Union | 3 |
| **Total** | **3169** |

|  |  |
| --- | --- |
| Individual/uncoded | 270 |
| For-profit business | 254 |
| Media | 38 |
| Legal | 21 |
| Government | 8 |
| Union | 4 |
| Academic | 3 |
| Nonprofit | 2 |
| Insurance | 1 |
| Lobbyist | 1 |
| **Total** | **602** |

 **Lottery**

 **EOG**

|  |  |
| --- | --- |
| Media | 201 |
| Individual/uncoded | 152 |
| Nonprofit | 38 |
| Legal | 37 |
| Government | 14 |
| For-profit business | 10 |
| Insurance | 6 |
| Academic | 6 |
| Lobbyist | 3 |
| **Total** | **467** |

|  |  |
| --- | --- |
| For-profit business | 5,179 |
| Individual/Uncoded | 4,967 |
| Legal | 3,325 |
| Government  | 1,179 |
| Media | 517 |
| Nonprofit | 347 |
| Insurance | 331 |
| Academic  | 91 |
| Lobbyists | 23 |
| Union  | 10 |
| **Total** | **15,969** |

**Total**

**Total**

**Total without EOG** (agencies that provided logs)

|  |  |
| --- | --- |
| For-profit business | 5,169 |
| Individual/Uncoded | 4,815 |
| Legal | 3,288 |
| Government  | 1,165 |
| Insurance | 325 |
| Media | 316 |
| Non-profit | 309 |
| Academic  | 85 |
| Lobbyists | 20 |
| Union  | 10 |
| **Grand Total** | **15,502** |

Looking at the four agencies that provided logs, 1,883 requests – or twelve percent – would be entitled to a fee waiver. Nearly one third of all requests came from for-profit businesses. Many businesses sought information about agency contracts. This is especially true for requests to the Department of Lottery; both individuals and printing companies sought records related to requests for proposals. Businesses, attorneys, and paralegals (one fifth of all requests) frequently asked for permit and licenses applications, particularly to DEP and AHCA.

A significant number of requests were individuals seeking their own records or records about themselves or their organization. For instance, many notaries public sought complaints filed against them to the Executive Office of the Governor and health care facilities asked AHCA for their own records.

Based on the requests with sufficient information, nearly one third of requests submitted to DACS could receive a fee waiver. The higher percentage may be attributed to the number of requests from government agencies, specifically from state attorney offices.

The EOG responded to the highest percentage of requests that would be entitled to a fee waiver. Of the 467 requests fulfilled during the applicable time period, more than half came from reporters, nonprofits, academic researchers, and other government agencies. The agency had the highest percentage of requests from journalists – 43 percent. No other agency had more than seven percent of requests from journalists. A fee waiver would have the most effect on the EOG and its ability to impose special service charges for public records requests.

Apart from the EOG, only a small percentage of requesters at other agencies would be entitled to a fee waiver. An agency could still charge for extensive use of information technology resources or labor for a large majority of requests. The effect of a fee waiver or reduction for requests made in the public interest would have a minimal financial effect on the reviewed state agencies.

 If an agency feels it is financially burdened by a fee waiver and a records custodian is expending extensive labor on requests, an agency could reduce the fee rather than waiving it entirely. In addition, an agency could charge a requester if the agency spends extensive time on multiple requests from the same requester within a specified period.[[37]](#footnote-37)

 Alternatively, agencies could implement policies to reduce fees and make record requests more affordable for all requesters, regardless of their ability to pay. For instance, an agency could charge a fee only if the request takes at least one, two, or four hours – a practice in other states – rather than charging after fifteen or thirty minutes.[[38]](#footnote-38) Several states permit a custodian to charge only for the time spent redacting exempt information from a record and not for the time an attorney or employee spends determining whether the record is exempt from disclosure – a common charge in Florida.[[39]](#footnote-39) Even without waiving fees, agencies could reduce the costs of records requests if made in the public interest by revising what is considered “extensive” labor.

**Conclusion**

 Public records are essential to oversight of state agencies. Florida lawmakers and voters considered access to public information critical and provided a right of access to records both in statute and in the state constitution. Despite the importance of public records and guarantees of access for every person, charges preclude many individuals from seeking public records. Only requesters with the resources to pay thousands of dollars can exercise their constitutional right and access public records.

 This article was an attempt to build on research showing that cities would not be significantly affected by a fee waiver for records sought in the public interest, by analyzing data related to the impact of fee waivers on state agencies. While this is a limited sample, the findings are mostly in line with previous research. Four of the agencies reviewed receive a majority of records requests from entities with commercial interests or individuals with personal interests in the records. When considering all requests made to four agencies, only twelve percent would be subject to a fee waiver.

Waiving fees for requests made in the public interest ensures that information about the operations of government is available to the public and not limited by a requester’s ability to pay. A fee waiver, or changes to policies on special services charges, would ensure that reporters and nonprofit organizations with limited budgets are not denied access to information.

To further the purpose of the Public Records Law and make records available to every person, agencies should implement a fee waiver. The Florida Public Records Act permits agencies to charge for extensive use of information technology resources or extensive clerical or supervisory assistance. Nothing prohibits agencies or municipalities from implementing a procedure to waive or reduce fees. Agencies are free to adopt a fee waiver today.

Alternatively, the Florida legislature should amend the public records law to provide a definition of requests made in the public interest and a mechanism to waive or reduce fees for such requests. Legislation would create uniformity of the application of fee waivers across state and local entities.

As evidenced throughout the coronavirus pandemic, a lack of information can cause distrust and confusion. Access to information leads to a more informed public. A fee waiver and, in turn, greater accessibility to public information can dispel shade in the Sunshine State.

1. Jenny Staletovich, *The High Cost of Sunshine: Public Records in Florida Can Cost More than a Year’s Salary*, WLRN (Mar. 29, 2021, 6:00 AM), <https://www.wlrn.org/local-news/2021-03-29/the-high-cost-of-sunshine-public-records-in-florida-can-cost-more-than-a-years-salary>. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. *Gov. DeSantis, Collier County: Take action NOW to protect Immokalee’s farmworkers from COVID-19 ahead of the harvest!*, Coalition of Immokalee Workers (Sept. 3, 2020), <https://ciw-online.org/blog/2020/09/gov-desantis-collier-county/>. [↑](#footnote-ref-3)
4. Emma Ockerman, *Florida Wants $17,000 to Release Documents About COVID-19 Vaccine Rollout*, VICE News (Jan. 5, 2021, 10:58 AM), <https://www.vice.com/en/article/dy84dw/florida-wants-dollar17000-to-release-documents-about-covid-19-vaccine-rollout>. [↑](#footnote-ref-4)
5. *See* Mary Ellan Klas, *Timeline: Florida’s dark year for its Sunshine Law*, Miami Herald (Mar. 1, 2021, 4:17 PM), <https://www.miamiherald.com/news/politics-government/state-politics/article249587018.html>, Katie Santich, *Florida health officials agree to release variant data, pay attorney fees in Sentinel lawsuit*, Orlando Sentinel (Apr. 21, 2021, 5:37 PM), <https://www.orlandosentinel.com/news/os-ne-florida-department-of-health-settles-sentinel-lawsuit-over-variant-data-20210421-i5byxgkkkrczfkelkmalhzjv2q-story.html>. [↑](#footnote-ref-5)
6. Email on file with author. [↑](#footnote-ref-6)
7. Email on file with author. [↑](#footnote-ref-7)
8. Joshua Solomon, *Portions of Alma Lee Loy Bridge in Vero Beach ‘unstable,’ but state wants thousands of for detailed records*, TC Palm, (Apr. 7, 2021, 7:43 PM)<https://www.tcpalm.com/story/news/local/2021/04/07/17th-street-alma-lee-loy-bridge-partly-unstable-fdot-says-its-safe/7068853002/>. [↑](#footnote-ref-8)
9. Kelly Cox & Matthew Haber, *Does Freedom of Information Mean “Free”? How Hidden Costs of FOIA and Open Records Laws Impact the Public’s Ability to Request Governmet Documents*, N.Y.U J. Legis. & Pub. Pol’y Quorum (2020). [↑](#footnote-ref-9)
10. *Id.*  [↑](#footnote-ref-10)
11. In re Report & Recommendations of Judicial Mgmt. Council of Fla. on Privacy & Elec. Access to Court Records, 823 So. 2d 712, 713 (Fla. 2002). [↑](#footnote-ref-11)
12. Fla. Const. art. I, § 24(a). [↑](#footnote-ref-12)
13. Carol Marbin Miller & Daniel Chang, *When Births Go Horribly Wrong, Florida Protects Doctors and Forces Families to Pay the Price*, ProPublica (Apr. 8, 2021 9 AM).<https://www.propublica.org/article/when-births-go-horribly-wrong-florida-protects-doctors-and-forces-families-to-pay-the-price>. [↑](#footnote-ref-13)
14. Carol Marbin Miller & Daniel Chang, *DeSantis signs into law bill overhauling safety net for families with brain-damaged babies*, Miami Herald (June 22, 2021 7:05 PM). <https://www.miamiherald.com/news/state/florida/article252283013.html>. [↑](#footnote-ref-14)
15. Sarah Blaskey & Aaron Leibowitz, *‘Major error’ was flagged in 2018 inspection report of collapsed building near Miami Beach*,Miami Herald (July 07, 2021, 3:59 PM). <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article252385083.html>. [↑](#footnote-ref-15)
16. Fla. Stat. § 119.07(4)(a). [↑](#footnote-ref-16)
17. Fla. Stat. § 119.07(4)(a)1. [↑](#footnote-ref-17)
18. Fla. Stat. § 119.07(4)(b). [↑](#footnote-ref-18)
19. Fla. Stat. § 119.07(4)(d). [↑](#footnote-ref-19)
20. For example, in response to public records requests for agency’s public records policies, the Florida Department of Health provided a document stating that a special service charge will be charged for work exceeding fifteen minutes. The Agency for Health Care Administration, Department of Lottery, and Executive Office of the Governor each charge fees after thirty minutes of labor. The Florida Department of Agriculture and Consumer Services defines extensive labor as more than two hours spent to respond to a request. [↑](#footnote-ref-20)
21. 1985-03 Fla. Op. Att’y Gen. (1985). [↑](#footnote-ref-21)
22. Bd. of Tr., Jacksonville Police & Pension Fund v. Lee, 189 So. 3d 120, 129 (Fla. 2016). [↑](#footnote-ref-22)
23. *See* N. Cty. Parents Org. v. Dep’t of Educ., 28 Cal. Rptr. 359 (Cal. Ct. App. 1994). [↑](#footnote-ref-23)
24. 5 U.S. § 552(a)(4)(A)(ii)(I). [↑](#footnote-ref-24)
25. 5 U.S. § 552(a)(4)(A)(ii)(II). [↑](#footnote-ref-25)
26. *See e.g.* 5 Ill. Comp. Stat. 140/6(c) (2020), 1 M.R.S. § 408-A(11), S.C. Code Ann. § 30-4-30(B). [↑](#footnote-ref-26)
27. 5 U.S. § 552(a)(4)(A)(iii)(I). [↑](#footnote-ref-27)
28. *See* Ctr. of Medicare Advocacy, Inc. v. U.S. HHS, 557 F. Supp. 2d 221, 239 (D.C.C. 2008). [↑](#footnote-ref-28)
29. *See, e.g.,* Haw. Code R. § 2-71-32(b) (“A waiver of fees is in the public interest when: the requested record pertains to the operation or activities of an agency…the requester has the primary intention and actual ability to widely disseminate information from the government record to the general public at large.”); *In Def. of Animals v. Or. Health Sciences Univ.*, 112 P.3d 336, 354 (Or. Ct. App 2005) (“Thus, a waiver or reduction of fees ‘in in the public interest because making the record available primarily benefits the general public’… when furnishing the record has utility – indeed, its greatest utility to the community or society as a whole.”) [↑](#footnote-ref-29)
30. 5 Ill. Comp. Stat. 140/6(c) (2020). [↑](#footnote-ref-30)
31. Colo. Rev. Stat. § 24-72-205(4). *See also,* 51 Okl. Stat. § 24A.5 (“In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.”). [↑](#footnote-ref-31)
32. Conn. Gen. Stat. § 1-212(d) (2020). [↑](#footnote-ref-32)
33. FOIA FAQ https://www.foia.gov/faq.html (last visited July 21, 2021). [↑](#footnote-ref-33)
34. 5 Ill. Comp. Stat. 140/6(c) (2020), Idaho Code § 74-102(10)(f)(i)–(ii) (2020). [↑](#footnote-ref-34)
35. The Florida Department of Law Enforcement responded to my request nearly three months after I sent it and estimated that it would cost $66 to complete the request. The Florida Department of Transportation provided a log with the name of requester for free. The agency estimated that it would cost more than $100,000 to also provide a description of the request and whether any special service charges were imposed. [↑](#footnote-ref-35)
36. *See* I.R.C. § 501(c)(3). [↑](#footnote-ref-36)
37. *See e.g.* Alaska Stat. Ann § 40.25.110(c). (“If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying task.”) [↑](#footnote-ref-37)
38. Neb. Rev. Stat. §84-712 (3)(c) (allowing a custodian to charge only after four hours of labor). *See also*, Idaho Stat. § 74-102(10)(b)(i) and N.Y. Pub. Off. § 87(1)(c)iv., (permitting charge for search and review of records after two hours of labor). [↑](#footnote-ref-38)
39. *See e.g.,* Del. Code Ann. tit. 29 § 10003(m)(2) (2020) (“Administrative fees shall not include any cost associated with the public body’s legal review of whether any portion of the requested records is exempt under FOIA.”) *See also* Neb. Rev. Stat. §84-712 (3)(c), Or. Rev. Stat. § 192.324(4)(b), 65 Pa. Stat. Ann. § 67.1307(g), Utah Code Ann § 63G-2-203(5)(a). [↑](#footnote-ref-39)