

Public records, charging council member fee for copies

Number: INFORMAL

Date: April 20, 1998

Subject:

Public records, charging council member fee for copies

Mr. Anthony A. Garganese
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Post Office Box 1807
Cocoa, Florida 32923-1807

RE: PUBLIC RECORDS--MUNICIPALITIES--ATTORNEYS--ATTORNEY-CLIENT PRIVILEGE--
city's authority to charge for copies requested by city council member; city attorney's
representation of city council. s. 119.07, Fla. Stat.

Dear Mr. Garganese:

This is in response to your recent request on behalf of the City of Cocoa as to whether the city may impose special copying and service charges on a city council member who requests inspection or copying of public records unrelated to city council business. You also ask several questions regarding the city attorney's representation of the city council as a collegial body and whether such representation includes an attorney-client relationship with individual city council members.

In sum, the City of Cocoa may not impose special copying and service charges against a city council member on the basis that public records requested for inspection or copying are unrelated to city council business. Moreover, the city attorney represents the city council as a collegial body and acts at the request of the city council, not an individual member.

Section 119.07(1)(a), Florida Statutes, establishes the right of access to public records:

"Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law . . . and for all other copies, upon payment of the actual cost of duplication of the record."

The statute clearly states that any person is authorized to inspect and receive copies of public records. This office has recognized that a public person or employee is a "person" within the meaning of Chapter 119, Florida Statutes.[1] Moreover, there is no requirement that a person requesting a public record show a special or legitimate interest before being allowed to inspect or copy such record.[2]

Given the underlying objective in creating the Public Records Law, Chapter 119, Florida Statutes, it has been judicially stated that the purpose for a public records inquiry is immaterial.[3] Accordingly, the city may not inquire as to the purpose for the request to view or copy a public record, nor may it condition the release of such a record to a city council member only if the record relates to city business. The city council member, however, would be subject to any charges allowed by law for the copying of the records.

While this office will not comment on the policies that the city has initiated for public records requests, I would note that section 6A. of the Public Records Policy & Procedures, provides a limited exemption to allow no charge when a request is for copies up to fifteen pages, but imposes the appropriate fees when a request exceeds fifteen pages for all documents copied. It would be advisable to follow the policy uniformly in order to avoid any appearance of preferential treatment.

Questions regarding attorney-client privilege should be addressed to the Florida Bar. It is beyond the jurisdiction of this office to offer legal opinions relating to ethical concerns arising from the relationship between the attorney and the client. In Attorney General Opinion 97-61, this office recognized that the attorney for a school board represents the board as a collegial body and the attorney-client privilege may be asserted by the board, not an individual member thereof. Thus, it would appear that the city attorney acts at the request of the city council as a collegial body and not at the request of an individual member.

I trust these informal comments will assist you in the resolution of this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tzg

[1] See Fla. Op. Att'y Gen. 75-175 (1975).

[2] See *State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905) (abstract companies may copy documents from the clerk's office for their own use and sell copies to the public for a profit); *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276 (Fla. 2d DCA 1980).

[3] See *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985).