

Lashway, Lisa

From: NJLM - Municipal Clerks [njlm-clerks@cityconnections.com]
Sent: Tuesday, February 16, 2010 1:24 PM
To: Lashway, Lisa
Subject: NJLM Mayors Letter REVISED OPRA

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William G. Dressel Jr.
Executive Director
Michael J. Darcy, CAE
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LEAGUE ALERT

Municipal Clerk: Please forward to Mayor and Governing Body.

February 16, 2010

RE: REVISED - IMPORTANT OPRA FEES

Dear Mayor:

On February 10, 2010, the Appellate Division handed down a decision that has an important impact on the copying fees that public bodies, including municipalities, may charge when complying with OPRA requests.

In the past, most public bodies charged the fee schedule contained in N.J.S.A. 47:1A-5(b): first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page.

In Smith v. Hudson County Register, 2010 WL 456751, the Appellate Division ruled that public bodies could only charge the **actual costs** of copying. The Appellate Division went on to say that such charges may be approximated, and a margin of error of a few cents is tolerable. Public bodies will be required to adjust their "actual cost" calculation on at least an annual basis.

If the charges imposed are equal to or less than those outlined above, the requesting party would have the burden of proving that actual costs were lower. If they are higher than those outlined above, the burden shifts to the public body to prove that actual costs were higher.

It is important to remember that this ruling is prospective, and will not take effect until July 1, 2010. No immediate change in copying fees is required, and past requesters cannot receive retroactive refunds of copying fees.

The League will continue to keep you updated on any further appeals or legislation affecting this issue. We urge you to consult with your municipal attorney if you have any questions about the potential impact on this ruling.

Very truly yours,

William G. Dressel, Jr.
Executive Director

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