

MEMORANDUM OF LAW

DATE: August 20, 1992

TO: Rod Rippel, Industrial Waste Program Director

FROM: City Attorney

SUBJECT: Costs in Responding to Public Records Request

By memorandum of August 3, 1992, you enclosed a legal memorandum from the Environmental Health Coalition claiming "there is no legal basis for the Industrial Waste Program to suggest charging administrative fees for the preparation of public records for inspection" and "there is no provision in the San Diego Municipal Code which would allow the Industrial Waste Program to charge a fee. . . ." Without critiquing the substance or logic of the above statements, the law is quite to the contrary, as evidenced below.

The San Diego Municipal Code provides express authority for fees for records, including administrative costs for same.

Section 22.0103 Copies of Documents

The City Manager is hereby authorized to furnish to any person copies of any official record, document or paper of the City upon payment by such person of the required fee.

(a) The City Manager is hereby authorized to establish fees for such records, documents or papers which shall be calculated to recover the cost of such copies including a reasonable amount for administrative overhead. Fees may be rounded off to the nearest ten cents for amounts under one dollar, and to the nearest twenty-five cents for amounts over one dollar. Sales tax may be included or excluded from the established fee . . . .

San Diego Municipal Code section 22.0103 emphasis added  
Pursuant to this express authority, Administrative

Regulation 95.20 was adopted and provides the amount of 15" per page plus administrative time in excess of one-half hour. (See Section 3.3 of A.R. 95.20, attached for your convenience.) Of course, in following the Administrative Regulation, caution should be exercised to ensure that the charge does not exceed the cost of duplication. The thrust of both the Municipal Code and the Administrative Regulation is cost recovery, not cost inflation. When your actions then conform to these guidelines, you have express authority to charge a fee that will cover the cost of production. Such a modest fee can hardly be said to diminish or deny public access to information.

As to the discussion directed toward the Public Records Act (California Government Code section 6250 et seq.), it has been judicially noted that the act was modeled on the 1967 Freedom of Information Act (5 U.S.C.A. section 552), and that the Freedom of Information Act and cases construing it serve to illuminate the Public Records Act. *ACLU v. Deukmejian*, 32 Cal.3d 440 (1982). Under the federal act, the cases are legion with holdings permitting direct costs to include searching, processing and reproducing. *Crooker v. Department of Army*, 577 F. Supp. 1220 (D.D.C. 1984); *Irons v. FBI*, 571 F. Supp. 1241 (D. Mass. 1983). Hence identifiable administrative costs are proper direct costs.

#### SUMMARY

In short, you are expressly authorized to recover all direct costs, including administrative, in responding to requests for public records. The Public Records Act mandates that government documents be reviewable; it does not mandate the many to lose money for the informational gain of a few.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:014(x043.2)

Attachment:1

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