

OPRA Modernization Bill – copying fee problems - NJ OPRA Blog

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8.29.18

Every year, transparency warrior Senator Loretta Weinberg introduces a bill which would modernize and improve OPRA. This year's bill is S107. Given that Democrats now control the Senate, Assembly, and Governor's Office, we are hopeful that the bill has a chance of passing.

While the bill overwhelmingly improves OPRA, through a series of blogs we will highlight how some small provisions of the bill that seem non-controversial can actually cause some major problems for requestors.

First topic? Copying costs.

Currently, agencies cannot charge a copying charge to send requestors PDFs of documents. One creative way that agencies try to stall access to records is to think of a way to charge for them. Sadly, S107 will make such conduct perfectly legal.

S107 amends N.J.S.A. 47:1A-5(b) so that "a public agency may charge the fee for each copy made in the process of responding to a government record request made during the redaction process." What this means is that if an agency has to print a copy of a record to redact it, it can charge for that copy even if it ends up scanning the record to the requestor in a PDF.

Hypothetical:

John Doe files an OPRA request for a copy of an employee's one-page pay stub. The Custodian is obligated to redact the employee's social security number from that document, so she prints a copy of it and redacts it. S107 allows her to charge 5 cents for that record. She emails John Doe and tells him that he has to pay 5 cents before she will email the pay stub to him and that he can either mail in a check or

come pay by check at the clerk's office.

John Doe now has to find his checkbook, write a check for a measly 5 cents, pay 49 cents for a stamp, and wait 1-3 business days for it to arrive and the Custodian to email the pay stub to him. Or, he can take time off work to go drop off a check during the Custodian's business hours. That's an awfully big hurdle to receive a pay stub! It's not the cost is too much, but the hassle of having to arrange to pay the fee discourages and delays access. But, S107 permits it.

This is not a crazy hypothetical, by the way. Things like this actually happen all the time. The GRC has addressed this issue several times, such as in Galloway Township News and Paff.

Hopefully this provision will be removed as the S107 works its way through committees.