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# Colorado

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## Criminal Justice Reform Coalition

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Prevention, treatment, and alternatives work  
**Prison should be the last resort**

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May 4, 2004

Joe Ortiz  
Executive Director  
Colorado Department of Corrections  
2862 S. Circle Dr.  
Colorado Springs, CO 80906

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Dear Mr. Ortiz:

On February 19, 2004, you wrote to me in response to a request I had made on February 3 that you reconsider the Department of Correction's fees for photocopying public records. In your letter (Attachment A), you stated that the Department's practice of charging \$1 per page for public records requests was appropriate. On March 19, 2004, I reviewed documents at the Department's headquarters pertaining to the Department's costs for paper and leased photocopiers. Since that time, I have been given a draft copy of a new administrative regulation entitled "Records Management" (Attachment B, referred to here as "draft regulation"). I write today to urge a reconsideration of the fees established in the draft regulation.

Section IV.A.8.b.iii of the draft regulation states that requestors of records shall be charged \$15.00 per hour for staff time necessary to compile records and/or supervise the inspection of records, and \$1 "per photocopy," as well as actual postage costs. The draft regulation states that all records in the custody of the Department are governed by the Criminal Justice Records Act (CJRA). I would call your attention to CRS §24-72-306(1)(section 6 of the CJRA) which states that criminal justice agencies "may assess reasonable fees, *not to exceed actual costs*...for the search, retrieval, and copying of criminal justice records" (emphasis added). The Department's draft regulation echoes this statutory instruction by stating that the "DOC may assess reasonable fees, *not to exceed actual costs*" (Section IV.A.8, emphasis added).

If the language of the statute and the regulation are to be adhered to, charging \$1 per page cannot possibly be justified as a reasonable fee that does not exceed actual costs. The costs incurred by the Department in responding to a CJRA request consist of staff time, paper, photocopier costs, supplies, and postage. The draft regulation states that costs of staff time and postage be recouped by itemized charges—a practice that is commendable, as it provides the requestor with a detailed justification for fees. Once these costs are accounted for, however,

the remaining costs (paper and photocopying) cannot possibly amount to \$1 per page.

My March 19 review of documents revealed that the Department consistently pays 0.4¢ per page for copier paper (as determined by data from Stock Requisition Input Forms from the third quarter of FY 2004; see Attachment C). I also discovered that photocopier leases for machines located in the Department's headquarters range from a low cost of 1.463¢ per page (third floor break room) to a high cost of 5.209¢ per page (Executive Director's office). The average cost per page is 2.844¢ per page (see Attachment D). The photocopier leases include all service calls and supplies, except paper and staples.

Although I did not request current costs for photocopiers throughout the Department, a 2001 memorandum did list the prices for all DOC photocopiers from that fiscal year. Of the 215 machines leased by the Department in FY 2000, the average cost per page was 2.555¢, and 91% of the photocopiers cost the Department 5¢ per page or less (see Attachment E). The most expensive copier the Department leased in FY 2000 (and the only one that cost more than 6¢ per page) was one machine at Sterling Correctional Facility that cost 7¢ per page. While prices have likely changed since then, the change presumably is not dramatic (the average cost per page for headquarters copiers went up by only 0.391¢ per page during that time period and many particular machine lease prices went down). Using the FY 2004 average price for headquarters' photocopiers as a proxy for Department-wide photocopier costs, the cost of the photocopier rental and paper amounts to a cost to the Department of 3.244¢ per photocopy.

Colorado courts have ruled that when interpreting statutes, all words must be given effect and that it is not appropriate to presume that the legislature used language idly and with no intent that meaning should be given to its language (*Blue River Defense Comm. v. Town of Silverthorne*, 516 P.2d 452 (Colo. App. 1973)). Accordingly, the CJRA's allowance of "reasonable fees, not to exceed actual costs," must be adhered to when establishing the Department's fee schedule for CJRA requests. When staff time and postage are billed separately (as contemplated by the draft regulation), a charge of \$1 per page amounts to a markup of 3,516% over the Department's actual costs for supplies—in the parlance of standard English, such a markup is neither "reasonable," nor does it "not exceed actual costs." The fees envisioned by the draft regulation (both the \$1 per page for members of the public *and* the 25¢ per page fee for offenders) fail to satisfy the requirements of the CJRA and as such should be immediately adjusted to reflect the actual cost of approximately 3¢ per page.

I realize that you declined to act on my February 3 request to reconsider the Department's \$1 per page copying fee. I write again because the draft regulation proposes to charge requestors for staff time and postage separate from the per-page fee—a step which serves to significantly simplify the calculations of a reasonable per-page fee for copying. In your letter of February 19, you justify the \$1 per page fee in part by citing other government agencies which have similar fees. Not only do many agencies charge substantially *less* than \$1 per page, but an agency's improper interpretation of statute does not create a binding precedent (*Douglas County Bd. of Equalization v. Fidelity Castle Pines*, 890 P.2d 119 (Colo. 1995)).

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Department of Corrections  
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We believe that the fees established in the draft regulation are excessive and unnecessarily hinder public access to information in violation of the CJRA. We would prefer to resolve this issue without having to resort to legal action. If I can be of any assistance to you in this matter, please do not hesitate to contact me at (719) 475-8059 or via email at [stephen@ccjrc.org](mailto:stephen@ccjrc.org). I look forward to your prompt reply.

Sincerely,

Stephen Raher  
Senior Policy Analyst

Attachments

cc: Ken Salazar, Attorney General