

Can cost a bundle for Morris public records

Daily Record (Morristown) July 5, 2009

By Abbott Koloff, Staff Writer

An audio compact disc of a Mendham Township committee meeting costs \$25, about 50 times the typical CD store price. In Mount Arlington, a similar CD goes for 60 cents.

While most Morris County towns fax or e-mail some documents to members of the public, a significant number won't, even though state officials have indicated they should at least consider those options.

And while the county government recently made a drastic price reduction for copies of paper documents to reflect actual costs, partly because of a recent Mercer County court decision, Morris County's municipalities have not followed its lead.

Those are some findings from a Daily Record survey of Morris County's 39 towns, which was prompted by the county's decision to drop prices after being prodded by an open-public-records activist and the Mercer County court decision in a class-action suit.

Daniel O'Mullan, Morris County's attorney, said he recently agreed to drop the county's fees for paper documents to 5 cents a page, a 15-fold decrease for some documents that took effect two weeks ago. He said the change was made partly as a defensive measure.

"At 5 cents, we become much less liable to lawsuits," he said.

He said the county has paid "tens of thousands of dollars" to fight a pending lawsuit that claims self-service copying machines in the county records hall were priced too high at 25 cents a page. Those prices have since been dropped to 5 cents, O'Mullan said, so it made sense to do the same for OPRA request documents.

The county previously charged 75 cents per page for the first 10 pages of documents, 50 cents for each of the next 10 pages, and 25 cents per page after that — the maximum allowed by the state's Open Public Records Act. Almost every Morris County town charges that rate, with four municipalities having slightly different fees.

But a May 21 ruling by Superior Court Judge Linda Feinberg, allowing the class action suit to continue in Mercer County, said agencies should charge actual costs and not simply rely on the state maximum. The maximum rate, she said in the ruling, is not supposed to be the default rate.

Jesse Wolosky, an open-records activist from Sussex County, happened to be in Morris County looking up tax records last month and had a conversation with Tom Zaccone, the county's OPRA officer. He provided Zaccone with an Internet link to Feinberg's decision. Zaccone said that convinced him to reduce fees.

Wolosky had a similar conversation in Andover Township about the cost of documents, about five months before the court ruling, with an almost identical result. Vita Thompson, the municipal clerk, lowered paper copy rates from the state maximum to 7 cents per page, which she said reflects actual cost.

"We know it's the right thing to do," said Thompson, president of Sussex County's municipal clerks association. She said a majority of Sussex towns are considering lowering rates for paper copies and CDs or already have done so.

In Morris County, most towns continue to charge the state maximum for paper copies and nine charge at least \$10 for a CD or an audio tape, even though such items are available for less than \$1 in many stores.

Stephen Mountain, Mendham Township's administrator, said he's not sure how the municipality came up with a \$25 CD fee years ago, but added that officials are reviewing charges and expect to make some changes by the end of the summer.

"We have found some fees not reflective of costs," he said, adding that the CD charge "is one of the fees that has been on our radar." However, he said the state maximum charge for paper copies appears to reflect actual cost.

OPRA requires government agencies to charge the actual cost of documents and other items without charging for labor, except in extraordinary circumstances. The state's Government Records Council, known as the GRC, which oversees OPRA, ruled last year that the Madison Board of Education should reduce charges for audio tapes from \$30 to \$1.50.

The law also requires government agencies to provide documents in "the requested medium." Some open-records advocates, such as Wolosky, say that means agencies should fax and e-mail documents for no charge.

Nine Morris County towns won't send any documents by fax, according to the Daily Record survey, and 16 won't send any by e-mail.

The GRC ruled last year that Fredon Township officials violated OPRA when they failed to acknowledge a request for documents to be sent by e-mail. Fredon officials argued that they didn't have the documents in electronic form and lacked equipment to convert them. But because they sent documents by mail without even addressing the request for an e-mail, the GRC determined the response to be "insufficient."

It did not say officials were required to send documents by e-mail.

BettyLou DeCroce, Roxbury's clerk, said she doesn't know whether the law requires her to send faxes and e-mails, but added that she does send them in those forms, and for no charge. She places some restrictions on the size of faxes.

"How hard is it to push a button?" she said. "I don't have a problem with doing that because it's the public's information."

DeCroce said she was aware of the Feinberg decision regarding document costs and had passed it on to township attorney Anthony M. Bucco. Last week, Bucco said the decision isn't binding outside of Mercer County, and he expects the issue eventually to be resolved either by state appeals courts or the state Legislature. Until then, he said he will advise clients to charge the state maximum for paper copies.

"Everybody supports the idea that documents should be accessible," Bucco said. "But OPRA requests cost taxpayers an awful lot of money. You could have somebody working on those things a couple of hours a day and they can't do other things they were employed to do."

Jonathan Williams, Morristown's attorney, said he had not reviewed the Feinberg ruling, but added that the county's decision to reduce fees might have a broad impact.

"If they are doing that, then every municipality should reexamine the fees they charge to allow the public access to documents at the lowest possible price," he said.

Parsippany clerk Judith Silver said she dropped CD fees from \$15 to \$5 at the beginning of the year, based on a survey of fees in other towns. Parsippany still charges the state maximum for paper copies — although the first two pages are free. The township will continue to examine the issue, she said, adding that she would prefer the state to set uniform fees.