State of North Carolina
Department of Justice

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January 28, 2014

The Hon. Pat McCrory, Governor
State of North Carolina
116 W. Jones Street
Raleigh, N. C. 27603

Dear Governor McCrory:

In recent months, several of your cabinet agencies have adopted policies which impose a "special service charge" on requests for public records. It is my understanding that these policies were developed by your General Counsel's Office and Communications Office. These new policies essentially direct agencies to charge a special fee for any requests that require agency personnel more than 30 minutes to locate, copy and refile the requested records. This charge for an "extensive" request is calculated by adding the actual cost of duplication plus the cost of the salary and benefits of personnel involved. At least one agency policy directs that the charge for IT personnel be billed at $51.47 per hour. It is also my understanding that some local governments have begun to add on charges for "extensive" requests.

I believe these policies violate the spirit and perhaps the legislative intent of the North Carolina Public Records Act. As a state Senator, I was the sponsor of many of the Public Records and Open Meetings laws. We specifically limited the charge to the public for getting copies to the "actual cost" which "is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made" [NCGS 132-6.2(b)].

The Legislature did recognize that there were special circumstances where "extensive" requests would be made so a "special service charge" was allowed. Although there are no specific North Carolina cases deciding this issue, I question whether a 30 minute standard constitutes "extensive" as that term is used in the law. We here in the Department of Justice get numerous requests for public records and our personnel have to spend significant time reviewing them to make sure that confidential information is not released. However, we consider that part of the job and have yet to charge a "special service charge".

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I am also concerned that these policies establishing a "special service charge" will result in more litigation. I urge you and your administration to review and reconsider these policies. I will also send a copy of this letter to local governments who are engaging in this practice when it is brought to our attention.

This letter is copied to legislative leaders to request that they consider legislative changes to NCGS 132-6.2 so that they can more clearly define "extensive" requests and the "special service charge", particularly if your administration declines to make these changes.

The people are poorly served by barriers to obtain information they already own. My Chief Deputy, Grayson Kelley, and I are available to you and legislators to discuss these matters.

With kind regards, I am

Very truly yours,

Roy Cooper

RAC/sm

cc: The Hon. Phil Berger
The Hon. Thom Tillis
The Hon. Harry Brown
The Hon. Edgar Starnes
The Hon. Martin Nesbitt
The Hon. Larry Hall