



**State of New York
Department of State
Committee on Open Government**

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June 15, 2023

FOIL AO 19848

By Electronic Mail Only:

The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence unless otherwise indicated.

The Committee on Open Government (Committee) received your request for an advisory opinion as to whether the New York State Police (NYSP) is authorized by statute to charge \$15.00 for digital copies of reports pursuant to Public Officers Law (POL) § 66-a(2).

The Freedom of Information Law (FOIL) states, in relevant part, that:

Each agency shall promulgate rules and regulations ... pertaining to the availability of records and procedures to be followed, including, but not limited to ... except when a different fee is otherwise prescribed by statute: (1) the fees for paper copies of records shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c) of this subdivision.

POL § 87(1)(b) (emphasis added). One statute that prescribes a different fee than what is authorized by FOIL is POL § 66-a(2). That statute reads:

Notwithstanding the provisions of section twenty-three hundred seven of the civil practice law and rules, the public officers law, or any other law to the contrary, the division of state police shall charge fees for the search and copy of accident reports and photographs. A search fee of fifteen dollars per accident report shall be charged, with no additional fee for a photocopy. An additional fee of fifteen dollars shall be charged for a certified copy of any accident report. A fee of twenty-five dollars per photograph or contact sheet shall be charged. The fees for investigative reports shall be the same as those for accident reports.

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As you know, when a statute includes a “notwithstanding” clause, it means the language of the statute applies despite the fact that there are other laws (such as Civil Practice Law and Rules § 2307 and Public Officers Law § 87) which may appear to conflict with its provisions. In other words, in this case, POL § 66-a governs what fees the NYSP may charge for certain records *instead of* POL § 87. So here, while POL § 87(c) prohibits an agency from charging a “search fee,” POL § 66-a specifically authorizes the NYSP to charge a \$15.00 search fee. POL § 66-a does not limit this search fee to records which would be produced as photocopies, but rather provides that the agency may not charge an *additional* fee for a photocopy of the record.

Given the fact that a different fee is prescribed by statute for accident reports and investigative reports maintained by the NYSP, and as discussed above that statute applies *instead of* the FOIL fee provisions, it is our opinion that the NYSP is permitted to charge a \$15.00 search fee per accident or incident report, regardless of the format in which the records may exist.

Thank you for your inquiry.

Sincerely,

Kristin O’Neill
Assistant Director