August 3, 2018

Martha H. Brown, Assistant Counsel
Pennsylvania Department of State
Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120

Re: Enhanced Electronic Access User Fees Request

Ms. Brown,

The Office of Open Records ("OOR") has reviewed your letter dated June 21, 2018, in which you requested approval of user fees for notary public master lists and other related electronic data pertaining to notary publics.

Pursuant to Section 1307(e) of the Right-to-Know Law ("RTKL"), the user fees for enhanced electronic access described in that letter are hereby approved.

A copy of your letter and this response will be posted to the OOR website.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Erik Arneson
Executive Director
June 21, 2018

Erik Arneson, Executive Director
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: Enhanced Electronic Access User Fees

Dear Mr. Arneson:

Pursuant to 65 P.S. § 67.1307(e) of the Right to Know Law, user fees for enhanced electronic access to public records must be approved by the Office of Open Records. Please accept this letter as the Department of State’s request for approval of the following user fees for notary public master lists and other notary-related electronic data requests:

- Master list of notaries public: $50
- Master list of notaries public approved to electronically notarize: $50
- Other notary public-related lists and data requests: $25

The Right to Know Law allows an agency to establish user fees for enhanced electronic access, with the approval of the Office of Open Records, provided that: 1) the enhanced electronic access is in addition to otherwise having the information accessible; 2) the fees are a flat rate, a subscription fee for a period of time, another reasonable method or combination of methods; 3) the user fees are reasonable; and 4) the fees are not established with the intent or effect of excluding persons from access to records; and 5) the fees are not established with the intent or effect of creating profit for the agency. 65 P.S. § 67.1307(e). The Department has fulfilled these provisions, as evidenced below.

**Information accessibility:** All of the public information available for notaries public that is contained in the Department’s notary public database is accessible to the public as required by 65 P.S. § 67.1307(e) and 57 Pa.C.S. § 324 (relating to Database of notaries public). The Department makes the information available on its website, which can be searched by notary name, commission number or location. To illustrate what is available on the website, several screen shots are enclosed for your reference as Attachment 1. While citizens can get information via the website at no cost, if copies of documents are requested, the Department charges the fees adopted by the Office of Open Records in the Official RTKL Fee Structure.
The enhanced electronic access under the above fees allows the public to obtain notary information in bulk (via an XML file) provided by the Department. An example of the first page of an XML file is enclosed for your reference as Attachment 2. It is the same public information available for notaries public that is contained in the Department’s notary database, compiled on a weekly basis for newly-appointed notaries or by special request (other time periods) or as needed (master lists of all notaries or electronic notaries).

**Fee rate/method:** The list fees set forth above are fixed, per-transaction fees, which provides certainty for requesters and Department staff alike.

**Reasonableness:** Currently, the notary database has information for more than 80,000 active notaries public. If the Department were to charge 25 cents per record, the master list fee would be in excess of $20,000. Each weekly report of newly-commissioned notaries contains records of approximately 500 notaries public. If the Department were to charge 25 cents per record, the master list fee would be in excess of $500. The Department also incurs additional costs for complying with list requests, as generation of the XML reports requires the assistance of Department’s information technology vendor. As such, the list fees charged by the Department are reasonable.

**Non-exclusion:** The establishment of these user fees for electronic access to lists that are regularly requested by the public has the effect of making more information available to requestors, rather than excluding persons from access to records. Typical requestors for a master list of all notaries public or a weekly list of new newly-appointed notaries are the notary associations, who are using it to market their services to notaries public. Having the information in XML format is a significant benefit to requestors, as they can use the data for marketing or communications.

**Profit:** The fees generated by the various lists of notaries public are not established with the intent or effect of creating a profit for the agency, as prohibited by 65 P.S. § 67.1307(e). Only the users of the services will pay the fee and there are a limited number of requestors for the lists. The anticipated revenue for all list requests is less than $6,600. The annual expenditures of the Bureau of Commissions, Elections and Legislation (which contains the Division of Commissions, Legislation and Notaries) are presently nearly $2 million. These funds are used for operational costs including personnel, facilities, equipment and maintenance and enhancement of the notaries database, as well as other Bureau record managements systems.

Please let me know if you need any further information about this request. I look forward to hearing from you.

Sincerely,

Martha H. Brown
Assistant Counsel

Attachments

c: Julio Peña, Manager, Division of Commissions, Legislation and Notaries
   Rebecca Fuhrman, Department of State Open Records Officer
https://www.notaries.pa.gov/Pages/NotarySearch.aspx
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<td>ARONSON, MARC L.</td>
<td>PENNSYLVANIA ASSOCIATION OF NOTARIES</td>
<td>(412) 281-0070</td>
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<tr>
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Attachment 2

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