

CITY OF HUNTINGTON BEACH

Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165,
Statutes of 1989; and Chapter 675, Statutes of 1990

July 1, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

June 2009



JOHN CHIANG
California State Controller

June 24, 2009

The Honorable Keith Bohr
Mayor of the City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Dear Mayor Bohr:

The State Controller's Office audited the costs claimed by the City of Huntington Beach for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The city claimed \$209,708 for the mandated program. Our audit disclosed that \$4,061 is allowable and \$205,647 is unallowable. The costs are unallowable because the city claimed \$128,886 for activities that were ineligible for reimbursement under the mandated program and \$76,761 for eligible activities that were based on estimates and not supported with corroborating documentation. The State paid the city \$52,309. The amount paid exceeds allowable costs claimed by \$48,248.

For the unsupported costs claimed, if the city can subsequently provide corroborating evidence to support the time it takes to perform individual reimbursable activities, as well as the number of activities performed, we will revise the audit finding as appropriate.

If you disagree with the audit finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site link at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

cc: Bob Wingenroth, Director of Finance
City of Huntington Beach
David Bunetta, Lieutenant
Huntington Beach Police Department
Todd Jerue, Program Budget Manager
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Huntington Beach for the legislatively mandated Peace Officers procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The city claimed \$209,708 for the mandated program. Our audit disclosed that \$4,061 is allowable and \$205,647 is unallowable. The costs are unallowable because the city claimed \$128,886 for activities that are ineligible for reimbursement under the mandated program and \$76,761 for eligible activities that were based on estimates and not supported with corroborating documentation. The State paid the city \$52,309. The amount paid exceeds allowable costs claimed by \$48,248.

Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code Sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code Section 17561 and adopted the statement of decision. The CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code Section 17514. The CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. The CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal, Interrogation, and Adverse Comment. In compliance with Government Code Section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the city's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Finding and Recommendation section of this report.

For the audit period, the City of Huntington Beach claimed \$209,708 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$4,061 is allowable and \$205,647 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payment to the city. Our audit disclosed that \$280 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$280, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the city. Our audit disclosed that \$3,781 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$3,781, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the city \$52,309. Our audit disclosed that the claimed costs are unallowable. The State will offset \$52,309 from other mandated program payments due the city. Alternatively, the city may remit this amount to the State.

**Views of
Responsible
Officials**

We issued a draft audit report on April 10, 2009. Bob Wingenroth, Director of Finance, responded by letter dated April 29, 2009 (Attachment), disagreeing with most of the audit results. This final audit report includes the city's response.

Restricted Use

This report is solely for the information and use of the City of Huntington Beach, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

June 24, 2009

**Schedule 1—
Summary of Program Costs
July 1, 2003, through June 30, 2006**

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment ¹</u>
<u>July 1, 2003, through June 30, 2004</u>			
Direct costs:			
Salaries	\$ 53,900	\$ —	\$ (53,900)
Benefits	23,915	—	(23,915)
Services and supplies	280	280	—
Total direct costs	78,095	280	(77,815)
Indirect costs	11,696	—	(11,696)
Total program costs	<u>\$ 89,791</u>	280	<u>\$ (89,511)</u>
Less amount paid by the State		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 280</u>	
<u>July 1, 2004, through June 30, 2005</u>			
Direct costs:			
Salaries	\$ 24,353	\$ 1,260	\$ (23,093)
Benefits	14,123	731	(13,392)
Travel and training	1,351	1,351	—
Total direct costs	39,827	3,342	(36,485)
Indirect costs	8,484	439	(8,045)
Total program costs	<u>\$ 48,311</u>	3,781	<u>\$ (44,530)</u>
Less amount paid by the State		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 3,781</u>	
<u>July 1, 2005, through June 30, 2006</u>			
Direct costs:			
Salaries	\$ 35,874	\$ —	\$ (35,874)
Benefits	23,324	—	(23,324)
Total direct costs	59,198	—	(59,198)
Indirect costs	12,408	—	(12,408)
Total program costs	<u>\$ 71,606</u>	—	<u>\$ (71,606)</u>
Less amount paid by the State		52,309	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 52,309</u>	
<u>Summary: July 1, 2003, through June 30, 2006</u>			
Direct costs:			
Salaries	\$ 114,127	\$ 1,260	\$ (112,867)
Benefits	61,362	731	(60,631)
Services and supplies	280	280	—
Travel and training	1,351	1,351	—
Total direct costs	177,120	3,622	(173,498)
Indirect costs	32,588	439	(32,149)
Total program costs	<u>\$ 209,708</u>	4,061	<u>\$ (205,647)</u>
Less amount paid by the State		(52,309)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (48,248)</u>	

Schedule 1 (continued)

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment ¹</u>
<u>Summary by Cost Component</u>			
Administrative activities	\$ 73,241	\$ 3,781	\$ (69,460)
Administrative appeal	10,276	—	(10,276)
Interrogations	102,637	280	(102,357)
Adverse comment	23,554	—	(23,554)
Total program costs	<u>\$ 209,708</u>	<u>\$ 4,061</u>	<u>\$ (205,647)</u>

¹ See the Finding and Recommendation section.

Finding and Recommendation

**FINDING—
Overstated salaries,
benefits, and related
indirect costs**

The city claimed \$175,489 in salaries and benefits and \$32,588 in related indirect costs for the audit period. Salaries and benefits claimed totaling \$173,498 for the audit period are unallowable because the activities claimed are not identified in the parameters and guidelines as reimbursable costs (\$110,264) or because reimbursable costs were estimated and not supported with adequate corroborating documentation (\$63,234). Related unallowable indirect costs totaled \$32,149.

For each fiscal year in the audit period, the city claimed costs for activities that did not exceed the duties of due process of law and, therefore, did not impose increased costs as a result of compliance with the mandate. Such activities are ineligible for reimbursement. In addition, the city claimed costs under the cost components of Administrative Activities and Adverse Comment for eligible activities that would have been reimbursable, except that they were based on estimates that were not supported by adequate corroborating documentation.

For the unsupported costs claimed, if the city can subsequently provide corroborating evidence to support the time it takes to perform individual reimbursable activities, as well as the number of activities performed, we will revise the audit finding as appropriate.

The following table summarizes the claimed, allowable, and unallowable costs for the audit period:

	<u>Claimed Costs</u>	<u>Allowable Costs</u>	<u>Audit Adjustment</u>
Salaries and benefits:			
Administrative activities	\$ 59,589	\$ 1,991	\$ (57,598)
Administrative appeals	8,839	—	(8,839)
Interrogations	87,619	—	(87,619)
Adverse comment	<u>19,442</u>	<u>—</u>	<u>(19,442)</u>
Total salary and benefit costs	175,489	1,991	(173,498)
Related indirect costs	<u>32,588</u>	<u>439</u>	<u>(32,149)</u>
Total	<u>\$ 208,077</u>	<u>\$ 2,430</u>	<u>\$ (205,647)</u>

Administrative Activities

The city claimed \$59,589 in salaries and benefits for the audit period under the Administrative Activities cost component. Related indirect costs totaled \$12,301. We determined that \$57,598 was unallowable. Related indirect costs totaled \$11,862.

The parameters and guidelines (section IV.A.) allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR [*sic*] cases.

The city claimed \$11,620 for the audit period to revise and update internal policies, procedures, manuals, and/or other materials relating to rights of public safety officers. However, the costs claimed for this allowable activity were based entirely on estimates. The city did not provide any corroborating documentation to support the estimates. Accordingly, the costs are unallowable.

The city claimed \$15,797 for the audit period for attendance at training sessions. We determined that \$1,991 is allowable and \$13,806 is unallowable.

For FY 2004-05, the city claimed 72 hours for training. We determined that 24 hours are allowable and 48 hours are unallowable. The unallowable hours occurred because 32 hours are claimed for training hours that were not related to the mandate program. The unallowable training hours included the following:

- Pitchess review
- Legal update, re-discovery, personal and civil liability

In addition, 16 hours claimed for Officer Procedural Bill of Rights training were not supported by documentation.

The city claimed 95 hours for training in FY 2005-06. We determined that none of the hours are allowable because none of the training was supported by documentation.

The city also claimed \$26,431 for the audit period for the reimbursable activity of updating the status of POBOR cases. However, the costs were estimated and the city did not provide any corroborating documentation to support the estimates. Accordingly, all of the costs are unallowable.

The following table summarizes estimated costs and unsupported costs for the Administrative Activities cost component:

<u>Cost Component</u>	<u>Unallowable Costs</u>	<u>Estimated Costs</u>	<u>Total</u>
<u>FY 2003-04</u>			
Travel and training	\$ —	\$ —	\$ —
Policies and procedures	—	6,963	6,963
Update status	—	2,359	2,359
Total salaries and benefits	—	9,322	9,322
<u>FY 2004-05</u>			
Travel and training	3,974	—	3,974
Policies and procedures	—	2,070	2,070
Update status	—	13,254	13,254
Total salaries and benefits	3,974	15,324	19,298
<u>FY 2005-06</u>			
Travel and training	9,832	—	9,832
Policies and procedures	—	2,587	2,587
Update status	—	16,559	16,559
Total salaries and benefits	9,832	19,146	28,978
Grand total	<u>\$ 13,806</u>	<u>\$ 43,792</u>	<u>\$ 57,598</u>

Administrative Appeal Activities

The city claimed \$8,839 in salaries and benefits during the audit period under the Administrative Appeals cost component. Related indirect costs totaled \$1,437. We determined that all costs claimed were unallowable because claimed costs do not meet the criteria for reimbursement per the adopted parameters and guidelines.

The parameters and guidelines (section IV.B.2.) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

The city incurred costs for providing and conducting administrative appeals under this cost component. However, an Internal Affairs representative stated that the administrative appeals resulted from actions against permanent employees, such as Skelly hearings, a formal grievance lawsuit, and civil service appeals. In addition, the hearings and appeals took place as a result of non-reimbursable disciplinary outcomes (suspensions/dismissals), which fall under due process.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

If officers appeal actions such as transfers for purposes of punishment or denials of promotion, then administrative appeal costs can be claimed for reimbursement. However, if peace officers appeal actions such as dismissals, demotions, suspensions, reductions in pay, or written reprimands, then those appeal hearings would fall under due process and cannot be claimed for reimbursement. Costs incurred for defending the city from lawsuits filed against the city are not reimbursable because the costs do not involve procedural protections of the city's peace officers.

Interrogation Activities

The city claimed \$87,619 in salaries and benefits for the audit period under the Interrogations cost component. Related indirect costs totaled \$14,738. We determined that the entire amount is unallowable. The costs are unallowable because they were not identified in the parameters and guidelines as reimbursable costs

The parameters and guidelines identify specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

The parameters and guidelines (section IV.C., Interrogation) identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines (section IV.C.) also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. This section further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [*sic*] was enacted.

The parameters and guidelines (section IV.C.) also state that the following activities are reimbursable:

- Tape recording the interrogation when the peace officer employee records the interrogation, and
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers,

The city claimed costs for the following activities that are not reimbursable:

- Interrogating accused and witnessing officers during regular hours; and
- Interrogating for Skelly hearings, formal grievance appeals, and civil service appeals.

Adverse Comment Activities

The city claimed \$19,442 in salaries and benefits during the audit period under the Adverse Comment cost component. Related indirect costs totaled \$4,112. We determined that the entire amount is unallowable. The costs are unallowable because the city estimated all costs associated with adverse comments and did not provide any corroborating documentation to support the estimates.

Depending on the circumstances surrounding an adverse comment, parameters and guidelines allow some or all of the following four activities upon receipt of an adverse comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer’s refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

The city claimed the following activities that were reimbursable, but all costs claimed were based upon estimates and were not corroborated by any supporting source documentation:

- Reviewing documentation;
- Reviewing and preparing adverse comment;
- Notifying and presenting adverse comment to the officer; and
- Command staff review.

The following table summarizes the overstated salaries and benefits and related indirect costs by fiscal year:

	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries	\$ (53,900)	\$ (23,093)	\$ (35,874)	\$(112,867)
Benefits	(23,915)	(13,392)	(23,324)	(60,631)
Subtotal	(77,815)	(36,485)	(59,198)	(173,498)
Related indirect costs	(11,696)	(8,045)	(12,408)	(32,149)
Audit adjustment	\$ (89,511)	\$ (44,530)	\$ (71,606)	\$(205,647)

The parameters and guidelines for POBOR, adopted by the CSM on July 27, 2000, and corrected on August 17, 2000, define the criteria for procedural protections of the city’s peace officers.

The parameters and guidelines (section IV., Reimbursable Activities) outline specific tasks that are deemed above the due process clause. The Statement of Decision on which the parameters and guidelines was based noted that due process activities were not reimbursable.

The parameters and guidelines (section V.A.1., Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

The parameters and guidelines (section VI., Supporting Data) require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

A substantial portion of the time records reviewed by your auditors is based on estimates rather than actual time recording documentation. The City believes that the estimates are very reasonable and conservative and actually understate the full costs of complying with the POBOR mandate. The Controller has stated in its draft audit report that "if the city can subsequently provide corroborating evidence to support the time it takes to perform individual reimbursable activities, as well as the number of activities performed, we will revise the audit findings as appropriate." The City strongly and respectfully requests the Controller reconsider the evidence that supports the completion of the mandated activities and reasonableness of the time estimates contained in the claims.

The remainder of this letter contains the City's specific responses to the Controller's audit findings. The Controller's draft audit report contained the following audit finding:

- Finding – Overstated salaries and benefits and related Indirect Costs

The City does take exception to most of the disallowances contained in the Controller's "Finding 1 – Overstated salaries, benefits, and related indirect costs" in which the Controller believes the activities claimed were not identified in the parameters and guidelines as reimbursable costs or because reimbursable costs were not supported with adequate documentation.

City Response

This Controller's audit finding includes salary and benefit disallowances in all 4 of the individual cost components included in the Commission on State Mandates original set of parameters and guidelines. The four components are: (1) Administrative Activities, (2) Administrative Appeal Activities, (3) Interrogation Activities, and (4) Adverse Comment Activities. The City disagrees with most of the proposed disallowances. The City has responded separately to each of the three below.

1. Administrative Activities

... At this time, the City is not contesting the Controller's disallowance of 32 hours claimed for training hours that were not related to the mandate program.

2. Administrative Appeal Activities

... At this time, the City is not contesting the Controller's disallowance, as there was a difference in opinion as to the interpretation of the law.

3. Interrogation Activities

... The City objects to the disallowance for its Police Department staff to perform the following eligible activities:

- Interrogating accused and witnessing officers during regular hours.

The Controller disallowed interrogation activities [sic] for interrogations that occurred during normal working hours. The City believes the costs incurred during normal business hours for completing the mandated interrogation activities in accordance with regular department procedures required by the seriousness of the investigation are eligible costs. The City recommends the Controller re-examine the Commission of State Mandates Statement of Decision in which the Commission made the following finding with regard to interrogations:

Conducting the interrogation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts. (Emphasis added.)

The use of the conjunctive "and" and the plural "requirements" refer to the fact that the Commission found that both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are reimbursable activities of the mandate.

The citing of the Commission's Final Staff Analysis does not reflect the action taken by the Commission. The Commission's staff comment that "Certainly, local agencies were performing these investigative activities before POBOR was enacted" has no relevance to whether or not a cost is eligible for reimbursement under the provisions of the California Constitution. The question is, were these activities required by pre-existing law. The actual practices of local agencies have no legal bearing on whether or not an activity is reimbursable.

The City respectfully requests the Controller allow for the reimbursement of these interrogation costs incurred by its Police Department during the audit period.

4. Adverse Comment Activities

... The Controller's proposed disallowance includes the total of all cost claimed in the three fiscal years. The City has documentation supporting the completion of the eligible mandated adverse comments activities and can identify which officer carried out those activities.

Due to the demands on limitation of staff time, at this time, the City has not conducted a time study to support the costs it takes to complete the four mandated activities it must perform to process each POBOR case.

The City believes the information provided is sufficient for the State Controller's Office to reverse those disallowed costs it has contested. . .

SCO's Comment

The finding and recommendation remain unchanged.

The city does not dispute that a substantial portion of its time records are based on time estimates. The city contends that its time estimates "are very reasonable and conservative and actually understate the full costs of complying with the POBOR mandate." Whether the time claimed was reasonable or not is not the issue. The parameters and guidelines require that claimants specify the actual time devoted to each reimbursable activity by each employee.

The documentation requirements are found in the parameters and guidelines (section VI., Supporting Data) adopted by CSM which states:

For audit purposes, all costs shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program.

In addition, the parameters and guidelines (section V., Supporting Documentation) states that claimed costs for salaries and benefits must be supported by the following information:

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the *actual time* [emphasis added] devoted to each reimbursable activity.

By claiming estimated costs with no additional supporting or corroborating documentation, the city did not meet the requirement of reporting *actual* costs. In addition, there is no way for SCO to verify whether the time claimed by the city was reasonable or not in the absence of actual time records.

We will address the rest of our comments for the audit finding in the same order as they appear in the city's response.

Administrative Activities

The city is not contesting this finding.

Administrative Appeal Activities

The city is not contesting this finding.

Interrogations

The city is objecting to our finding that costs incurred for interrogating accused and witnessing officers during regular working hours are unallowable. The city did not respond to the portion of the audit finding related to interrogating for Skelly hearings, formal grievance appeals, and civil service appeals.

The city is relying on specific language that appears on page 13 of the original statement of decision adopted by CSM on November 30, 1999, for the mandated program. The city claims that the language cited in its response supports a CSM finding that interrogations conducted during on-duty hours are reimbursable and requests that we re-examine the statement of decision. However, the statement of decision does not define reimbursable activities. These were written into regulation when CSM adopted the parameters and guidelines for POBOR on July 27, 2000, and corrected them on August 17, 2000.

The city is taking the statement of decision language cited in its response out of context. The language is found in the section of the statement of decision titled "Compensation and Timing of an Interrogation." The purpose of this section was to address the test claimant's assertion that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities.

The section begins on page 12 by stating that:

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor.

In addition, the parameters and guidelines (section IV.C., Interrogation) state that "claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or any other routine or unplanned contact with, a supervisor or any other public safety officer." The document goes on to specify five activities that are reimbursable.

The parameters and guidelines (section IV.C.1.) describe the only reimbursable activity that relates to interrogations. It states "when required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures."

Further, the language used by CSM staff in its analysis for Item #10 (Proposed Parameters and Guidelines for Peace Officers Procedural Bill of Rights) heard at its July 27, 2000 hearing (specifically on page 912) contains reference to Government Code section 3303, subdivision (a).

The CSM states that this section of the test claim legislation:

. . . addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [*sic*] was enacted.

The staff analysis goes on to state:

Based on the foregoing, staff has modified Section IV(C) as follows:

~~"1. Conducting an interrogation of a peace officer while the officer is on duty or compensating~~ When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)

Stating that interrogations conducted during an officer's regular on-duty time is reimbursable is contrary to the other wording that appears in the statement of decision, the staff analysis for the proposed parameters and guidelines, and in the adopted parameters and guidelines. Therefore, the preponderance of evidence on this issue does not support the city's contention.

We also noted that at a subsequent CSM hearing, held on December 4, 2006, one of the agenda items (item #13) concerned Requests to amend parameters and guidelines for the POBOR Program. During testimony for this item, a San Bernardino County representative testified that the county had submitted an amendment to clarify what was adopted in the original statement of decision. The county representative disagreed with the CSM staff's conclusion regarding interrogations because it was supposedly inconsistent with the original statement of decision; the representative urged CSM to reconsider the amendment. The Chief Legal Counsel for the CSM responded that some statements in the original statement of decision were being taken out of context. She clarified that the test claim legislation does not mandate local agencies to interrogate an officer and it does not mandate local agencies to investigate. Rather, these activities are based on local policy and regulation.

Adverse Comment

We noted in the audit report that costs claimed by the city for reviewing documentation, reviewing and preparing adverse comments, notifying and presenting adverse comments to officers, and command staff review would have been reimbursable if the costs had been properly supported. We concur that these activities were completed by Police Department personnel and that the city can identify who performed the activities. However, the time required to perform the activities was estimated and the city has not yet provided any additional documentation to support the actual time that it takes to perform the activities. The activities claimed by the city under this cost component are activities that would be eligible for a time study. If the city subsequently provides corroborating evidence to support the time it takes to perform these activities, we will revise the audit report as appropriate.

**Attachment—
City's Response to
Draft Audit Report**



CITY OF HUNTINGTON BEACH

Finance Department

Bob Wingenroth
Director of Finance

April 29, 2009

Jim L. Spano, Chief
Mandated Cost Audits Bureau
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814-4347

Dear Mr. Spano:

Please accept this letter as the City of Huntington Beach's response to the State Controller's April 10, 2009 Draft Final Audit Report of the City's Peace Officers Procedural Bill of Rights (POBOR) mandated cost claims for the three fiscal years between: July 1, 2003 to June 30, 2006. The Controller proposes to disallow \$205,647 of the \$209,708 claimed. The audit report concluded that "the costs are unallowable because the city claimed...activities that were ineligible for reimbursement under the mandated program and...eligible activities that were based on estimates and not supported with corroborating documentation."

A substantial portion of the time records reviewed by your auditors is based on estimates rather than actual time recording documentation. The City believes that the estimates are very reasonable and conservative and actually understate the full costs of complying with the POBOR mandate. The Controller has stated in its draft audit report that "if the city can subsequently provide corroborating evidence to support the time it takes to perform individual reimbursable activities, as well as the number of activities performed, we will revise the audit findings as appropriate." The City strongly and respectfully requests the Controller reconsider the evidence that supports the completion of the mandated activities and reasonableness of the time estimates contained in the claims.

The remainder of this letter contains the City's specific responses to the Controller's audit findings. The Controller's draft audit report contained the following audit finding:

- Finding - Overstated salaries and benefits and related Indirect Costs

The City does take exception to most of the disallowances contained in the Controller's "Finding 1 – Overstated salaries, benefits, and related indirect costs" in which the Controller believes the activities claimed were not identified in the parameters and

guidelines as reimbursable costs or because reimbursable costs were not supported with adequate documentation.

Controller Finding 1 – Overstated Salaries and benefits

The city claimed \$175,489 in salaries and benefits and \$32,588 in related indirect costs for the audit period. The audit determined that Salaries and benefits claimed totaling \$173,498 for the audit period are unallowable because the activities claimed are not identified in the parameters and guidelines as reimbursable costs (\$110,264) or because reimbursable costs were estimated and not supported with adequate corroborating documentation (\$62,234). Related unallowable indirect costs totaled \$32,149.

City Response

This Controller's audit finding includes salary and benefit disallowances in all 4 of the individual cost components included in the Commission on State Mandates original set of parameters and guidelines. The four components are: (1) Administrative Activities, (2) Administrative Appeal Activities, (3) Interrogation Activities, and (4) Adverse Comment Activities. The City disagrees with most of the proposed disallowances. The City has responded separately to each of the three below.

1. Administrative Activities

Summary of the Controller's Finding:

The city claimed \$59,589 in salaries and benefits for the audit period under the Administrative Activities cost component. Related indirect costs totaled \$12,301. We determined that \$57,598 was unallowable. Related indirect costs totaled \$11,862.

City Response by Component:

At this time, the City is not contesting the Controller's disallowance of 32 hours claimed for training hours that were not related to the mandate program.

2. Administrative Appeal Activities

Summary of the Controller's Finding:

The city claimed \$8,839 in salaries and benefits during the audit period under the Administrative Appeal cost component. Related indirect costs totaled \$1,437. The Controller determined that all costs claimed were unallowable because the claimed costs do not meet the criteria for reimbursement per the adopted parameters and guidelines.

City Response by Component:

At this time, the City is not contesting the Controller's disallowance, as there was a difference in opinion as to the interpretation of the law.

3. Interrogation Activities

Summary of the Controller's Finding:

The City claimed \$87,619 in salaries and benefits for the audit period under the Interrogations cost component. Related indirect costs totaled \$14,738. The Controller determined that the entire amount is unallowable because they were not identified in the parameters and guidelines as reimbursable costs.

City Response by Component:

The City objects to the disallowance for its Police Department staff to perform the following eligible activities:

- *Interrogating accused and witnessing officers during regular hours.*

The Controller disallowed interrogation activities for interrogations that occurred during normal working hours. The City believes the costs incurred during normal business hours for completing the mandated interrogation activities in accordance with regular department procedures required by the seriousness of the investigation are eligible costs. The City recommends the Controller re-examine the Commission on State Mandates Statement of Decision in which the Commission made the following finding with regard to interrogations:

Conducting the interrogation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts. (Emphasis added.)

The use of the conjunctive "and" and the plural "requirements" refer to the fact that the Commission found that both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are reimbursable activities of the mandate.

The citing of the Commission's Final Staff Analysis does not reflect the action taken by the Commission. The Commission's staff comment that "Certainly, local agencies were performing these investigative activities before POBOR was enacted" has no relevance to whether or not a cost is eligible for reimbursement under the provisions of the California Constitution. The question is, were these activities required by pre-existing law. The actual practices of local agencies have no legal bearing on whether or not an activity is reimbursable.

The City respectfully requests the Controller allow for the reimbursement of these interrogation costs incurred by its Police Department during the audit period

4. Adverse Comment Activities

Controller Finding:

The city claimed \$19,442 in salaries and benefits, all of which were deemed unallowable because they were estimated and the city did not provide any corroborating documentation to support the estimates.

City Response:

The Controller's proposed disallowance includes the total of all cost claimed in the three fiscal years. The City has documentation supporting the completion of the eligible mandated adverse comments activities and can identify which officer carried out those activities.

Due to the demands on limitation of staff time, at this time, the City has not conducted a time study to support the costs it takes to complete the four mandated activities it must perform to process each POBOR case.

The City believes the information provided is sufficient for the State Controller's Office to reverse those disallowed costs it has contested. Should you have any further questions regarding this matter, or need clarification of any issue, please contact Robert Sedlak, Accounting Manager at (714) 536-5907.

Sincerely,



Bob Wingenroth
Director of Finance

**State Controller's Office
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