

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
ON:

Evidence Code Sections 1043, Subdivision (a),  
Penal Code Sections 832.5, Subdivisions (b)  
and (c), and 832.7, Subdivisions (b) and (e);  
Statutes 1978, Chapter 630; Statutes 1994,  
Chapter 741;

Filed on October 24, 2003,

by City of Hayward and County of San Mateo,  
Claimants

No. 00-TC-24

***Peace Officer Personnel Records:  
Unfounded Complaints and Discovery***

ADOPTION OF PARAMETERS AND  
GUIDELINES PURSUANT TO  
GOVERNMENT CODE SECTION 17557  
AND TITLE 2, CALIFORNIA CODE OF  
REGULATIONS, SECTION 1183.14

*(Adopted on December 9, 2005)*

**PARAMETERS AND GUIDELINES**

On December 9, 2005, the Commission on State Mandates adopted the attached Parameters and Guidelines.

  
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PAULA HIGASHI, Executive Director

12-14-2005  
Date

## PARAMETERS AND GUIDELINES

Evidence Code Section 1043, subdivision (a)  
Penal Code Sections 832.5, subdivisions (b) and (c), and 832.7, subdivisions (b) and (e)

Statutes 1978, Chapter 630  
Statutes 1994, Chapter 741

*Peace Officer Personnel Records:  
Unfounded Complaints and Discovery (00-TC-24)*

City of Hayward and County of San Mateo, Claimants

### I. SUMMARY OF THE MANDATE

On June 29, 2001, claimant, City of Hayward (City), submitted a test claim alleging a reimbursable state mandate for employers of peace officers was imposed by amendments to Penal Code section 832.5. On the same date,<sup>1</sup> claimant, County of San Mateo (County), submitted a test claim alleging a reimbursable state mandate for employers of peace officers arising from additions and amendments to the Evidence and Penal Codes, including Penal Code section 832.5.

On September 13, 2002,<sup>2</sup> the Commission on State Mandates (Commission) received two test claims from claimant, Santa Monica Community College District, alleging substantially similar (but not identical) test claim legislation and activities on behalf of school district employers of peace officers to the claims originally filed by the City and County. On May 1, 2003, the Commission consolidated all four claims designating them *Peace Officer Personnel Records: Unfounded Complaints and Discovery (00-TC-24)*.

The Commission heard and decided this test claim during regularly scheduled hearings on July 31, 2003, and September 25, 2003. At the July 31, 2003 hearing, the Commission heard and decided the test claim allegations from the city and county claimants. At the September 25, 2003 hearing, the Commission heard the test claim allegations from the school district claimant.

On September 25, 2003, the Commission adopted the Statement of Decision for *Peace Officer Personnel Records: Unfounded Complaints and Discovery (00-TC-24)*. The Commission found that Evidence Code sections 1043, subdivision (a), Penal Code sections 832.5, subdivisions (b) and (c), and 832.7, subdivisions (b) and (e), constitute a new program or higher level of service and impose a reimbursable state-mandated program on local agency employers of peace officers within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

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<sup>1</sup> Reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

<sup>2</sup> Reimbursement period begins no earlier than July 1, 2001. (Gov. Code, § 17557, subd. (c).)

- Upon receipt of the notice that discovery or disclosure is sought of peace officer personnel records, the local agency served shall immediately notify the individual whose records are sought. (Evid. Code, § 1043, subd. (a).)<sup>3</sup>
- Retain complaints against peace officers by members of the public, and any reports or findings relating to these complaints, either in the officer's general personnel file or in a separate file, for an additional three years (a higher level of service above the two-year record retention requirement pursuant to Government Code sections 26202 and 34090). Complaints found to be frivolous, unfounded, or exonerated shall not be maintained in that officer's general personnel file, but shall be retained in other, separate files. (Pen. Code, § 832.5, subds. (b) and (c).)<sup>4</sup>
- Release to the complaining party a copy of his or her own statements at the time the complaint against the peace officer is filed. (Pen. Code, § 832.7, subd. (b).)<sup>5</sup>
- Provide written notification to the complaining party of the disposition of the complaint against the peace officer within 30 days of the disposition. (Pen. Code, § 832.7, subd. (e).)<sup>6</sup>

The Commission concluded that Evidence Code sections 1044, 1045, 1046 and 1047, Penal Code section 832.8, and none of the additional activities or costs claimed for receiving, responding to, or defending against a discovery motion, or investigating complaints against peace officers, constitute a new program or higher level of service within the meaning of the California Constitution, article XIII B, section 6.

The Commission also found that forming a school district police department and employing peace officers is a discretionary activity on the part of all school districts. Pursuant to Education Code sections 38000 and 72330, school districts remain free to discontinue providing their own police department, and statutory duties that follow from discretionary activities do not impose a reimbursable state mandate. Thus, the Commission concluded that school districts are not eligible claimants for the test claim statutes.

The Commission denied any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

## **II. ELIGIBLE CLAIMANTS**

Any city, county, and city and county that incurs increased costs as a direct result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

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<sup>3</sup> As amended by Statutes 1978, chapter 630; test claim allegation filed June 29, 2001, reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).).

<sup>4</sup> As amended by Statutes 1978, chapter 630; test claim allegation filed June 29, 2001, reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).).

<sup>5</sup> As amended by Statutes 1994, chapter 741; test claim allegation filed September 13, 2002, reimbursement period begins no earlier than July 1, 2001. (Gov. Code, § 17557, subd. (c).)

<sup>6</sup> *Ibid.*

### III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a fiscal year to establish eligibility for that fiscal year. The test claims for this mandate were filed on June 29, 2001 and September 13, 2002. Therefore, costs incurred for compliance with Evidence Code section 1043, subdivision (a), and Penal Code section 832.5, subdivisions (b) and (c), are reimbursable on or after July 1, 1999, and costs incurred for compliance with Penal Code section 832.7, subdivisions (b) and (e), are reimbursable on or after July 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

### IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

- A. Notice to Peace Officers (Evid. Code, § 1043, subd. (a).) Reimbursement period begins July 1, 1999.
  - 1. Provide immediate notice to an officer that his personnel file is the subject of discovery or disclosure.

B. Record Retention (Pen. Code, § 832.5, subds. (b) and (c).) Reimbursement period begins July 1, 1999.

1. Retain complaints against peace officers and any reports on findings relating to these complaints, for an *additional* three years. This is limited to the cost of retaining complaints against peace officers and any reports on findings relating to these complaints, including file storage of those records for the three-year period of time after the mandatory two-year retention period provided in Government Code sections 26202 and 34090. No staff time is required or reimbursable for this activity.
2. Maintain those complaints found to be frivolous, unfounded or exonerated in a file separate from the officer's general personnel file.

C. Notice to Complaining Party (Pen. Code, § 832.7, subds. (b) and (e).) Reimbursement period begins July 1, 2001.

1. Make a copy of the complaining party's own statements at the time the complaint against the peace officer is filed, and provide the complaining party a copy of that statement.
2. Provide written notification to the complaining party of the disposition of the complaint against the peace officer within thirty days of the disposition.

**V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that

were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable

indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>7</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim. Service fees collected include cost reimbursements received by counties pursuant to Government Code, Sections 27135, 27013, and 53684, subdivision (b).

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code, section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code, section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code, section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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<sup>7</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code, section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.