Hearing Date: April 19, 2013
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ITEM___

DRAFT STAFF ANALYSIS

AND

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapter 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act

02-TC-10 and 02-TC-51

County of Los Angeles and
Riverside Unified School District, Claimants

EXECUTIVE SUMMARY

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission's regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.[1] Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.[2] Oral or written testimony is offered under oath or affirmation in article 7 hearings.[3]

I. SUMMARY OF THE MANDATE

These proposed parameters and guidelines pertain to the consolidated *California Public Records Act* test claim (02-TC-10 and 02-TC-51), adopted May 26, 2011. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

The California Public Records Act (CPRA) provides for the disclosure of public records kept by state, local agencies, school districts and community college districts, and county offices of education. These activities include:

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;

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[1] California Code of Regulations, Title 2, section 1187.

[2] Government Code section 17559(b); California Code of Regulations, Title 2, 1187.5.

[3] *Ibid*.

- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats; and
- Removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

The Commission found that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255, as amended in Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014) impose reimbursable state-mandated programs on local agencies and K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514 as follows:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested, if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days of receipt of a request for a copy of records, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)
4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

    a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

    b. Describe the information technology and physical location in which the records exist; and

    c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

    These activities are not reimbursable when:

    - The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;

- The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or
- The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355).)

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

    a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

    This activity is not reimbursable when the information is requested by:

    - an agent, or a family member of the individual to whom the information pertains;
    - an officer or employee of another school district, or county office of education when necessary for the performance of its official duties;
    - an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld);
    - an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

    b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)

In addition, the Commission concluded that the fee authority set forth in Government Code section 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.[4]

[4] Exhibit A, Corrected Statement of Decision, at pp. 4-5.

II. PROCEDURAL HISTORY

The statement of decision on the test claim was adopted on May 26, 2011. A corrected statement of decision was issued on December 17, 2012, to correct a clerical error approving reimbursement for K-14 school districts, rather than K-12 school districts, for activities mandated by Government Code section 6254.3. That statute imposes requirements only on K-12 school districts.

On June 15, 2011, claimant Riverside Unified School District (Riverside) submitted proposed parameters and guidelines. On June 23, 2011, claimant Los Angeles County (LA County) submitted proposed parameters and guidelines. On July 22, 2011 the State Controller's Office (SCO) submitted comments on the proposed parameters and guidelines. On July 25, 2011, the Department of Finance (DOF) submitted comments on the proposed parameters and guidelines. On August 30, 2011, the claimant submitted rebuttal comments on the proposed parameters and guidelines.

III. POSITION OF THE PARTIES

Claimants' Position

Riverside submitted proposed parameters and guidelines restating and reordering, but not otherwise altering, the activities approved in the test claim statement of decision. LA County submitted proposed parameters and guidelines that substantially elaborate upon the approved activities, and in effect propose a number of alleged reasonably necessary activities. LA County's proposals are addressed in the analysis.

SCO Position

The SCO submitted comments in which it argued that the claimants' proposed parameters and guidelines "were confusing, not specific, and needed clarification."

DOF Position

The DOF submitted comments in which it argued that reimbursable activities proposed in the claimants' proposed parameters and guidelines were, alternatively, additive, duplicative, vague, or outside the scope of the mandate.

IV. DISCUSSION

The claimants' proposed reasonably necessary activities are analyzed herein, exactly as presented. Staff finds that some of the proposed reasonably necessary activities are not new, and were held to be requirements of prior law in the test claim statement of decision. Staff finds that some of the proposed activities are not supported by substantial evidence, and must be denied. And, staff finds that some of the proposed activities reasonably define or clarify the activities expressly approved in the test claim statement of decision, and should be approved. The parameters and guidelines reflect these changes.

Finally, the test claim statement of decision identified offsetting revenues, in the form of fee authority granted to local agencies and school districts for the activity providing a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.

The analysis herein discusses the legal foundation for identifying offsetting revenues, and provides that SCO may reduce reimbursement claims to the extent of fee authority provided.

V. STAFF RECOMMENDATION

Staff recommends that the Commission:

- Adopt the attached proposed statement of decision and proposed parameters and guidelines; and

- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES: Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255 Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014) Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.	Case No.: 02-TC-10 and 02-TC-51 *California Public Records Act* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted April 19, 2013*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on April 19, 2013. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

I. SUMMARY OF THE MANDATE

These proposed parameters and guidelines pertain to the consolidated *California Public Records Act* test claim (02-TC-10 and 02-TC-51), adopted May 26, 2011. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. The required activities include:

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;

- Making disclosable public records in electronic formats available in electronic formats; and
- Removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

The CPRA was originally adopted in 1968 "to more clearly define what constitutes a "public record" open to inspection and what information can be or is required to be withheld from disclosure."[5] The Commission found, in the test claim statement of decision, that the requirement for local agencies and school districts to make public records available for inspection during office hours, "except for public records exempted from disclosure or prohibited from disclosure" was required prior to 1975 and thus was not new.[6] The Commission also found that "the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process," and that the purpose and intent of the CPRA is "to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency."[7] In addition, the Commission found that a 1981 amendment to CPRA codified the courts' interpretation, that "CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying."[8] Finally, the Commission found that pursuant to Government Code sections 6256 and 6257, public agencies (both state and local government) have been required to provide "copies or exact copies of public records upon a request that reasonably describes an identifiable record" since the 1968 enactment of CPRA.[9]

However, the Commission found that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255, as amended in Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014), impose reimbursable state-mandated programs on local agencies and K-14 school districts, within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, as follows:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)

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[5] Exhibit A, Test Claim Statement of Decision, at p. 5.

[6] *Id*, at p. 12.

[7] *Id*, at p. 13.

[8] *Ibid*.

[9] *Id*, at p. 14.

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

    a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

    b. describe the information technology and physical location in which the records exist; and

    c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

    These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355).)

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

    a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

    This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

    b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used

exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)

In addition, the Commission concluded that the fee authority set forth in Government Code section 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.[10]

II. PROCEDURAL HISTORY

The first test claim was filed by the County of Los Angeles (LA County) on October 15, 2002. A second test claim on the same statutes was filed by Riverside Unified School District (Riverside) on June 26, 2003. Due to an ongoing dispute over the constitutionality of Government Code section 17556(f), and a ballot measure that would have triggered an analysis of the disputed issue, the two CPRA test claims were removed from the Commission's hearing calendar until the constitutionality of section 17556 was resolved in March of 2009.[11] On November 2, 2010 the two claims were consolidated by the executive director. The consolidated test claim was heard May 26, 2011. The statement of decision was adopted on May 26, 2011. A corrected statement of decision was issued on December 17, 2012, to correct a clerical error approving reimbursement for K-14 school districts, rather than K-12 school districts, for activities mandated by Government Code section 6254.3. That statute imposes requirements only on K-12 school districts.

On June 15, 2011, Riverside submitted proposed parameters and guidelines. On June 23, 2011, LA County submitted proposed parameters and guidelines. On July 22, 2011 the State Controller's Office (SCO) submitted comments on the proposed parameters and guidelines. On July 25, 2011, the Department of Finance (DOF) submitted comments on the proposed parameters and guidelines. On August 30, 2011, the claimant submitted rebuttal comments on the proposed parameters and guidelines.

III. POSITION OF THE PARTIES

A. Claimant Riverside's Position and Proposed Parameters and Guidelines

Riverside submitted proposed parameters and guidelines in which the claimant proposes reimbursement for exactly the activities approved in the test claim statement of decision, except that the claimant reorganizes the activities and re-numbers them.[12]

B. Claimant LA County's Position and Proposed Parameters and Guidelines

LA County submitted proposed parameters and guidelines in which the claimant proposes reimbursement for the activities approved in the test claim statement of decision, but also

[10] Exhibit A, Corrected Statement of Decision, at pp. 4-5.

[11] Exhibit A, Corrected Statement of Decision, at p. 6.

[12] Exhibit B, Riverside's Proposed Parameters and Guidelines.

proposes reimbursement for a number of reasonably necessary activities. These proposed reasonably necessary activities will be described in the analysis below.[13]

C. State Controller's Office Position

The SCO submitted comments on the proposed parameters and guidelines, in which SCO stated that "the reimbursable activities listed under the "Scope of Reimbursable Activities" were numbered incorrectly, included several duplications, and were incomplete." The SCO continued, "[f]urthermore, the reimbursable activities listed were confusing, not specific, and needed clarification." The SCO also suggested that activities should be designated "one-time" or "ongoing."[14]

D. Department of Finance Position

The DOF submitted comments on the proposed parameters and guidelines, in which DOF raises the following arguments:

- Claimants "appear to add to the activities found reimbursable by the Commission;"
- Many of the activities "appear to be outside the scope of the SOD as these were likely already required and utilized before this mandate and for purposes other than complying with this mandate;"
- Many activities are "duplicative and repetitious or are too vague and general and therefore lack sufficient specificity;"
- A number of activities "do not appear to be reasonably necessary to comply with the mandate, are inconsistent with the SOD, and additive in nature;" and
- Several of the activities "could be performed by lower-level staff than what is referenced in the [parameters and guidelines]."

The DOF recommends "that Commission staff apply the *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794 case and offset any and all applicable costs for specified activities…to the extent of the fee authority provided by law."[15]

IV. COMMISSION FINDINGS

A. Period of Reimbursement (Section III. of Proposed Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. LA County filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred on or after July 1, 2001 are reimbursable under this consolidated test claim, for statutes in effect before July 1, 2001, or later, as specified, for statutes effective after July 1, 2001. The language of Section III. Period of Reimbursement,

[13] Exhibit C, LA County's Proposed Parameters and Guidelines.

[14] Exhibit D, SCO Comments on Proposed Parameters and Guidelines.

[15] Exhibit E, DOF Comments on Proposed Parameters and Guidelines.

therefore reflects a reimbursement period beginning July 1, 2001, or later for specified activities added by subsequent statutes.

B. Reimbursable Activities (Section IV. of Proposed Parameters and Guidelines)

Government Code section 17557 provides that "[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program."[16] The Commission's regulations provide that parameters and guidelines shall include "a description of the most reasonable methods of complying with the mandate." "'The most reasonable methods of complying with the mandate' are those methods not specified in statute or executive order that are necessary to carry out the mandated program."[17]

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence.[18] The Commission's regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs," and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice "in the manner and of such information as is described in Government Code section 11515."[19] Therefore, reasonably necessary activities, in order to be adopted by the Commission, must be supported by substantial evidence, and that evidence must include something other than hearsay evidence.

LA County has proposed a number of reasonably necessary activities for reimbursement. These are analyzed below, incorporating SCO and DOF comments where appropriate. The claimant has ordered and categorized the proposed reasonably necessary activities under headings that approximate the language of the reimbursable activities expressly approved in the test claim statement of decision. The following analysis will determine that some of the activities that LA County proposes are reasonably necessary to implement the mandated activities approved in the test claim statement of decision, and others are beyond the scope of what was approved in the test claim statement of decision, or are not new.

To begin, the claimants have submitted scant evidence that the proposed activities are necessary to implement the mandate. The claimants have submitted declarations from Diane C. Reagan, Principal Deputy County Counsel for Los Angeles County; Nancy Takade, Principal Deputy County Counsel for Los Angeles County; Rick Brouwer, Principal Deputy County Counsel for Los Angeles County; and Shaun Mathers, Captain in the Risk Management Bureau of the

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[16] Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).

[17] Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

[18] Government Code section 17559(b) (Stats. 1984, ch. 1469, § 1; Stats. 1999, ch. 643 (AB 1679)).

[19] Code of Regulations, title 2, section 1187.5.

Los Angeles County Sheriff's Department. All four of these declarations refer to an "Attachment A," which includes a summary of the reasonably necessary activities proposed by LA County, and which was prepared by LA County's representative on the test claim before the Commission. But none of the four declarations directly states why or how the activities described in Attachment A are necessary for their departments to complete, in complying with the mandate. Instead, the declarants state they have *reviewed* the attachment, and that the attachment "includes and summarizes" the department's statutory and reasonably necessary activities for the parameters and guidelines.[20]

The declaration of Diane Reagan, for example, states that "I have reviewed Attachment A which *includes and summarizes* County Counsel's statutory and reasonably necessary activities for inclusion in Los Angeles County's proposed parameters and guidelines as reimbursable service components." Ms. Reagan does not state on her own information and belief that the activities in Attachment A are necessary to implement the mandate.[21]

Similarly, the declaration of Nancy Takade states that "I have reviewed Attachment A," and that "[t]hese reasonably necessary activities include the services that the attorneys in this Office currently provide and will continue to provide to Client Departments to assist them in performing the reimbursable CPRA activities described in the Commission Decision." Ms. Takade states that the activities "include the services" that the attorneys in the County Counsel's Office provide, but not that those services are necessary to comply with the mandate, or that Attachment A includes *only* the services being provided.[22]

The same result obtains in the declarations of Rick Brouwer and Shaun Mathers, both of whom acknowledge having read Attachment A, but neither of whom expressly endorses its content.[23]

The Commission finds that Attachment A cannot, standing alone, be treated as sufficient evidence of reasonably necessary activities, absent a clear expression explaining why the proposed activities are necessary to implement the mandate. The four declarations submitted do not constitute substantial evidence to support a decision of the Commission to adopt the activities described in Attachment A in whole. Rather, these declarations support the assertion that these are the practices of the respective agencies, which is not directly relevant to whether claimants have a legal duty to perform these activities, or whether they are reasonably necessary to implement the mandate.

However, to the extent that the activities described in Attachment A, and in LA County's proposed parameters and guidelines, are clarifying of the mandated activities approved in the test claim statement of decision, those activities may be approved as reasonably necessary to carry out the mandate, irrespective of the claimant's anemic presentation of evidence.

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[20] Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibits 1-4.

[21] Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibit 1.

[22] Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibit 2.

[23] Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibits 3-4.

1. Developing Policies and Procedures to Implement the Mandate

LA County has proposed reimbursement for the following:

> To develop policies, protocols, manuals and procedures for implementing following reimbursable California Public Record Act (CPRA) provisions:
>
> a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code,§ 6253.9, subd. (a)(2) (Stats. 2000, ch. 982)).
>
> b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).
>
> c. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code,§ 6253, subd. (c) (Stats. 2001, ch. 982)).
>
> d. Identifying litigation, claims, and related records which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code,§ 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355)).
>
> e. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code,§ 6255, subd. (b) (Stats. 2000, ch. 982).[24]

Despite the lack of clarity or explanation, it is easily imagined that changes to CPRA would necessitate an update of policies and procedures to implement the mandate, and the Commission has routinely approved reimbursement for the development of policies and procedures to address the implementation of test claim statutes.

However, as will appear below to be a consistently recurring theme, what was approved in the test claim statement of decision was only an *incremental* increase in service: to provide records in *electronic form*; to provide a time frame for response; and to place the burden on agencies to assist the public in making effective public records requests.[25] As discussed in the test claim statement of decision, the duty of government agencies (both state and local) to make records available for inspection reaches back to the 1968 statute, and is therefore not new.[26] The test claim statement of decision also notes that public records, per the interpretation of the courts, included "every conceivable kind of record that is involved in the governmental process," and

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[24] Exhibit C, LA County's Proposed Parameters and Guidelines, at p. 15.

[25] See Exhibit A, Test Claim Statement of Decision, at pp. 14-16.

[26] *Id*, at p. 12.

the spirit of the CPRA was "to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency."[27] The test claim statement of decision also reasoned that the determination whether and to what extent a record is disclosable was not a new activity subject to reimbursement.

The Commission concluded that the purpose of amending the CPRA to provide for copies of electronic records was to "substantially increase the availability of public records to the public and to reduce the cost and inconvenience to the public associated with large volumes of paper records," and that therefore "the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution."[28]

Because, as stated, the requirement to provide copies of disclosable public records upon request was an element of prior law,[29] the claimants here cannot receive reimbursement for making a determination whether a record is disclosable; that activity is not new and was required under prior law. Only the incremental increase in service of providing copies of records in an electronic form, and of providing written notice of the determination *within 10 days* whether a record is disclosable, can be reimbursed. And in this context, only the development or updating of policies and procedures to perform these incrementally increased services would be reimbursable. Therefore item a., above, developing a policy or procedure for "Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable" is denied. The underlying requirement to determine whether records or parts thereof are disclosable is not new, and there is no meaningful difference between making that determination for physical records and making that determination for electronic records. Similarly, item b., above, developing policies or procedures for "Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination," is only reimbursable to the extent that the policy or procedure must be updated to provide for the new deadline in statute to provide notice of the determination within 10 days.

The Commission finds that the remaining policy and procedure updates are reasonably necessary to implement the ongoing mandated activities reflected in section IV.B of the parameters and guidelines.

LA County's proposed parameters and guidelines do not include any information about the activity of developing policies and procedures for implementing the activities that were approved only for schools and school districts. If policies and procedures are to be reimbursed as a one-time activity, school districts should receive the same treatment, and therefore receive reimbursement for developing policies and procedures to implement those mandated activities also.

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[27] *Id*, at p. 13 [citing *Nor. Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, p. 123-124].

[28] Exhibit A, Test Claim Statement of Decision, at pp. 14-15.

[29] Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

The Commission finds that the development of policies, protocols, manuals and procedures *to implement the newly mandated activities* identified in Section IV. B. is approved for all claimants, for *one-time reimbursement*, but not for policies and procedures for "[d]etermining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable," and not for policies and procedures for determining whether a record is disclosable, but only for the higher level of service of providing notice of the determination within 10 days. Section IV.A. of the parameters and guidelines authorizes reimbursement for this one-time activity as follows:

> Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV. B of these parameters and guidelines. The activities in section IV.B represent the incremental higher level of service approved by the Commission. This activity specifically does not include, and reimbursement is not required for, developing policies and procedures to implement all of the California Public Records Act, or making a determination whether a record is disclosable, or providing copies of disclosable records.

2. <u>Acquiring or Developing Technology and Equipment to Track and Process Public Records Requests</u>

LA County has proposed reimbursement for the following activities:

> To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).
>
> To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable).
>
> To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).[30]

These activities are not established as being reasonably necessary on the basis of the record. As discussed above, none of the four declarations submitted directly supports a finding that the activities proposed in Attachment A prepared by the claimant's representative are reasonably necessary to comply with the mandated activities. Moreover, none of the four declarations refers to any technological difficulties that could be ameliorated by tracking software or documentation. Neither do any of the four declarants specifically cite the tracking of requests as a necessary activity. Finally, none of the other exhibits that LA County has submitted speaks to the necessity of technological methods to "track and process" or "monitor and document" public records requests. The need to "track and process" public record requests is not new, in any event, since the CPRA has been law since 1968 and public record requests have required processing for nearly 35 years.

The DOF argues, in its comments on the claimants' proposed parameters and guidelines, that many of the activities, "including, but not limited to, developing data base software for tracking and processing public records requests appear to be outside the scope of the [statement of decision] as these were likely already required and utilized before this mandate and for purposes

[30] Exhibit C, LA County's Proposed Parameters and Guidelines, at p. 6.

other than complying with this mandate."[31] LA County does not directly answer that argument in its rebuttal comments, instead arguing that the CPRA amendments giving rise to the test claim were intended to prevent public agencies from ignoring public records requests. LA County argues that "tracking and processing public records act requests to ensure timely compliance of CPRA provisions" is necessary, and should be reimbursable, because without "such systems, the status of requests would be left to memory – easily ignored as in the past."[32]

Even accepting LA County's argument that a "system" for tracking and processing of records is essential to comply with the mandate, nothing submitted in the record amounts to substantial evidence that acquiring or developing a data base or purchasing or leasing computers is necessary to comply with the mandated activities approved by the Commission in the test claim statement of decision. Nor does LA County answer DOF's charge that such methods "were likely already required and utilized before this mandate and for purposes other than complying with this mandate." Furthermore, the claimants ignore the fact that whatever difficulties in tracking and responding to public records requests might have obtained prior to the enactment of the test claim statutes, the fundamental and existing requirement to make records available and provide copies upon request has not changed; a lost or ignored records request was no more permitted under prior law than it can be accepted now. The state is not required to provide reimbursement to local government for increased costs of complying with an existing requirement, merely because the requirement was not met under prior law.

As discussed above, the changes implicated here are incremental. The requirement to respond to a public records request is not new. The bill analysis attached to LA County's rebuttal comments describes an audit in which it was found that local agencies rejected or ignored public records requests 77% of the time.[33] LA County cites this as evidence of the need for tracking software and other technology, but it is also evidence that the test claim statute was meant to remedy an inadequacy; that the Legislature was not satisfied that local governments were fully and properly implementing the CPRA, and the Legislature chose to make the requirements more stringent in order to encourage more consistent compliance. The *only* new activity with respect to disclosure or records is the requirement to respond within 10 days or provide a written response setting forth the reason why the determination cannot be made, or the records produced, within that time. To the extent that local governments must implement processes to track records requests to avoid losing them or ignoring them, those requirements are not new; the prior law was not being implemented properly and completely.

Moreover, to the extent that existing equipment is inadequate to implement the mandate, replacing such outmoded equipment is not reimbursable because the underlying mandate to receive and respond to public records requests is not new.

Therefore, the Commission finds that the request for reimbursement for acquiring or developing new technology and equipment is denied, because it has not been demonstrated with substantial evidence that these activities are reasonably necessary to implement the limited approved activities in this claim.

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[31] Exhibit E, DOF Comments on Proposed Parameters and Guidelines

[32] Exhibit F, LA County's Rebuttal Comments, at p. 4.

[33] Exhibit F, LA County's Rebuttal Comments, at p. 4.

3. Annual Training

LA County has proposed reimbursement for the following:

> Annual training programs on implementing reimbursable test claim provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies.[34]

The claimants have submitted no evidence that annual training is required to implement the test claim activities. Furthermore, as discussed above and throughout this section, the changes to CPRA are incremental, and in some instances are meant to make certain tasks easier (e.g., the use of electronic records, which can be more easily redacted and reproduced). There is no evidence in the record that would warrant annual training, and no evidence that the initial training of local government employees could not include CPRA.

The Commission finds that reimbursement for annual training is denied, because the claimants have not shown that training is reasonably necessary to implement the approved activities.

4. Providing a Copy of a Disclosable Electronic Record

The test claim statement of decision approved reimbursement for *providing a copy of an electronic record* as follows:

> If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.[35]

LA County has proposed reimbursement for the following:

> Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982)).
>
> a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.
>
> b. Determining whether the electronic public records request falls within the agency's jurisdiction.
>
> c. Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.
>
> d. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.

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[34] Exhibit C, LA County's Proposed Parameters and Guidelines, at p. 6.

[35] Exhibit A, Test Claim Statement of Decision, at p. 27.

e. Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.

f. Processing the requested electronic record(s) or parts thereof that are disclosable.

g. Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).

i. Copying or saving electronic record(s) and accompanying correspondence.

j. Sending or transmitting the electronic records to the requestor.

k. Tracking the shipment of requested CPRA electronic records.[36]

The claimants suggest that "provid[ing] a copy of a disclosable electronic record" necessarily implies making a determination as to whether the record is disclosable. As the test claim statement of decision explored at length, the making of a determination whether a record or part thereof is disclosable is not new. The test claim statement of decision makes clear that local government claimants would have been required under prior law to determine whether a record is disclosable under statutory and case law exemptions, in order to make a record "open to inspection by every person at all times during the office hours of the local agency and [school district],"[37] The activity of making that determination is no different, whether the determination applies to electronic records or physical records, and therefore the activities proposed above are not new. Furthermore, the Commission found in the test claim statement of decision that the process of determining that a portion of a record is exempt from disclosure and redacting the document was not new. The Commission found that "[p]rior to the 1981 amendment courts already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying."[38]

The activity that was approved, read in context of the test claim analysis, includes only the marginal increase in service to *provide a copy* of a disclosable *electronic record*, not the determination of whether a record is disclosable, and not the provision of a copy of a public record. Any of the activities described above that relate to the making of a determination *whether a record is disclosable* are denied, because that determination was required under prior law, in order to make records available for inspection and to provide copies upon request. In fact, even the 1968 statute required disclosure of electronic data: "[c]omputer data shall be

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[36] Exhibit C, LA County's Proposed Parameters and Guidelines, at pp. 6-7.

[37] Exhibit A, Test Claim Statement of Decision, at p. 12, [citing former Government Code section 6253 (Stats. 1968, ch. 1473)].

[38] Exhibit A, Test Claim Statement of Decision, at p. 13[citing former Government Code section 6257 and *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124].

provided in a form determined by the agency."[39] The inclusion of "computer data," though vague, expresses the Legislature's intent that electronic records should receive differential treatment only insofar as the form in which they would be provided, and further reinforces the view, as found in the test claim statement of decision, that determining whether records are disclosable is not new, even where the records are in electronic form, and is therefore not reimbursable.

The reasonably necessary activities cited above, under this heading, are therefore denied. The activity of providing a copy of a disclosable electronic record, as approved in the test claim statement of decision, is included in the parameters and guidelines.

However, the test claim statutes, as interpreted by the courts, imply that the activity of "providing a copy of a disclosable electronic record" may at times be more involved than simply copying, redacting, and emailing a document. Section 6253.9(b) provides, in pertinent part:

> [T]he requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
>
> (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
>
> (2) The request would require data compilation, extraction, or programming to produce the record.

This section does not necessarily provide an explicit mandate to conduct activities related to data compilation, extraction, or programming, or a mandate to provide a copy of a record that is produced only at otherwise regularly scheduled intervals. But the section implies that such activities might from time to time be required, insofar as the section provides new fee authority to cover those activities. Furthermore, the Attorney General of California assumes, in a published opinion analyzing section 6253.9, that a request for electronic records might "require data compilation extraction, or programming to produce the record;" and that in that event the fee authorized under section 6253.9 "may additionally include 'the cost to construct [the] record, and the cost of programming and computer services necessary to produce a copy of the record.'"[40] This comports with the broad definition of "public records," and the emphasis on the disclosure of "information," rather than individual documents.[41]

The same interpretation is accorded in *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301. In that case the court found that section 6253.9 permitted the county to charge the requestor fees in excess of the direct cost of duplicating the records, where the county was being asked to produce electronic records "at an unscheduled interval."

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[39] Former Government Code section 6256 (Stats. 1968, ch. 1473).

[40] Exhibit X, 88 Ops. Cal. Atty. Gen. 153 (2005).

[41] Exhibit A, Test Claim Statement of Decision, at p. 5; Government Code section 6250 (Stats. 1968, ch. 1473) ["access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state"].

The court remanded the case to resolve a factual dispute but first recognized that, if excess costs were shown, the agency may charge "the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record..." pursuant to section 6253.9(b).[42]

The Commission therefore finds that providing a copy of an electronic record may include compiling information from disparate sources, extracting information from larger data sets, or writing computer programs or code to cull information, in order to generate an electronic record. However, the Commission also finds that the test claim statutes provide fee authority to offset the requirement to "provide a copy of a disclosable electronic record in the electronic format requested," as discussed below, including fee authority to offset the costs of compiling, extracting, or otherwise generating an electronic record. The SCO is authorized to reduce reimbursement for these activities accordingly, as discussed below.

5. Within 10 Days of Receipt of a Request, Determine Whether the Request Seeks Copies of Disclosable Records in the Possession of the Local Agency or School District.

In the test claim statement of decision the Commission approved reimbursement for acting on a public records request within 10 days, as follows:

> Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).

LA County has proposed reimbursement for the following:

> Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).
>
> a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.
>
> b. Determining whether the public record(s) request falls within the agency's jurisdiction.
>
> c. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.
>
> d. Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the

[42] *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301, at p. 1337.

requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

e. Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

f. Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

g. Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

i. Copying or saving record(s) and accompanying correspondence.

j. Sending or transmitting the records to the requestor.

k. Tracking the shipment of requested CPRA records.[43]

As discussed above, the determination whether a record is disclosable and the provision of copies upon request are not new mandated activities. The approved activity is to provide notice to the requestor of the determination within 10 days. This is an *incremental* increase in service, and the focus is not whether the records are disclosable, as implied by the claimant's proposed activities, but providing notice to the requestor within 10 days.

As discussed throughout this analysis, and in the test claim statement of decision, prior law provided for "the right of every person to inspect any public record, with exceptions."[44] The Commission found, in the test claim statement of decision, that "[s]ince 1968, local agencies and K-14 districts were required to make public records open to inspection at all times during the office hours of the local agencies and K-14 districts, by every person, except for public records exempted from disclosure or prohibited from disclosure."[45] The Commission also found that "the general duty to make any reasonably segregable portion of a record available for inspection" was not a new program or higher level of service as compared with prior law.[46] Therefore, the duty to make a determination as to what records or parts of records were exempt from disclosure or prohibited from disclosure is not a new program or higher level of service. Only the requirement to notify the requestor *within 10 days* is new.

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[43] Exhibit C, LA County's Proposed Parameters and Guidelines, at pp. 8-9.

[44] Exhibit A, Test Claim Statement of Decision, at p. 10

[45] Exhibit A, Test Claim Statement of Decision, at p. 12.

[46] Exhibit A, Test Claim Statement of Decision, at pp. 13-14.

Receiving, logging, and tracking public records requests, as well as determining whether the agency has jurisdiction over the request, and whether the request describes reasonably identifiable records, are all requirements of the public records act under prior law. Similarly, identifying access to pertinent records and conducting legal review would have been required under prior law. Processing and reviewing the records for compliance, as well as preparing supervisory approval and signature of correspondence, copying or saving records and correspondence, sending the records, and tracking shipment are all activities that were required, at least in analog, with respect to physical records subject to disclosure under prior law. Therefore, items (a.) through (e.), and (g.) through (k.), above, are either duplicative or not *new* mandated activities, and must be denied.

The Commission finds that item (f.) - Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination - reasonably defines the mandate to provide notice to the requestor within 10 days, and this activity is therefore approved.

However, the activity approved for reimbursement in the test claim statement of decision is written broadly enough to possibly encompass activities beyond those approved in the analysis, and beyond the higher level of service approved. For this reason, the Commission here re-drafts the approved activity to appropriately limit reimbursement to the scope of the test claim statement of decision and to properly reflect prior law.

The parameters and guidelines authorize reimbursement for the following activity:

> *Within 10 days from receipt of a request for a copy of records, notify the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).*
>
> *This activity includes developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.*
>
> *Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review, processing the records, obtaining supervisory review, or sending and tracking the records.*

6. <u>If the 10-Day Time Limit is Extended, the Agency Shall Provide Written Notice to the Requestor.</u>

LA County has proposed reimbursement for the following:

> If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).

a. Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(l)-(4)) to determine which are relevant in justifying an extension of the 10 day time limit in providing the requested document(s).

   i. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

   ii. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

   iii. The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

   iv. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

b. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.

c. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

d. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.

e. Copying or saving the extension notice and accompanying correspondence.

f. Sending or transmitting the notice and accompanying correspondence to the requestor.

g. Tracking delivery of the notice and accompanying correspondence to the requestor.[47]

The test claim statement of decision approved the following activity for reimbursement:

> If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a

[47] Exhibit C, LA County’s Proposed Parameters and Guidelines, at pp. 9-10.

determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).[48]

The Commission approved, in the test claim statement of decision, reimbursement for "providing written notice" to a requestor when the 10-day time limit must be extended due to unusual circumstances. Based on the intent of the amendments made to CPRA that are the subject of this test claim, this activity should be read as narrowly as possible. The intent and purpose of the amendments to CPRA was to promote access to public records and accountability to the public, and to remedy existing failures in the administration of the CPRA, by providing more specific guidelines for agencies and school districts to respond promptly to public records requests.

Item a. above, restates the "unusual circumstances" that are provided in the test claim statute to justify an extension of time beyond the 10-day time limit, and provides reimbursement for the decisionmaking process of selecting an appropriate justification. The activity approved in the statement of decision is to prepare and send written notice to the requestor when the 10-day time limit cannot be met. The notice required does not necessitate deep consideration and analysis of the unusual circumstances described in the statute, and in any case those circumstances are enumerated in the code and need not be repeated.

Item b. above is not sufficiently specific. As discussed above, the claimants have not submitted substantial evidence to defend the reasonably necessary activities proposed, and the activity of meeting or conferring with other staff to determine the date on which the determination can be expected is not sufficiently distinguished from item c., "drafting, editing, and reviewing."

Items c. and d. are reasonably necessary to comply with the mandate. As discussed above, the 10-day time limit is new, and was approved, as was the requirement to inform a requestor when the 10-day time limit must be extended. In the case an extension is necessary, a written notice is due the requestor, identifying the reasons for the extension and the date on which a determination is expected. Items c. and d. include drafting and reviewing that notice, and obtaining the signature of the agency head or his or her designee. These activities are consistent with the mandated activity, are reasonably necessary to comply with the mandated activity, and are approved.

Item e. is denied: there is no requirement to copy or save the notice prepared for the requestor, only to "provide written notice to the person."

Item f., to send or transmit the notice, is approved. As discussed above, the requirement to inform the requestor if the 10-day time limit cannot be met is new, and in order to inform the requestor, a written notice must be sent or transmitted.

Item g. is denied: there is no requirement to track delivery of the written notice or accompanying correspondence.

Items c., d., and f. reasonably describe and explain the process of providing notice to a requestor that the 10-day time limit must be extended, consistently with the activities approved in the test claim statement of decision.

Thus, the parameters and guidelines authorize reimbursement for the following activities:

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[48] Exhibit A, Test Claim Statement of Decision, at pp. 27-28.

If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes:

a. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice.

c. Sending or transmitting the notice to the requestor.

7. Assisting the Public in Making Effective Records Requests

The test claim statement of decision approved reimbursement for the following:

When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b. Describe the information technology and physical location in which the records exist; and

c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:

- The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;
- The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or
- The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).[49]

LA County has proposed reimbursement for the following:

When a member of the public requests to inspect a public record or obtain a copy of a public record:

[49] Exhibit A, Test Claim Statement of Decision, at p. 28.

a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b. describe the information technology and physical location in which the records exist; and

c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

To implement Sections (9) a., b., c. (above):

(i) Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.

(ii) Determining whether the public record(s) request falls within the agency's jurisdiction.

(iii) Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

(iv) Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

(v) Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

(vi) Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(vii) Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

(viii) Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

(ix) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

(x) Copying or saving record(s) and accompanying correspondence.

(xi) Sending or transmitting the records to the requestor.

These activities are not reimbursable when:

1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;

2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or

3) the public agency makes available an index of its records. (Gov. Code,§ 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355)).[50]

Proposed reimbursable activities (i) and (ii) above – receiving public records requests and determining whether the request is within the agency's jurisdiction – are not new. As discussed throughout this analysis, agencies had a duty under prior law to receive public records requests; and the duty to determine whether the request is within the agency's jurisdiction is implied from the duty to determine whether a record is disclosable.[51] Similarly, activities (iv), (v), (vii), and (viii), above, restate the legal review that would be required under prior law pursuant to the requirement to make all public records available, subject to exemptions. Items (iv) and (v) describe the process of identifying access to requested records and reviewing for disclosable material (i.e., reviewing for exemptions from disclosure). Items (vii) and (viii) describe the making of the disclosure determination and the review of that determination. All four of these activities were required under prior law, and none relate to or explain the activity of assisting the public with an effective records request. Item (ix) is duplicative, and does not relate to or explain the activity of assisting the public in making an effective request. Items (ix) and (x) are not required activities, where public records are to be disclosed: an agency head is only required to sign a determination that records will not be disclosed, or a notice of extension of the time limit, and there is no requirement to copy or save records and accompanying correspondence; the requirement is merely to send the records. Item (xi) is required, but is not new: disclosable records would have to be sent or transmitted under prior law as well. The requirement that local agencies and school districts must assist members of the public in making an effective public records act request is new, as approved in the test claim statement of decision, but is only an incremental increase in service, as discussed in similar context above. Items (i), (ii), (iv), (v), (vii), (viii), (ix), (x), and (xi) are not reasonably necessary to comply with the incremental increase in service.

Activity (vi) "Identifying litigation, claims, and related record(s)" is narrower than the requirement of law (which requires "identifying records and information which may be disclosable and may be responsive…" and is redundant. Therefore, it is denied as written. The intent of placing the burden on the agency to assist the public in making an effective records request necessarily includes identifying records and information which "may be disclosable and may be responsive to the request or to the purpose of the request." The intent of the statutory change, and the activity approved in the test claim statement of decision, is to require an agency to interpret a request generously, with a bias toward identifying all relevant information. However, this activity not does not include determining whether such relevant information is disclosable, since that activity is not new and was specifically denied in the test claim statement of decision,

Thus, of the above activities, only activity (iii), "[d]etermining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed,"

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[50] Exhibit C, LA County's Proposed Parameters and Guidelines, at pp. 10-12.

[51] See Exhibit X, Government Code 6253 (Stats. 1968, ch. 1473).

is reasonably clarifying or explanatory of the approved activity of assisting the public. Activity (iii), is approved, but limited; "conferring with the requestor" for clarification is implied by the statutory change, and the activity as approved in the test claim statement of decision. But "[d]etermining whether the request reasonably describes any identifiable records(s)" is not new; this is an essential part of providing access to or copies of disclosable public records, as required under provisions of CPRA dating back to 1968.

The Commission finds that activity (iii), above, is partially approved. The parameters and guidelines authorize reimbursement for the following activities:

> *When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.*
>
> *These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).*
>
> *This activity includes:*
>
> *i. Conferring with the requestor if clarification is needed to identify records requested.*
>
> *ii. Identifying record(s)and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.*
>
> *iii. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.*
>
> *Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request reasonably describes any identifiable records, identifying access to records, conducting legal review, processing the records, obtaining supervisory review, or sending and tracking the records.*

8. <u>If a Request is Denied, Preparing a Written Response.</u>

The test claim statement of decision approved reimbursement as follows:

> If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982)).[52]

LA County has proposed reimbursement for the following:

> If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code § 6255, subd. (b) (Stats. 2000, ch. 982).
>
> a. Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.
>
> b. Drafting and editing a written response that includes a determination that the request is denied.
>
> c. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.
>
> d. Copying or saving the written denial response and accompanying correspondence.
>
> e. Copying or saving the denial response and accompanying correspondence.
>
> f. Sending the denial response and accompanying correspondence to the requestor.
>
> g. Tracking delivery of the denial response and accompanying correspondence to the requestor.[53]

The requirement to provide a written response is new, and was expressly approved in the test claim statement of decision, as provided above. However, item a., "[m]eeting and conferring with staff, including but not limited to legal staff, to review and finalize the analysis" is an element of making the determination whether a record is disclosable, as required under prior law. The incremental increase in service here is to *provide the determination in writing*. Accordingly, items b., c., and f., drafting and editing a written response, preparing the denial response and obtaining agency head or designee approval and signature, and sending the written denial response, are new activities, and are reasonably necessary to comply with the mandate.

Item d. is not required: there is no requirement to copy or save the denial response, and no consequence for failure to do so; it may be a policy of the agencies to save denial responses, but it is not required by the statute. Item e. is duplicative, and is not required, and is therefore

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[52] Exhibit A, Test Claim Statement of Decision, at p. 28.

[53] Exhibit C, LA County's Proposed Parameters and Guidelines, at p. 12.

denied. Item g. is not established as necessary; there would seem to be no consequence in the test claim statute for failing to track delivery of a denial response.

The activities proposed by LA County in items b., c., and f. reasonably explain and describe the activities that must be conducted to comply with the mandate. The Commission finds that these activities are approved, but expressly limited to exclude the costs of determining what is or is not disclosable; only the formulation of a written determination is reimbursable. This limitation is identified in the parameters and guidelines. The remaining activities are denied. The parameters and guidelines identify the following activities for reimbursement:

> *If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982)).*
>
> *This activity includes:*
>
> a. *Drafting and editing a written response that includes a determination that the request is denied.*
>
> b. *Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.*
>
> c. *Sending the denial response to the requestor.*
>
> *This activity does not include, and reimbursement is not required for making the determination, based on case law and statute, that a record is exempt from disclosure. Reimbursement may be claimed only for providing the justification in writing.*
>
> 9. <u>Redaction and removal of home addresses and telephone numbers upon request, for K-12 school districts only.</u>

The remaining activities approved in the parameters and guidelines for Government Code section 6254.3 are those affecting only school districts, and are approved as written in the test claim statement of decision, with only slight reorganization. Those activities are, in summary, to "redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information," and to "remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee."[54] The Commission approves these activities, as stated in the test claim statement of decision, without substantial analysis.

C. Offsetting Revenues (Section VII. of Parameters and Guidelines)

In adopting parameters and guidelines, the Commission is required by Government Code section 17557 to determine the "amount to be subvened" under the Constitution. Specifically, the Commission's regulations require parameters and guidelines to identify offsetting revenues that may apply to the program as follows:

[54] Exhibit A, Test Claim Statement of Decision, at p. 27.

i. Dedicated state and federal funds appropriated for this program

ii. Non-local agency funds dedicated for this program.

iii. Local agency's general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.[55]

The SCO has the authority to reduce reimbursement to an eligible claimant, to the extent of fee authority created by the test claim statute (or another provision), which must in turn be identified in the parameters and guidelines. A reduction in this manner is consistent with Article XIII B, section 6, which requires subvention only when the costs in question can be recovered solely from tax revenues.[56]

Thus, fee authority given to local government agencies and school districts that *can* be used for costs of a mandated program is required to be identified as a source of offsetting revenues in the parameters and guidelines, and required to be offset against costs claimed, to the extent of the authority. Fee authority granted by the Legislature provides a mechanism by which funds other than local tax revenues can be used for costs of the program. A claimant is not in need of the protection offered by Article XIII B, section 6, to the extent of the revenues that can be raised by authorized fees, and cannot show increased costs mandated by the state, consistently with sections 17556(d) and 17514, to the extent of the fee authority granted.

Here, the fee authority found in Government Code sections 6253 and 6253.9 must be identified in the parameters and guidelines, and the SCO may reduce reimbursement to the extent of direct costs that are permissible subjects of the fees.

Government Code section 6253 provides, in pertinent part:

> Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person *upon payment of fees covering direct costs of duplication*, or a statutory fee if applicable.[57]

Section 6253.9 provides, in pertinent part:

> (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

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[55] Code of Regulations, Title 2, section 1183.1 (Register 2005, No. 36).

[56] *County of Fresno, supra*, 53 Cal.3d at p. 487.

[57] Government Code section 6253 (Stats. 1998, ch. 620 (SB 143); Stats. 1999, ch. 83 (SB 966); Stats. 2000, ch. 982 (AB 2799); Stats. 2001, ch. 355 (AB 1014)) [derived from former Government Code section 6257 (Stats. 1981, ch. 968)].

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. *The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.*

(b) Notwithstanding paragraph (2) of subdivision (a), *the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy* of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.[58]

Section 6253, above, provides that agencies shall make disclosable records "promptly available to any person upon payment of fees covering *direct costs of duplication,"* or statutorily defined fees, where applicable. Section 6253.9(a)(2), above states that the costs of duplication generally must be limited to direct costs of producing copies. This would include, for example, the cost of a flash drive. Subdivision (b) provides that "the requester shall bear the cost of producing a copy of the record," if the agency is compelled to produce the record other than at the regularly scheduled time, or if the request requires data compilation, extraction, or programming.

In the context of paper records, the courts have held that "[t]he direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it." The courts contend that direct cost "does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted."[59] In the context of electronic records, "the statute allows an agency to recover specified ancillary costs in either of two cases: (1) when it must 'produce a copy of an electronic record' between 'regularly scheduled intervals' of production, or (2) when compliance with the request for an electronic record 'would require data compilation, extraction, or programming to produce the record.'" The court in *County of Santa Clara* held that pursuant to section 6253.9, "[u]nder those circumstances, the agency may charge 'the cost [of staff] to construct a record, and the cost of programming and computer services necessary to produce a copy of the record ....'"[60]

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[58] Government Code section 6253.9 (added by Stats. 2000, ch. 982 (AB 2799)).

[59] *North County Parents Organization v. Department of Education* (*North County*) (Cal. Ct. App. 4th Dist. 1994) 23 Cal.App.4th 144, at p. 148.

[60] *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301, at p. 1336.

In this test claim, reimbursement is required for the increased level of service mandated by providing a copy of an electronic record, which the court in *Santa Clara* recognizes may at times require "data compilation, extraction, or programming." The fee authority under sections 6253 and 6253.9(a), as discussed, extends to the *direct costs* of providing copies of disclosable public records, and may not be applied to cover the costs of retrieving records to comply with a request, or conducting legal review to identify disclosable material. And the fee authority found in section 6253.9(b) also extends to the costs of programming, extraction, and compiling required to construct a record.

Based on the courts' interpretation of sections 6253 and 6253.9, the Commission finds that the test claim statutes provide fee authority to offset the direct costs of "provid[ing] a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies."[61] The Commission also finds fee authority for the costs of staff "construct[ing] a record, and the cost of programming and computer services necessary to produce a copy of the record," when "the record is one that is produced only at otherwise regularly scheduled intervals…[or]… would require data compilation, extraction, or programming to produce the record."[62] The fee authority found in sections 6253 and 6253.9 does not extend to activities of retrieving or reviewing records for disclosable material, but neither are those activities reimbursable, because, as discussed above, those activities would be required for physical records under prior law.

The remaining activities required under the test claim statutes, including responding in writing to public records requests within 10 days, assisting the public in making effective public records requests, and redacting employees' home addresses and phone numbers, are not permissible subjects of the identified fee authority. The parameters and guidelines reflect this analysis.

V. CONCLUSION

For the foregoing reasons the Commission hereby adopts the attached proposed parameters and guidelines, providing for actual cost reimbursement of the activities approved in the test claim statement of decision and the reasonably necessary activities approved, as analyzed above.

[61] Exhibit A, Test Claim Statement of Decision, at p. 27.

[62] Government Code section 6253.9 (Stats. 2000, ch. 982 (AB 2799)).

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act

02-TC-10 and 02-TC-51

Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

I. SUMMARY OF THE MANDATE

On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies and K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).
4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
    a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
    b. Describe the information technology and physical location in which the records exist; and
    c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:

- The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;
- The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or
- The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

      This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

   b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county, or any "school district" as defined in Government Code section 17519 which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los

Angeles filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred pursuant to the test claim statutes are reimbursable on or after July 1, 2001.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(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.
3. Pursuant to Government Code section 17560(a), a local agency or school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b)).
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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 to 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, training packets, 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 that incurs increased costs, the following activities are reimbursable:

A. <u>One Time Activity</u>

Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV. B of these parameters and guidelines. The activities in section IV.B represent the incremental higher level of service approved by the Commission. This activity specifically does not include, and reimbursement is not required for, developing policies and procedures to implement all of the California Public Records Act or making a determination whether a record is disclosable, or providing copies of disclosable records.

B. <u>Ongoing Activities</u>

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

   This activity includes:

   a. Computer programming, extraction, or compiling necessary to produce disclosable records.

   b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

   This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests; tracking requests; processing requests; determining whether a request describes reasonably identifiable records and identifying access to those records; retrieving records, or sending the records to the requestor.

   Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity, and may fully offset the reimbursable costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

   This activity includes developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

   This activity does not include, and reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review, processing the records, obtaining supervisory review, or sending and tracking the records.

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 school district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes:

a. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice.

c. Sending or transmitting the notice to the requestor.

4. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

   These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

   This activity includes:

   a. Conferring with the requestor if clarification is needed to identify records requested.

   b. Identifying record(s)and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

   c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

   Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request reasonably describes any identifiable records, identifying access to records, conducting legal review, processing the records, obtaining supervisory review, or sending and tracking the records.

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

      This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2)

an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982)).

   This activity includes:

   a. Drafting and editing a written response that includes a determination that the request is denied.

   b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response.

   c. Sending the denial response to the requestor.

   This activity does not include, and reimbursement is not required for making the determination, based on case law and statute, that a record is exempt from disclosure. Reimbursement may be claimed only for providing the justification in writing.

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. Attach a copy of the contract to the claim. 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 and itemize all costs for those services. 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

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been 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. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

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.

For local agency claimants:

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (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 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).

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 of 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 of allowable indirect costs bears to the base selected.

<u>For school district claimants:</u>

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5 (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[1] 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

[1] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 REVENUES AND REIMBURSEMENTS

Any offsetting revenue 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, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

The test claim statement of decision identified fee authority from Government Code section 6253, and section 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, which provides offsetting fee authority for:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and

2. If the record is of a type that must be compiled or constructed, or is one that is otherwise produced only at regular intervals, the costs of extracting and compiling the data required, or producing the record outside the normal schedule, including computing processes, as necessary.

Revenue from this fee authority must be identified and deducted from the costs claimed for the activity described in Section IV.B.1 of these parameters and guidelines.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 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(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.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.