



**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

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January 18, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

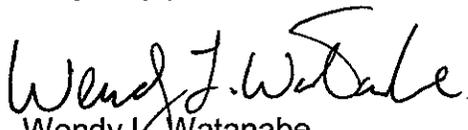
Dear Mr. Bohan:

**LOS ANGELES COUNTY'S REVIEW
THE BALLOT INITIATIVE FUNDING DISCLAIMER'S APPLICATION
CALIFORNIA PUBLIC RECORDS ACT TEST CLAIMS (02-TC-10, 02-TC-51)**

The County of Los Angeles respectfully submits its review of the ballot initiative funding disclaimer's application to the California Public Records Act test claims.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or lkaye@auditor.lacounty.gov.

Very truly yours,


Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:Ik

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Enclosure

Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Executive Summary

This review addresses the question asked by Commission staff on "Proposition 59's affect, if any, on the consolidated test claim, *California Public Records Act*".

In 2002, the County of Los Angeles (County) and the Riverside School District (District) filed test claims to recover the costs for providing public record act services which were not required under prior law.

In 2004, voters approved Proposition 59 in order to place a brief and general declaration about the fundamental rights of access to public records in the California Constitution. Previously this declaration was found only in the 1968 California Public Records Act. Application of the ballot initiative funding disclaimer at the time required that test-claimed provisions be expressly included in the initiative. This was not the case here. Consequently, Proposition 59 had no affect on the test claims.

In 2005, the legislature (in Chapter 72 (AB 138)) added a second basis for applying the ballot initiative funding disclaimer. It was now sufficient to apply this disclaimer in cases where (test-claimed) duties are 'reasonably within the scope of a ballot measure'. Subsequently, in 2007, the Commission removed the County's test claim from the hearing calendar pending the outcome of a law suit challenging the new ballot initiative funding disclaimer's 'reasonably within' standard.

In 2009, the ballot initiative funding disclaimer provision declaring that no reimbursement is necessary for "duties that are reasonably within the scope of a ballot measure" was struck down by the courts. In 2010, the Legislature, in Chapter 719 (SB 856), replaced the "reasonably within" standard with a "necessary to implement" standard.

The test claim legislation was enacted long after the advent of the declaration of rights in the 1968 California Public Records Act and was not available, let alone necessary, for the implementation of those rights, subsequently incorporated in Proposition 59.

Accordingly, the ballot initiative funding disclaimer is not applicable here and reimbursement is required as claimed herein.

This review addresses an issue recently raised by Commission staff regarding the affect, if any, of the 2004 (Proposition 59) California public record ballot initiative, in disqualifying reimbursement for public record services claimed by the County of Los Angeles (County) and the Riverside Unified School District (District) in 2002.

The County maintains that the ballot initiative funding disclaimer, found in Government Code Section 17556(f) is not applicable to the test claims being adjudicated here.

Section 17556(f), as amended on October 19, 2010 by the Statutes of 2010, Chapter 719 (S.B. 856) requires, in pertinent part, that:

“The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.”

The funding disqualification based on the test-claimed duties being ‘expressly included in a ballot measure’ is clearly not applicable here. Proposition 59 did not include any of the test-claimed duties.

Proposition 59

Regarding public records, Proposition 59 only contained a brief declaration of fundamental rights of public access to writings of public officials and agencies. This declaration was added to the California Constitution under Article 1 (Declaration of Rights), Section 3 (b)(1) and provides that:

“The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

As may be seen, the (above) language added by Proposition 59 was not lengthy or specific. It was a general and brief statement of the people's right of access to information concerning the conduct of the people's business and public scrutiny of the writings of public officials and agencies. This brief declaration of fundamental rights was nothing more than a declaration and was appropriately added to the Constitution, under Article 1 (Declaration of Rights).

Proposition 59's language (above), does not address or include any of the public record service duties added by the test claim legislation. For example, absent from Proposition 59, is any reference to the duties (included in the test claim legislation) which were imposed by Government Code Section 6253.1, added by Statutes of 2001, Chapter 355 (A.B. 1014):

“(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist a member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

- (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.
- (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a), shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying from the requestor that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.”

The duties imposed by Government Code Section 6253.1, in 2001 were in addition to those required under prior law, including the California Public Records Act of 1968. Consequently, this and the other test claim provisions were not available, let alone necessary, to implement prior law including the (above) declaration of rights in the California Public Records Act of 1968 and Proposition 59.

It should be noted that arguably the public record duties claimed herein may meet the standard of being 'reasonably within the scope of' Proposition 59. However, this standard was found to be impermissibly broad, as it allows for denial of reimbursement when reimbursement is constitutionally required. California School Boards Ass'n v. State (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.

Accordingly, the test-claimed duties may arguably be 'reasonably within the scope of' actualizing the (above) fundamental rights found in Proposition 59, but this occurrence is not sufficient to invoke the current version of the ballot initiative funding disclaimer. What is required now is that the test-claimed duties be 'necessary to implement' the Proposition 59 ballot initiative.

However, the County's test claim legislation was first enacted in 2000, decades after the advent of the declaration of rights in the 1968 California Public Records Act (Act). Therefore, this test claim legislation was not available, let alone necessary, to implement the fundamental rights of access to information concerning the conduct of the people's business and public scrutiny of the writings of public officials and agencies found in the 1968 Act and Proposition 59.

Accordingly, the test claim legislation is not subject to the ballot initiative funding disclaimer and reimbursement is required as claimed herein.

Supplemental Duties

It should be noted that the County has submitted substantial evidence that the test-claimed duties are in addition to those found under prior law. In this regard, the County's 2002 test claim filing includes declarations and schedules prepared by Commander Richard L. Castro and Captain Michael R. McDermott with the County Sheriff's department and J. Tyler McCauley, the County's Auditor-Controller. Their declarations and schedules detail and document the new public records act requirements and compliance costs imposed upon the County.

Also, the County's 2002 test claim filing includes a "Public Records Act Manual" prepared by the County's Office of the County Counsel in 2002. This manual details many of the new public records duties claimed herein.

In addition, this filing includes a declaration prepared by Captain Shaun Mathers in the Risk Management Bureau of the County Sheriff's department. Captain Mathers has analyzed the County Sheriff's additional or supplemental public record act

work load imposed by the test claim legislation and prepared two schedules ("Public Records Act Requests" and "Public Records Act Processing") which detail the types, numbers and costs of public record requests.

Conclusion

The County has provided substantial evidence that the public records act requirements included in the test claim legislation were in addition to those found in prior law and were not available or necessary in implementing the (above) declaration of fundamental rights in the California Public Records Act of 1968 and Proposition 59. In addition, the test claim legislation was not expressly included in Proposition 59.

Accordingly, the County finds that the test claim legislation did not impose duties that are necessary to implement, or are expressly included in, the Proposition 59 ballot measure approved by the voters. Consequently, the ballot initiative funding disclaimer cannot be applied to disqualify reimbursement of the County's costs as claimed herein.

**Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
Supplemental California Public Record Act Requirements
California Public Record Act Test Claims (02-TC-10, 02-TC-51)**

Declaration of Shaun Mathers

Shaun Mathers makes the following declaration and statement under oath:

I, Shaun Mathers, Captain, in the Risk Management Bureau of the Los Angeles County Sheriff's Department, declare that I have served thirty (30) years in law enforcement and the past eight (8) years in the Risk Management Bureau where I am responsible for handling public record act requests for the Sheriff's department.

I declare that I have read the November 2, 2010 letter prepared by Ms. Paula Higashi, Executive Director of the Commission on State Mandates (Commission) regarding "Proposition 59's affect, if any" in nullifying reimbursement for implementing supplemental California Public Record Act requirements under current law.

I declare that it is my information or belief that the current standard for applying the ballot initiative funding disclaimer in Government Code section 17556, subdivision (f) was recently adopted by the Legislature, as noted by Ms. Higashi on page 2 of her November 2, 2010 letter:

"Statutes 2010, chapter 719 (Sen. Bill No. (SB) 856), removed the "reasonably within the scope of language" from Government Code section 17556, subdivision (f). As a result Government Code section 17556, subdivision (f), provides that the Commission shall not find costs mandated by the state if the Commission finds:

The statute of executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

I declare that it is my information and belief that Proposition 59 placed in the California Constitution fundamental rights guaranteeing public scrutiny of governmental conduct and did not expressly include the additional or supplemental requirements in the test claim legislation, such as those found in Government Code Section 6253.1, added by Statutes of 2001, Chapter 355 (Assembly Bill 1014):

“(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist a member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

- (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.
- (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a), shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying from the requestor that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.”

I declare that it is my information or belief that the public records act requirements identified (above) were in addition or supplementary to the fundamental rights set forth in the California Public Records Act of 1968 and subsequently in Proposition 59.

I declare that it is my information and belief that the test claim legislation was not expressly included in Proposition 59.

I further declare that it is my information and belief that the test claim legislation was not necessary to implement the fundamental rights set forth in the California

Public Records Act of 1968 and subsequently in Proposition 59, as the California Public Records Act was implemented in 1968, well before the advent of the County's initial test claim statute in 2000.

I declare that it is my information or belief that the ballot initiative funding disclaimer is not applicable to the County's claim as the test claim legislation was not expressly included in Proposition 59 and not required to implement fundamental rights set forth in the California Public Records Act of 1968 and subsequently in Proposition 59.

I therefore declare that it is my information or belief that reimbursement of the County's additional or supplemental public record act duties is required as claimed herein.

I declare that I have analyzed the County Sheriff's additional or supplemental public record act work load and attach two schedules ("Public Records Act Requests" and "Public Records Act Processing") which detail the types, numbers and costs of requests.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

1/11/11 COMMERCE, CA

Date and Place



Signature

**PUBLIC RECORDS ACT REQUESTS
2004 - 2010**

	2004	2005	2006	2007	2008	2009	2010*	Total
Total Requests	111	151	101	204	276	284	312	1439

Listed, below, are the main topic areas tracked during 2009 and 2010.

Not all requests are reflected, as they might lie outside the main categories.

	2004	2005	2006	2007	2008	2009	2010*	Total
Appellate Project						0	10	10
Audio 9-1-1						15	28	43
Booking Photos						4	3	7
Calls for Service						39	33	72
Contracts						7	16	23
Crime Statistics						10	18	28
Evidence Preservation						0	5	5
Incarceration						34	36	70
Miscellaneous						57	95	152
Personnel						5	4	9

* 2010 to date

The categories of Audio 9-1-1, Booking Photos, Calls for Service, Contracts, Crime Statistics, Incarceration, Personnel and a myriad of queries within Miscellaneous category, involve researching via a wide variety of databases, spreadsheets, and electronic systems, etc.

Some of the documents can be presented as printed, while others require labor-intensive redactions to be in compliance with privacy laws, security concerns, and/or policies regulating release of information. Depending on the nature and complexity of the request, some requests can require multiple man-hours of labor to generate the end-product as requested.

Examples of some recent time-intensive requests:

- 36 months of 9-1-1 calls for each station, by each Contract City and County area, for routine, priority and emergency response and the corresponding response times.
- Copies of Contracts for each of the City Contracts, Phase I and II Contracts for Maywood and Cudahy, and for any other cities from July 2005 to present.
- Requests for archival records related to the deployment and response of Department personnel at the Station Fire event.
- Crime stats within a 2 mile radius of a crime scene over a stated period of time - for use in a civil trial.
- A complex 4-page ACLU request for data, statistics, documents, from 2005 to present about our Mira Loma Facility, providing contracted services, etc., for housing Federal detainees.
- SEIU requesting personnel and demographic data on multiple payroll titles.
- Media requests for Rubén Salazar shooting archives.

PUBLIC RECORDS ACT PROCESSING

Public Records Act requests are received by the Discovery Unit via e-mail, facsimile, in person, incoming phone call, and forwarded from Stations, Bureaus, and Units within the Sheriff's Department, and from other County Departments.

- Track receipt of all Public Records Act requests.
- Determine whether the request falls within the jurisdiction of the Los Angeles Sheriff's Department (as we border many other jurisdictions).
- Determine whether the request reasonably describes any identifiable record(s).
 - Contact with the requesting party to clarify the request, as needed.
- Determine where the records(s) reside within the Department. This may entail research and coordination with a variety of entities that have oversight and/or ownership of the requested data/information.
 - Contact the appropriate Station, Bureau and/or Unit to initiate the acquisition of the record(s),
 - Ascertain an estimated time frame for producing the requested record(s).
 - Generate a 14-day extension letter, as needed.
 - Follow-up contacting the Station, Bureau, and/or Unit, as needed, for timely compliance.
 - Consult with County Counsel to clarify any legal concerns.
 - Send previously identified topic-specific requests to specialized personnel for processing external to the Discovery Unit's Public Records Act staff.
- Access the appropriate database to obtain the identified record(s).
- Assemble the requested record(s).
 - Review for content that must be redacted.
 - Redact the record(s) as required.
- Prepare outgoing correspondence to accompany the record(s).
 - Obtain supervisory approval and signature on outgoing correspondence.
- Copy and scan all documents.
- Obtain postage (metered) and take to the post office if it is after the daily US Mail delivery.
- Track the sending of all Public Records Act responses.

Personnel Assigned to Public Records Act Processing	Monthly	Yearly (2010)
Operations Assistant III (Full Time)	\$ 5,685.36	\$ 68,224.32
Administrative Services Manager II (\$ 7,457.09 [10% Time])	\$ 754.70	\$ 9,056.40
Lieutenant (\$ 12,300.27 [10% Time])	\$1,230.03	\$ 14,760.36
Total	\$ 7,670.09	\$ 92,041.08

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**Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
California Public Records Act Test Claims (02-TC-10, 02-TC-51)**

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached review.

I declare that I have met and conferred with state and local officials, claimants and experts in preparing the attached review.

I declare that it is my information and belief that the ballot initiative funding disclaimer, in Government Code Section 17556(f), is not applicable to the above captioned test claims.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

1/13/11; Los Angeles, CA

Date and Place

Signature