



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

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

August 30, 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 OF STATE AGENCY COMMENTS
REVISED PARAMETERS AND GUIDELINES
CALIFORNIA PUBLIC RECORDS ACT REIMBURSEMENT PROGRAM**

The County of Los Angeles respectfully submits its review of State agency comments and its revised parameters and guidelines for the California Public Records Act reimbursement program.

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

Very truly yours,


Wendy L. Watanabe
Auditor-Controller

WLW:JN:CY:Ik

H:\SB90\A CPRA 08 25 11 Final Ps&Gs\CPRA PsGs State Comments Review 2 Cover Letter.doc

Enclosure

Los Angeles County's
Review of State Agency Comments and Revised Parameters and Guidelines
California Public Records Act Reimbursement Program (02-TC-10, 02-TC-51)

Executive Summary

The County of Los Angeles (County) has reviewed State agency comments on its proposed parameters and guidelines (Ps&Gs) for the California Public Records Act (CPRA) reimbursement program and found many to be useful.

The State Controller's Office (SCO) commented that "... the reimbursable activities listed were not specific and needed clarification" and recommended that the Ps&Gs could be redrafted using "... the reimbursable activities laid out in the test claim attachments of Michael R. McDermott and Richard L. Castro". Consequently, the County has included these activities in its revised Ps&Gs.

The State Department of Finance (Finance) commented that the County's recital of activities found to be reimbursable does "... not clearly match up with the Commission's Statement of Decision (SOD) and appear(s) to add to the activities found reimbursable by the Commission". Here, the Ps&Gs were modified to include the same descriptions of reimbursable activities found in the CPRA SOD.

Finance also comments that several reimbursable activities proposed by the County "... could be performed by lower-level staff than what is referenced in the proposed Ps&Gs". However, Finance provided no examples. So, the County has made no changes.

Further, the County respectfully disagrees with Finance's conclusion that "... logging and tracking requests ... do not appear to be reasonably necessary to comply with the mandate". Here, the alternative is to trust compliance to memory... an unacceptable alternative for County staff with personal knowledge of this matter.

Legal services have been retained in the CPRA Ps&Gs. Its importance is undisputed. Indeed, Commissioner Ken Alex stated that "... the idea that you need some legal advice on how to proceed initially is pretty clear".

In sum, the County has revised its CPRA Ps&Gs after considering State agency comments requesting clarification and further specification of reimbursable activities.

SCO's Comments

On July 22, 2011, Mr. Jay Lal, a manager of the Local Reimbursement Section of the State Controller's Office (SCO) wrote the Commission and indicated that "... the reimbursable activities listed (by the County) were confusing, not specific and needed clarification".

To reduce confusion, Mr. Lal recommended that the County could redraft its Ps&Gs by using "... the reimbursable activities laid out in the (County's 2002) test claim attachments of (Captain) Michael R. McDermott and (Commander) Richard L. Castro (of the Los Angeles County Sheriff's Department)". These activities are:

"One-time Activities

1. Develop policies, protocols.
2. Conduct training on implementing test claim legislation.
3. Purchase computers to monitor and document public record service actions.
4. Purchase or develop data base software for tracking and processing Public Record Act requests.
5. Develop a Web Site for public record disclosure requests.

Continuing Activities

I. Staff time for:

A. Station or branch personnel.

1. Assistance in defining telephone, walk-in or written requests.
2. Writing and logging request.
3. Station-level research.
4. If availability known, notify requestor.
5. Indicate date/time available.
6. If availability not known, forward request to central unit.

B. Central Unit Personnel

1. Assistance in defining telephone, walk-in or written requests
2. Writing and logging request.
3. Central Unit research.
4. If availability known, notify requestor.

5. Indicate date/time available.
6. If availability not known:
 - a. consult with specialized personnel.
 - b. document findings.
 - c. notify requestor of results.

C. County Counsel – legal services to implement and comply with the test claim legislation, including Govt Code 6253.1.

II. Supplies and Materials

III. Contract Services – e.g. PC maintenance

IV. Travel “

The (above) reimbursable activities were developed for the County’s 2002 test claim and found to be acceptable by SCO for use in the CPRA Ps&Gs. And so the County has included them in its revised CPRA Ps&Gs.

It should be noted that legal services have been retained in the County’s revised CPRA Ps&Gs. Its inclusion in the CPRA Ps&Gs is undisputed by SCO. Also, as will be seen its inclusion is undisputed by Finance. Indeed, Commissioner Ken Alex stated that “... the idea that you need some legal advice on how to proceed initially is pretty clear”¹.

Finance’s Comments

On July 25, 2011, Ms. Nona Martinez, Assistant Program Budget Manager wrote the Commission and identified a number of concerns. First of these is Finance’s contention that the specific activities found to be ‘reasonably necessary’ by the County in implementing reimbursable CPRA provisions “... do not clearly match up with the Commission’s Statement of Decision (SOD) and appear to add to the activities found reimbursable by the Commission”.

The County maintains that it has not added reimbursable activities to the CPRA SOD, but merely specified those “reasonably necessary” to implement it. In this regard, the County has provided four supporting declarations of those with personal knowledge of this matter. Finance has none.

¹ Commissioner’s Alex statement is found in the transcript excerpt of the Commission’s hearing of the CPRA test claim on May 26, 2011, attached as Exhibit 3, on page 59.

Finance also notes that "... developing data base software for tracking and processing public records requests appear to be outside the scope of the SOD". Finance further opines that "... these activities were likely already required and utilized before this mandate and for purposes other than complying with this mandate".

The County contends otherwise. The purpose of the test claim legislation was precisely to ensure the fulfillment of CPRA requests by tracking them from inception to completion. Under prior law, it appears that requests were not tracked and seldom completed. In this regard, the AB 1014 Bill Analysis (attached as Exhibit 2) indicates on page 3 that:

"In the fall of 2000, the California First Amendment Coalition and the Society of Professional Journalists performed an audit of local agency compliance with the CPRA. The audit, conducted by university journalism students (USC, UC Berkeley, CSU Fullerton, CSU Northridge, Chapman University) under the supervision of their respective professors, covered records at more than 130 local government agencies in the San Francisco Bay Area and in Los Angeles, Orange, and San Bernardino Counties. The findings, entitled "State of Denial, Roadblocks to Democracy" were published in the Stockton Record on December 17 and 18, 2000. The findings document that local agencies initially reject or ignore legitimate public record requests 77% of the time, on the average. Cities and police departments initially refused legitimate public records requests 79% of the time (declining to 60 to 64% when oral requests were followed by formal written requests citing state disclosure mandates), and schools initially failed to comply 72% of the time (similarly declining to 33%).

The results of the audit, the CNPA states, definitively document what has been fact for decades after the CPRA was first enacted: that public agencies routinely ignore the Act, or abuse their powers to the detriment of the free flow of information to the public that is the basis of this democracy."

Therefore, tracking and processing public records act requests to ensure timely compliance of CPRA provisions are found to be reimbursable. Without such systems, the status of requests would be left to memory --- easily ignored as in the past.

In addition, Finance points out that many of the County's proposed reimbursable activities "... duplicative and repetitious or are too vague and general and therefore lack sufficient specificity".

The County finds this comment similar to SCO's comment (discussed above) that "... the reimbursable activities listed (by the County) were confusing, not specific and needed clarification". To address this type of concern, the County, as previously indicated, follows SCO's recommendation and incorporates the activities proposed by Captain McDermott and Commander Castro in its revised CPRA Ps&Gs.

Finance also comments that "... logging and tracking requests and tracking and shipment of records do not appear to be reasonably necessary to comply with the mandate, are inconsistent with the SOD, and additive in nature".

However, the County can find no prohibition in the CPRA SOD denying reimbursement for logging and tracking of requests or tracking and shipment of records. Further, the alternative to not logging and tracking CPRA compliance is to trust compliance to memory... an unacceptable alternative for County staff with personal knowledge of this matter.

Importantly, Finance's current position in this matter is inconsistent with its previous position. Specifically, on November 20, 2002, S. Calvin Smith, Program Budget Manager, for Finance writes to the Commission to point out that:

"The claimant has also identified increased staff time dedicated to PRA requests, such as:

- Assist in defining telephone, walk-in or written requests ,
- Write and logging requests
- Research of the requests
- Notification to requestors of availability
- Indicate date and time record will be available
- When availability is unknown consult with specialized personnel
- Document findings
- Provide the public records or a written denial of the request. (Emphasis added.)

Mr. Smith concludes that:

“The tests claim legislation specifies the type of response that the claimant must give to the requestor and the timelines that must be met which could potentially result in a greater number of staff hours spent researching and helping requestors.”

Here, the County agrees with Finance’s Mr. Smith and continues to retain the logging and tracking of requests and the shipment of records in its CPRA Ps&Gs.

Next, Finance comments that several of the reimbursable activities “... submitted by the claimant could be performed by lower-level staff than what is referenced in the proposed Ps&Gs”.

The County did not find this comment to be useful in revising the CPRA Ps&GS as Finance never identified which activities they were discussing. So no staff changes were made.

Finally, Finance 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 in the Ps&Gs to the extent of the fee authority provided by law”.

However, the County is not presented with Finance’s analysis of the facts or law pertaining to the *Clovis* case, so it is not possible for the County to assess the validity of Finance’s changes to fee authority language found in the Commission’s CPRA SOD. Therefore, the County relies on fee authority language in Commission’s CPRA SOD and incorporates Commission’s language in the revised CPRA Ps&Gs as follows:

“The fee authority set forth in Government Code section 6253.9, subdivisions (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”.

Further, the County CPRA PS&Gs fee authority section also provides that:

“Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In

addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim”.

Therefore, the fee authority language (specified in the above two paragraphs) is included in section VII. (Offsetting Savings and Reimbursements) of the County’s revised CPRA Ps&Gs.

Reimbursable Activity Revisions

The reimbursable activities found in Section IV. of the County’s revised CPRA Ps&Gs have been reformatted and clarified in light of State agency comments. Separate sections are provided for reimbursement of one-time activities, annual activities and continuing activities. The continuing activity section is further broken down into five claiming categories:

1. Record Production
2. Electronic Records
3. Determination Notification
4. Extension Notification
5. Denial Notification

Each claiming category is first described using language found in Commission’s CPRA SOD. This is followed by specific activities found to be ‘reasonably necessary’ in implementing the (above) five types of CPRA services. The language for the ‘reasonably necessary’ activity sections was taken from the declarations of the following four County experts with long-standing experience in the provision of CPRA services.

Diane C. Reagan

Diane C. Reagan, Principal Deputy County Counsel is assigned to respond to CPRA requests and work with the Board of Supervisors’ staff as well as staff from the Animal Care and Control, Auditor-Controller, Health Services, Public Health, and Public Social Services departments and Office of the Chief Executive officer.

Nancy Takade

Nancy Takade, Principal Deputy County Counsel is assigned to work as “office coordinator” of matters related to the CPRA. Since 2003 she has provided

guidance and assistance to other County attorneys providing legal CPRA services to the Board of Supervisors, 37 County departments and the County's numerous agencies, commissions, boards and committees.

Rick Brower

Rick Brower, Principal Deputy County Counsel, supervises the Sheriff's Department Advocacy Unit with six lawyers and six support staff and has done so for the past 13 years. Among other things, his unit provides legal CPRA services to the Sheriff's Department. He has been personally responsible for providing CPRA assistance.

Shaun Mathers

Shaun Mathers is a Captain in the Risk Management Bureau of the County Sheriff's Department. Captain Mathers has 30 years of experience in law enforcement and has handled CPRA requests for his department for the past 8 years.

Accordingly, the reimbursable activities now included in the County's revised CPRA Ps&Gs are stated as follows:

"For each eligible claimant, employee, contract service, material, supply, equipment and travel costs are reimbursable when incurred in performing the following activities:

A. One-time Activities (Local Agencies)

1. To develop policies, protocols, manuals and procedures for implementing reimbursable California Public Record Act (CPRA) provisions.
2. To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable CPRA provisions.
3. To purchase computers to monitor and document public records request actions to implement reimbursable CPRA provisions. (Use for other purposes is not reimbursable.)
4. To develop or update web site(s) for public record act requests to implement reimbursable CPRA provisions.

B. Annual Activities (Local Agencies)

1. Annual training programs on implementing reimbursable CPRA provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies

C. Continuing Activities (Local Agencies)

Record Production Services

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, subs. (a) and (d) (Stats. 2001, ch. 355).)

Specific reimbursable activities that are reasonably necessary in performing record production services are:

1. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for public records.
2. Determining whether the public records requests fall within the agency's jurisdiction.
3. Determining whether the request reasonably describes any identifiable records and conferring with the requestor if clarification is needed.
4. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to 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.

5. Conducting legal reviews, research and analysis of the requested records to determine if the requested records 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.
6. Processing the requested records or parts (including the redaction of records) thereof that are disclosable.
7. Reviewing the records to be sent to the requestor to ensure compliance with statutory and case law exemptions.
8. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested records.
9. Copying or saving records and accompanying correspondence.
10. Sending or transmitting the records to the requestor.
11. Tracking the shipment of requested CPRA records

Electronic Records Services

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, subd. (a)(2) (Stats. 2000, ch. 982).)

Additional reimbursable activities that are reasonably necessary in performing electronic records services are:

12. 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.

Determination Notification Services

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).)

Additional reimbursable activities that are reasonably necessary in performing determination notification services are:

13. 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.
14. 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.
15. Sending or transmitting the determination notice to the requestor.

Extension Notification Services

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).)

Additional reimbursable activities that are reasonably necessary in performing extension notification services are:

16. 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.

17. 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.
18. Sending or transmitting the extension notice to the requestor

Denial Notification Services

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).

Additional reimbursable activities that are reasonably necessary in performing denial notification services are:

19. 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.
20. Drafting and editing a written response that includes a determination that the request is denied.
21. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.
22. Sending the denial response and accompanying correspondence to the requestor. “

In conclusion, the County's CPRA Ps&Gs have been revised in light of State agency comments and closely follow the Commission's Statement of Decision. Specific activities which County CPRA experts maintain are reasonably necessary in performing reimbursable CPRA services are included.

A complete copy of the County's revised CPRA Ps&Gs is attached in the pages that follow.

Los Angeles County's Revised Parameters and Guidelines
California Public Records Act Test Claims (02-TC-10, 02-TC-51)

I. SUMMARY OF THE MANDATE

This consolidated test claim filed by County of Los Angeles and Riverside Unified School District addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state, local agencies, kindergarten through 12th grade school districts and community college districts (K-14 districts), and county offices of education. These activities include: (1) providing copies of public records with portions exempted from disclosure redacted; (2) notifying a person making a public records request whether the requested records are disclosable; (3) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) making disclosable public records in electronic formats available in electronic formats; and (5) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

II. ELIGIBLE CLAIMANTS

Any city, county, city and county; special district; or municipal corporation; or other political subdivision; or any board, commission or agency thereof; or other local public agency; joint powers authority or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Government Code Section 54952; and, any kindergarten through 12th grade school districts and community college districts (K-14 districts), and county offices of education.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On October 10, 2002, the County of Los Angeles filed the subject test claim and therefore the reimbursement period is considered to have begun on July 1, 2001 for those statutory provisions then in effect.

Actual costs for one fiscal year shall be included in each claim. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement

of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed.

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

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.

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employees reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

Scope of Reimbursable Activities

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

For each eligible claimant, labor, contract service, material, supply, equipment and travel costs are reimbursable when incurred in performing the following activities:

A. One-time Activities (Local Agencies)

1. To develop policies, protocols, manuals and procedures for implementing reimbursable California Public Record Act (CPRA) provisions.
2. To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable CPRA provisions.
3. To purchase computers to monitor and document public records request actions to implement reimbursable CPRA provisions. (Use for other purposes is not reimbursable.)
4. To develop or update web site(s) for public record act requests to implement reimbursable CPRA provisions.

B. Annual Activities (Local Agencies)

1. Annual training programs on implementing reimbursable CPRA provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies

C. Continuing Activities (Local Agencies)

Record Production Services

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, subs. (a) and (d) (Stats. 2001, ch. 355).)

Specific reimbursable activities that are reasonably necessary in performing record production services are:

1. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for public records.
2. Determining whether the public records requests fall within the agency's jurisdiction.
3. Determining whether the request reasonably describes any identifiable records and conferring with the requestor if clarification is needed.
4. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to 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.
5. Conducting legal reviews, research and analysis of the requested records to determine if the requested records 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.
6. Processing the requested records or parts (including the redaction of records) thereof that are disclosable.

7. Reviewing the records to be sent to the requestor to ensure compliance with statutory and case law exemptions.
8. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested records.
9. Copying or saving records and accompanying correspondence.
10. Sending or transmitting the records to the requestor.
11. Tracking the shipment of requested CPRA records

Electronic Records Services

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, subd. (a)(2) (Stats. 2000, ch. 982).)

Additional reimbursable activities that are reasonably necessary in performing electronic records services are:

12. 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.

Determination Notification Services

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).)

Additional reimbursable activities that are reasonably necessary in performing determination notification services are:

13. 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.
14. 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.
15. Sending or transmitting the determination notice to the requestor.

Extension Notification Services

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).)

Additional reimbursable activities that are reasonably necessary in performing extension notification services are:

16. 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.
17. 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.
18. Sending or transmitting the extension notice to the requestor

Denial Notification Services

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).

Additional reimbursable activities that are reasonably necessary in performing denial notification services are:

19. 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.

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

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

22. Sending the denial response and accompanying correspondence to the requestor.

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Capital Assets and Equipment

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, 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 are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs

may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

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

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

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

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

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

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

used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

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

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

The fee authority set forth in Government Code section 6253.9, subdivisions (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.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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



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

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

Los Angeles County's
Review of State Agency Comments and Revised Parameters and Guidelines
California Public Records Act Reimbursement Program (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 of State agency comments and revised parameters and guidelines.

I declare that I have met and conferred with local officials, claimants and experts in preparing the attached review of State agency comments and revised parameters and guidelines.

I declare that it is my information and belief that claimed costs, including legal services as specified in the attached review, are reimbursable "costs mandated by the state" as defined in Government Code Section 17514.

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.

August 25, 2011; Los Angeles, CA

Date and Place

A handwritten signature in cursive script, appearing to read "Leonard Kaye", written over a dashed horizontal line.

Signature

| SENATE RULES COMMITTEE | AB 1014 | EXHIBIT TWO
| Office of Senate Floor Analyses | | Page 1

| 1020 N Street, Suite 524 | |

| (916) 445-6614 Fax: (916) | |

| 327-4478 | |

THIRD READING

Bill No: AB 1014
Author: Papan (D)
Amended: 8/23/01 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 6-1, 8/21/01
AYES: Escutia, Ackerman, Kuehl, O'Connell, Peace, Sher
NOES: Haynes

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 64-2, 5/30/01 - See last page for vote

SUBJECT : California Public Records Act: disclosure
procedures

SOURCE : California Newspaper Publishers Association

DIGEST : This bill requires a public agency, when it
dispatches a determination that a public records request
seeks disclosable public records, to notify the requestor
of the estimated time and date when the records will be
made available.

This bill also requires a public agency to assist a member
of the public who requests to inspect or obtain a copy of a
public record to make a focused and effective request, by
doing the following actions "to the extent reasonable under
the circumstances;" with specified exceptions:

1. identify records and information that are responsive to

CONTINUED

- 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 requested.

ANALYSIS : Existing law, the California Public Records Act (CPRA), governs the procedure for members of the public to request, and public agencies to provide access to, disclosable public information. Specifically, the CPRA requires a public agency, upon a request for public records and within 10 days from the receipt of the request, to determine whether the public records requested are disclosable public records and to promptly notify the requestor of the determination and reasons for the decision. The time period in which the determination must be made may be extended for no more than 14 days in unusual circumstances, as specified in the statute, and upon written notice by the head of the agency or by a designee as to the reason for the extension and the date on which the determination is expected to be dispatched. (Section 6253 of the Government Code.)

This bill would require that when the determination is dispatched, and the agency has determined that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.

This bill also would require a public agency when a member of the public requests to inspect or obtain a copy of a public record, to the extent reasonable under the circumstances, to do all of the following in order to assist a member of the public make a focused and effective request that reasonably describes an identifiable public record or records:

1. Assist the requestor in identifying the records and information responsive to the request or to the purpose of the request, if stated by the requestor;
2. Describe the technology or physical location in which the records exist; and
3. Provide suggestions for overcoming any practical basis for a denial of access to the records or information sought.

The above requirements are deemed to have been met and satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

This bill would make this requirement inapplicable when the public agency either makes the records available as requested, makes the determination that the records sought are exempt from disclosure under the CPRA or makes available an index of its records.

Prior legislation :

SB 48 (Sher) and SB 2027 (Sher), passed the Senate Floor 40-0, 9/9/2000 - both vetoed by Governor Davis. See background for details.

Background:

The California Newspaper Publishers Association, sponsor of AB 1014, was also the sponsor of two bills dealing with the California Public Records Act (CPRA), SB 48 (Sher, 1999) and SB 2027 (Sher, 2000), both of which were vetoed by Governor Davis. SB 48 and SB 2027 were introduced, according to the CNPA, to provide an expedited and less expensive review of a denial of access to public records by a public agency, to be conducted by the Attorney General prior to court review. The bills also would have provided for a daily penalty for a wrongful denial of access to public records.

The Governor's veto message on SB 48 focused on the inherent conflict of interest arising from the Attorney General's review of an agency decision to deny access, when the Attorney General is charged with the responsibility of

representing the public agency. The Governor's veto message on SB 2027, while contending that the review process involving the Attorney General would be too costly and yet not achieve the purpose of the bill, recognized the need for public agencies to be fully responsive to legitimate public record requests. The Governor directed the Secretary of State and Consumer Services Agency "to conduct a review of all state agencies' performance in responding to PRA requests and to make recommendations on appropriate procedures to ensure timely response."

In the fall of 2000, the California First Amendment Coalition and the Society of Professional Journalists performed an audit of local agency compliance with the CPRA. The audit, conducted by university journalism

students (USC, UC Berkeley, CSU Fullerton, CSU Northridge, Chapman University) under the supervision of their respective professors, covered records at more than 130 local government agencies in the San Francisco Bay Area and in Los Angeles, Orange, and San Bernardino Counties. The findings, entitled "State of Denial, Roadblocks to Democracy" were published in the Stockton Record on December 17 and 18, 2000. The findings document that local agencies initially reject or ignore legitimate public record requests 77% of the time, on the average. Cities and police departments initially refused legitimate public records requests 79% of the time (declining to 60 to 64% when oral requests were followed by formal written requests citing state disclosure mandates), and schools initially failed to comply 72% of the time (similarly declining to 33%).

The results of the audit, the CNPA states, definitively document what has been fact for decades after the CPRA was first enacted: that public agencies routinely ignore the Act, or abuse their powers to the detriment of the free flow of information to the public that is the basis of this democracy.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

SUPPORT : (Verified 8/27/01)

California Newspaper Publishers Association (source)
Consumer Attorneys of California

OPPOSITION : (Verified 8/27/01)

California Law Enforcement Association of Records
supervisors
California Association of Resource Conservation Districts
(CARCD)
County Sanitation Districts of Los Angeles County
California Municipal Utilities Association
California Assessor's Association
Association of California Water Agencies (ACWA)
California Association of Sanitation Agencies (CASA)
Los Angeles County District Attorney's Office

ARGUMENTS IN SUPPORT : According to the sponsor, AB 1014 is intended "to fundamentally alter the relationship between public agencies and the citizens they serve." The bill contains a legislative declaration of intent that the CPRA specifically require public agencies to assist members of the public in a specified manner in making requests for public records.

The author cites both the referenced audit conducted by university students, and an investigation conducted by the Stockton Record that showed, in the latter case, public agencies delivered properly requested information 53% of the time, and rejected, partially answered, or left unanswered the rest. Additionally, the sponsor provided anecdotal evidence, reported in various newspapers, of frustrations experienced by citizens trying to get public information from public agencies (state and local). There is certainly a need, the author states, to give citizens a helping hand in obtaining access to information to which they are entitled under the CPRA.

ARGUMENTS IN OPPOSITION : Opponents have stated that in small special districts where staff turnover is often and big, the bill would mandate them to "train new employees to be knowledgeable regarding ALL old business records and how to find them - a mostly unrealistic burden for any agency, particularly districts that receive no direct funding from state or local sources." [California Association of Resource Conservation Districts (CARCD) letter dated May 15, 2001.] The CARCD has suggested exempting from this bill all non-enterprise (or non-fee generating) special districts such as resource conservation districts.

ASSEMBLY FLOOR :

AYES: Aanestad, Aroner, Bates, Bogh, Calderon, Bill Campbell, Cardenas, Cedillo, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Hollingsworth, Horton, Jackson, Keeley, Kehoe, Kelley, Koretz, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nation, Negrete McLeod, Oropeza, Robert Pacheco, Rod Pacheco, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Simitian, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Wesson, Wiggins, Wright, Wyman, Zettel, Hertzberg
NOES: Dickerson, La Suer

RJG:jk 8/27/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

EXHIBIT 3

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:30 a.m.
DATE: Thursday, May 26, 2011
PLACE: Department of Finance
915 L Street, Redwood Room
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

Commission on State Mandates – May 26, 2011

1 CHAIR REYES: It's been moved and seconded.
2 Take the roll call, please.
3 MR. BOHAN: Mr. Alex?
4 MEMBER ALEX: Yes.
5 MR. BOHAN: Mr. Chivaro?
6 MEMBER CHIVARO: Yes.
7 MR. BOHAN: Mr. Lujano?
8 MEMBER LUJANO: Aye.
9 MR. BOHAN: Ms. Olsen?
10 MEMBER OLSEN: Aye.
11 MR. BOHAN: Mr. Worthley?
12 MEMBER WORTHLEY: Aye.
13 MR. BOHAN: And finally, Chair Reyes?
14 CHAIR REYES: Aye.
15 MR. BOHAN: The motion carries, 6-0.
16 CHAIR REYES: And without objection, can we
17 take the same roll call on Item 4?
18 Thank you. Item 4, that shall be the order.
19 Moving on to Item 5.
20 MR. LOUIE: Item 5 is the *California Public*
21 *Records Act* test claim. This addresses various
22 activities associated with providing public access to
23 public records.
24 MR. PETERSEN: Actually, we're on the decision;
25 aren't we?

Commission on State Mandates – May 26, 2011

1 MEMBER ALEX: He just zipped through it.

2 MEMBER OLSEN: We just substituted the roll
3 call.

4 MR. PETERSEN: I'm sorry, my fault. I
5 apologize.

6 It's this room, lack of oxygen.

7 Thank you very much. Sorry.

8 I'm on the next one, too.

9 MR. LOUIE: Okay, so once again, Item 5 is the
10 *California Public Records Act* test claim.

11 This test claim addresses various activities
12 associated with providing public access to public
13 information, activities such as providing electronic
14 copies or assisting individuals in searching for specific
15 information.

16 We have approved some of the activities and
17 denied some of the activities.

18 So I guess the only real major issue in
19 dispute other than individual findings of denial for
20 reimbursement, Finance argues that the test-claim
21 statutes are necessary to implement a ballot measure;
22 and as a result, reimbursement should be denied.

23 Will the parties and witnesses state their
24 names for the record?

25 MR. PETERSEN: Keith Petersen, representing

Commission on State Mandates – May 26, 2011

1 Riverside Unified School District, the test claimant.

2 MS. FEREBEE: Donna Ferebee, Department of
3 Finance.

4 LT. GERHARDT: Judy Gerhardt, Los Angeles
5 County Sheriff's Department.

6 MR. KAYE: Leonard Kaye, Los Angeles County.

7 CHAIR REYES: Thank you.

8 MR. BOHAN: Chairman, before we begin,
9 Mr. Petersen has indicated to us that he wasn't sworn in.
10 He had stepped out of the room. So if you will, I'll
11 just swear him quickly.

12 CHAIR REYES: Please.

13 MR. BOHAN: Mr. Petersen, do you solemnly swear
14 or affirm that the testimony which you are about to give
15 is true and correct based on your personal knowledge,
16 information or belief?

17 MR. PETERSEN: Yes, I do.

18 MR. BOHAN: Thank you.

19 CHAIR REYES: Okay, thank you.

20 The floor is yours, sir.

21 MR. PETERSEN: I'm going to defer to Mr. Kaye.

22 CHAIR REYES: Okay.

23 MR. KAYE: Thank you.

24 Good morning. It's good to see you all this
25 morning.

Commission on State Mandates – May 26, 2011

1 We agree with Commission staff analysis. And
2 we do have one small exception, and that is regarding
3 legal services. And we feel that, in plain language,
4 without legal services, you only have the tip of the
5 iceberg.

6 And as we speak, throughout California,
7 hundreds, if not thousands, of attorneys are involved in
8 drafting various determinations denying Public Records
9 Act requests. We feel this is a reasonable and necessary
10 component, and should be reimbursable under the terms
11 and the conditions of the parameters and guidelines.
12 However, we recognize that this hearing this morning
13 deals merely with the Statement of Decision and the
14 reimbursable activities as defined by Commission staff.
15 However, many times, it's been my experience over the
16 years, that sometimes if things are not included formally
17 in the Statement of Decision, they may be forgotten
18 during the parameters and guidelines phase.

19 So, therefore, we merely ask that right after
20 Item 7 -- and Item 7 has to do with providing a written
21 response to a request for a Public Records Act which has
22 been denied. And that written response also has to
23 include a determination.

24 Now, we toyed with the idea of adjusting that
25 language to include a legal determination of whether or

Commission on State Mandates – May 26, 2011

1 not to make other things. But I think at this point,
2 because we've waited nine years for this decision, we
3 certainly don't want to delay or defer it, so that we can
4 go back and do a lot of further analysis.

5 We think a lot of factual analysis will be
6 required to develop appropriate parameters and
7 guidelines.

8 So, therefore, we recommend that a simple
9 sentence after the last item, 7, to the effect of the
10 scope of legal services reasonably necessary in drafting
11 written responses and determinations when a Public
12 Records Act request is denied can be addressed in the
13 parameters and guidelines phase. So that would put
14 everyone on notice, so to speak, that these requirements
15 could be not fully disclosing the extent of the
16 reimbursable activities to follow in the parameters and
17 guidelines. So I thank you for that.

18 CHAIR REYES: Before I go to Finance, does
19 anybody -- Mr. Louie, do you have off-the-cuff comments
20 or thoughts on this?

21 MR. LOUIE: It can be handled in the P's & G's
22 stage, to the extent that, I guess, to repeat the
23 sentence that you were looking for, is that the scope of
24 legal services that are reasonably necessary for the
25 denial are not precluded or are included in the activity?

Commission on State Mandates -- May 26, 2011

1 MR. KAYE: Well, they'll be addressed.

2 MR. LOUIE: Addressed in the P's & G's stage?

3 MR. KAYE: Addressed in the P's & G's stage.

4 We recognize that at this moment, I think it would take a
5 lot of discussion, a lot of understanding, a lot of
6 fact-gathering to determine the exact scope of legal
7 services.

8 I have been talking to --

9 CHAIR REYES: So you're asking that we defer to
10 that and take care of that at the P's & G's -- work it
11 out in the P's & G's?

12 MR. KAYE: Right. But we recognize that it is
13 coming; that the Statement of Decision that is before
14 you today doesn't include any sort of understanding or
15 disclosure that this very large area of discussion is
16 coming for resolution in the P's & G's phase.

17 All we ask for is a simple sentence indicating
18 that.

19 CHAIR REYES: Okay --

20 MEMBER WORTHLEY: Mr. Chairman?

21 CHAIR REYES: Yes -- Ms. Shelton?

22 MS. SHELTON: I need to get a clarification
23 because there is a finding in this decision that says
24 that these statutes don't create a new mandated duty to
25 litigate. And so if you adopt this analysis --

Commission on State Mandates – May 26, 2011

1 CHAIR REYES: It opens it up?

2 MS. SHELTON: No, that's the finding. There is
3 no state-mandated duty to litigate.

4 Okay, I'm not sure what Mr. Kaye is suggesting.
5 If he is suggesting legal services is part of making the
6 determination whether or not a document can be
7 disclosed --

8 MR. KAYE: Yes.

9 MS. SHELTON: -- that's a different issue, and
10 that is an issue for parameters and guidelines.

11 MR. KAYE: Yes.

12 MS. SHELTON: But the litigation of the
13 decision is denied under this analysis.

14 MR. LOUIE: Right. And that's been noted in
15 the footnote of the analysis.

16 CHAIR REYES: Right.

17 MR. KAYE: Okay. And all I'm saying is, I
18 didn't use the term litigation, court costs, attorney's
19 services, or anything like that.

20 I recognize and respect the Commission's
21 analysis. We don't necessarily agree with it, but we
22 understand it. And we think it would take quite a bit of
23 argument and analysis and so forth to go ahead and
24 challenge that part.

25 But what we are very, very aware of is that --

Commission on State Mandates - May 26, 2011

1 and Lieutenant Gerhardt can testify to this -- that we,
2 as well as hundreds, if not thousands of public agencies
3 throughout California are confronted with trying to make
4 legally cognizable determinations in our written denials.
5 And many times, it's actually written into the
6 requirements before sometimes determinations can be made
7 and the written justification that we must consult with
8 our County counsel and so forth.

9 And these activities are reasonably
10 necessary -- in many cases, absolutely required in order
11 to do that. As a matter of fact, it's inconceivable that
12 we couldn't do that. So that's all I'm asking.

13 I'm not saying it's part of this or that and so
14 forth. I'm leaving in a tiny crack so that we can
15 define -- you know, get our arms around this and say what
16 it is in the parameters and guidelines phase.

17 MS. SHELTON: And those issues to determine --
18 you know, the verb here "to determine whether or not a
19 document can be made public" can be reserved for the
20 P's & G's stage. You can make that decision later.

21 MR. LOUIE: Okay, I don't think it's necessary
22 to add a sentence to keep that open.

23 CHAIR REYES: Because the notes will
24 memorialize the fact that this was part of the
25 conversation for the P's & G's?

Commission on State Mandates – May 26, 2011

1 MS. SHELTON: Right. And I would urge you not
2 to make a ruling on that, because your issue today is
3 whether, as a matter of law, these are state-mandated
4 duties.

5 CHAIR REYES: Yes, parameters...

6 MS. SHELTON: You don't have at this point
7 jurisdiction until you adopt a Statement of Decision to
8 determine whether something is reasonably necessary.

9 CHAIR REYES: Okay, so, point taken.

10 Lieutenant, did you want to add something?

11 LT. GERHARDT: Thank you for having me.

12 I'll just add that I'm the fortunate one of
13 20,000 members in our department that oversees the Public
14 Records Act desk.

15 CHAIR REYES: My sympathies.

16 LT. GERHARDT: Thank you. I need that from
17 somebody.

18 Particularly in the Sheriff's Department in
19 LA County, obviously, it's a huge endeavor when somebody
20 asks for a record from us because we are so large. And
21 so searching for those records, the type of records being
22 requested from our agency are usually very complex.

23 Because of the nature of our business, we have
24 to go through them with a fine-toothed comb for
25 redaction, both from the personnel side and the security

Commission on State Mandates – May 26, 2011

1 side. So it is a burdensome, complex process that we try
2 very hard to make sure it's accurate.

3 CHAIR REYES: Thank you.

4 Mr. Petersen, you had raised your hand earlier,
5 and then waved it off. I'm not sure where you are.

6 MR. PETERSEN: I didn't mean to wave it off.
7 I'm sorry.

8 Mr. Kaye said he wanted to open a small crack
9 here to embrace the concept of reasonable necessary
10 activities. I'd like to wedge that open a little bit
11 further.

12 Regarding section 6259, the legal costs, I
13 think the staff analysis is framed inappropriately.
14 It says that one of the bases for the decision is that
15 districts are not required to engage in litigation.
16 That's not how this works. The staff analysis finds that
17 providing the written justification is necessary as a
18 matter of law and reimbursable.

19 The written justification requires the analysis
20 of the records being requested, and that analysis is run
21 against a list of records you cannot disclose to the
22 public. In other words, the public agency has a duty to
23 make sure certain things are not released, especially
24 regarding peace officers and that sort of thing.

25 If the person requesting those records is

Commission on State Mandates – May 26, 2011

1 dissatisfied, they can file a petition in court.

2 The public agency does not engage in
3 litigation. A public agency cannot file a petition to
4 rule itself out of order in replying to the petition.
5 The standing is for the person requesting the records to
6 file a petition. The District -- excuse me, the local
7 agency has no standing to engage, start, commence any
8 litigation on this issue.

9 It's up to the requesting party. Therefore,
10 it's out of the hands of the local agency.

11 Once the requesting party files a petition, the
12 public agency has a duty to defend itself. And that
13 would seem to be obviously reasonable and necessary. And
14 I want to make sure that that carries over to the
15 parameters-and-guidelines discussion, notwithstanding the
16 staff's analysis.

17 CHAIR REYES: The staff's analysis is contrary
18 to that.

19 Mr. Louie --

20 MR. LOUIE: That would preclude that activity.
21 In terms of engaging in litigation, the staff analysis
22 would preclude that.

23 CHAIR REYES: Whether you are doing the
24 litigant, the defense or the plaintiff, right?

25 MR. PETERSEN: What does "engaging" mean?

Commission on State Mandates - May 26, 2011

1 MR. LOUIE: Yes.

2 MR. BOHAN: "True, true." And it couldn't be
3 fixed in the P's & G's.

4 MR. LOUIE: It's not something that can be
5 addressed in the P's and G's.

6 CHAIR REYES: Right.

7 MR. BOHAN: If you adopt the staff analysis,
8 that's precluded, clearly.

9 MR. PETERSEN: I guess that leaves us,
10 Mr. Chair, with the concept of what does "engaging" mean.

11 Any defending? Responding? Anything?

12 CHAIR REYES: Staff?

13 MR. LOUIE: It's essentially based off of, if
14 litigation is brought pursuant to 6258, which was -- I
15 don't believe it was pled -- or 6259.

16 And the duties that the court has to engage in
17 based on 6259, any response from that would be
18 "engaging." Based off the language of 6259, there's no
19 duty to engage in litigation.

20 MR. PETERSEN: I still don't understand what
21 that means, Mr. Chair.

22 MR. LOUIE: There's no duty to participate.
23 There's no -- I guess the activity that you are asking
24 for is not found in 6259.

25 MR. PETERSEN: There is no duty to respond to

Commission on State Mandates – May 26, 2011

1 a lawsuit in the California courts?

2 MR. LOUIE: Not from 6259. Not from the
3 statutes that have been pled in the test claim.

4 MR. PETERSEN: I understand that.

5 Thank you.

6 CHAIR REYES: Finance?

7 MS. FEREBEE: Well, I would also -- I guess I
8 would like to be clear on exactly what the proposal was.
9 I think I'm a little bit confused.

10 Is it the portion of the analysis that begins
11 on page 27, "court costs and attorney fees"?

12 The other thing that I would like to observe
13 is -- first of all, I think we agree with the staff
14 analysis as to this point. We thought it was well
15 analyzed, and should be -- if the Commission is so
16 inclined to adopt this proposed decision as it is, we
17 think that should be included.

18 But I also wanted to ask, there is a portion in
19 the middle of page 29 that notes that litigation has been
20 present, duties to litigate have been present since the
21 original enactment of the CPRA in 1968, and would have
22 been present since 1968.

23 And I'm not sure, in light of that, how...

24 MR. PETERSEN: Okay, Can I --

25 CHAIR REYES: Okay, let her finish her thought,

Commission on State Mandates – May 26, 2011

1 and then Mr. Petersen, and then Mr. Kaye.

2 Go ahead.

3 MS. FEREBEE: I'm not sure, in light of that,
4 that seems to be one additional reason, and this analysis
5 seems to have more than one reason why, and as Mr. Louie
6 has stated why, that should not be allowed.

7 But I guess back to my first statement: I'm
8 not quite clear on exactly what the proposal was to
9 extract out of this analysis and to bump over into the
10 P's & G's.

11 CHAIR REYES: Ms. Shelton?

12 MS. SHELTON: Let me try to make that clear.

13 What Mr. Kaye is suggesting is something
14 different than what Mr. Petersen is suggesting. That is
15 number one.

16 What Mr. Kaye is suggesting, if you look at the
17 conclusion on pages 34 and 35, and Activity No. 7 is
18 based on Government Code section 6255, and that activity
19 is, "If a request is denied in whole or in part, respond
20 in writing to a written request for inspection or copies
21 of public records that includes a determination that the
22 request is denied."

23 So in order to comply with that activity,
24 Mr. Kaye wants to discuss during the parameters-and-
25 guidelines phase, maybe getting the Commission to

Commission on State Mandates – May 26, 2011

1 consider whether legal assistance in writing that letter
2 would be a reimbursable state-mandated activity -- or,
3 rather, that it would be reimbursable.

4 MS. FEREBEE: Oh, I see.

5 MS. SHELTON: As reasonably necessary.

6 And that would be one separate issue. And I
7 think that would be allowable under this present
8 proposal.

9 Mr. Petersen is asking for litigation under
10 6259 and 6258, I think. And the analysis that is
11 presented is recommending a denial on that because it's
12 not a mandated new duty imposed on local government.

13 MS. FEREBEE: Okay.

14 MR. KAYE: Okay, and thank you.

15 And my point in all of this, if there is
16 confusion here now today with the concept of what we are
17 requesting or what LA -- what I'm suggesting here, is
18 I think it's super important, too, for those that aren't
19 privy to this discussion, or don't have the opportunity
20 to read the transcript in a timely fashion, to try and
21 figure out what is what.

22 I really, strongly recommend that we insert
23 some phrase or sentence or thought, that the scope of
24 legal services reasonably necessary in drafting
25 written responses and determinations when a Public

Commission on State Mandates – May 26, 2011

1 Records Act request is denied can be addressed in the
2 parameters-and-guidelines phase, to alert everyone that
3 this is something that at this point we think is possibly
4 allowable in the P's & G's; and we're not cutting it off
5 at the Statement of Decision level.

6 CHAIR REYES: Let me go to Ms. Olsen and to
7 Mr. Kaye's point before it goes to Mr. Petersen.

8 MEMBER OLSEN: Mr. Chair, it seems to me that
9 this is an issue that comes up, if not routinely, then
10 fairly regularly here about what folks would like
11 addressed in the P's & G's that might not be specifically
12 included in the decision.

13 And I think what Mr. Kaye is suggesting is sort
14 of a P's & G's Post-It note be inserted in this decision.
15 And I just would like staff's response on the sort of
16 general issue of that versus just having it reflected in
17 the record in minutes.

18 How does that -- if it's reflected just in the
19 record in minutes of this meeting, does that then go into
20 your thinking as you're going forward on the P's & G's?
21 Or do you really -- do we really need to start inserting
22 Post-It notes?

23 MS. SHELTON: No, you don't need it, because
24 when we do parameters and guidelines, we have the full
25 test-claim record available, and we do review that in

Commission on State Mandates – May 26, 2011

1 order to draft P's & G's.

2 When you're doing a test claim, you're basing
3 it on the language used in the statutes and regs, and
4 you're not considering how something is implemented,
5 necessarily. So you're just basing it as a question of
6 law, what is mandated by the State.

7 My hesitation with the language that Mr. Kaye
8 wants to insert into this analysis, is that I'm not sure,
9 sitting here today, if it's too broad or if it's narrow
10 enough to encompass only section 6255. And I don't feel
11 comfortable, necessarily, adding your language.

12 When, by law, you're allowed to -- when you
13 propose your P's & G's, allowed to include any activity
14 that you're asserting is reasonably necessary; and you
15 have to put the evidence in to show why it is.

16 MR. BOHAN: You also run the risk of having
17 decisions with lots of Post-It notes all over them.

18 CHAIR REYES: I'm more inclined to support the
19 notion that this is in the minutes, memorialized by the
20 transcript. It's memorialized by the minutes. It will
21 be incorporated into the discussion.

22 And then at the time that the P's & G's,
23 Mr. Kaye will participate in that and bring back a copy
24 of the minutes and the transcript, saying we talked about
25 it, we didn't quite put it into the box that you wanted,

Commission on State Mandates – May 26, 2011

1 because we're not there yet. We haven't done the
2 analysis. And we can sit here for the next ten hours and
3 try to come with the verbiage that everybody's going to
4 be happy with. And I'm not inclined to go there. I
5 would rather keep it at the higher level.

6 MEMBER ALEX: Let me observe, having spent many
7 hours on Public Records Act requests, which also applies
8 to state agencies, that the idea that you need some legal
9 advice on how to proceed initially is pretty clear. And
10 I don't think that this is going to be lost in
11 translation. So I think you made your point. And I
12 don't think anybody here would disagree with it.

13 MR. KAYE: Okay, except for the litigation
14 phase.

15 MS. SHELTON: Right, that part is denied.

16 MR. BOHAN: It's different.

17 CHAIR REYES: And now I think we've addressed
18 your issue.

19 Now, we can go back to Mr. Petersen.

20 MR. PETERSEN: Well, based on the comment from
21 Finance, it appears there is still some confusion on the
22 duty-to-litigate thing. I never asserted a duty to
23 litigate.

24 She referenced a 1968 statute, and Commission
25 staff said, "Even if litigation were implied, the 1968

Commission on State Mandates – May 26, 2011

1 statute was the source of it."

2 I never asserted, and it's clear from the plain
3 language in the statute, that the public agency, under
4 this statute, cannot commence litigation on its written
5 justification to deny access; only the person who
6 requested the documents.

7 So I'm not asserting that the public agency
8 should be reimbursed for commencing litigation; only the
9 reasonable and necessary fact that they have to defend
10 themselves when the petition is filed against them.

11 The related concern is two sentences that start
12 on the bottom of page 27. And this occurs frequently,
13 but I would like to mention it one more time.

14 The last paragraph starts, "Thus, the K-14
15 District claimant alleges that payment of court costs
16 and fees is reimbursable."

17 The next sentence, "However, the payment of
18 court costs and fees is not a program or service.
19 Instead, it is a consequence of failing to provide a
20 legally required program or service, specifically the
21 service of making disclosable public records open for
22 inspection by the public or providing copies."

23 I believe that's the fundamental
24 misunderstanding of the law.

25 Public agencies are required to either provide

Commission on State Mandates – May 26, 2011

1 the documents requested or provide a written
2 justification of why they were not provided. The
3 mandate, which the staff says is reimbursable, is to
4 provide that written justification. That's the duty.
5 There is no duty to be correct about that justification.
6 It's a matter of opinion; and legal opinions vary. And
7 the court will have the final say. By coming up with the
8 wrong judgment is not a failure to implement the mandate;
9 it's coming up with the wrong conclusion.

10 So the fact that it goes to court doesn't mean
11 there was a failure in performing the mandate. And I
12 believe that's the fundamental problem with this test
13 claim and many other test claims, that reimbursement is
14 based on outcomes rather than process.

15 CHAIR REYES: Thank you.

16 MS. FEREBEE: Can I? I'd like to --

17 CHAIR REYES: Yes.

18 MS. FEREBEE: Well, if I still do have a
19 chance, I would just like to say that Finance concurs
20 with the analysis as to the court costs and attorney
21 fees.

22 However, I do want to say, as Mr. Louie
23 pointed out in his opening remarks, that Finance has
24 filed written comments objecting, sort of a big
25 objection, that Government Code section 17556,

Commission on State Mandates – May 26, 2011

1 subdivision (f), applies to this claim. And because of
2 that, the Commission should find that there are no costs
3 mandated by the State because the test-claim statutes are
4 necessary to implement Proposition 59. We outlined our
5 argument in our written comments of January 14th, 2011,
6 and continue to maintain that as so.

7 But I wanted to make sure that I got that in
8 the record. But as to the points that have just been
9 made about the court costs, attorney fees, we concur with
10 the staff analysis.

11 Thank you.

12 CHAIR REYES: Thank you.

13 Okay, any additional questions from any
14 members?

15 MEMBER WORTHLEY: Just a comment.

16 CHAIR REYES: Mr. Worthley?

17 MEMBER WORTHLEY: I think it's a little
18 unfortunate that the analysis indicated -- the portion
19 that was read by Mr. Petersen -- I think it should have
20 simply ended with saying that -- going back to the last
21 paragraph on page 27, "However, the payment of court
22 costs or reasonable attorneys fees is not a program or
23 service provided to the public." I think it should have
24 ended there. The statement that, "Instead, it is a
25 consequence of failing to provide a legally required

Commission on State Mandates -- May 26, 2011

1 program or service" is an assumption which is not
2 necessarily true. I mean, because you could be sued --
3 you could be absolutely right in your determination that
4 this should not be disclosed, and still be sued by the
5 person requesting it.

6 This would indicate that that -- that on the
7 basis of the fact that the only reason that you're being
8 sued is because you failed to provide something, well,
9 that is true. But if you have a legal obligation not
10 to provide it, then this is assuming that every time
11 you're sued, it's because of the failure you've made.
12 And oftentimes, you may not have failed at all, but
13 you're being sued because you have an unhappy litigant,
14 and so they're going to sue you.

15 CHAIR REYES: Mr. Louie?

16 MR. LOUIE: That statement was more towards the
17 payment of attorneys' fees which only occurs when a court
18 has found that you should have provided the document.

19 MEMBER WORTHLEY: Oh, okay, in that instance?
20 Okay.

21 MR. BOHAN: Mr. Chairman, would it be helpful
22 to go into this a little deeper? I mean, we've thought
23 through some of the issues that are being raised. We
24 haven't really responded. We'd be pleased to, or not.

25 MEMBER WORTHLEY: Personally, I don't have a

Commission on State Mandates – May 26, 2011

1 problem going forward today.

2 I understand Mr. Petersen's objection, and I
3 understand it. But I know we were under this wall of
4 what the law allows us to do. And I think when you look,
5 Mr. Petersen's argument is one of: Isn't it reasonably
6 expected that if you're going to be sued, you're going to
7 respond to it? Absolutely, you're going to respond to
8 it. But then you get to the very strict constraints
9 under which we operate, and that becomes our constraint.

10 It's not about whether it makes sense,
11 oftentimes, unfortunately; it's about what we're allowed
12 to do legally.

13 CHAIR REYES: Our parameters, right.

14 MEMBER WORTHLEY: And I think that's kind of
15 where we are.

16 CHAIR REYES: Mr. Louie?

17 MS. SHELTON: Well, we can go around and around
18 about this.

19 I think that there were couple of things. One,
20 who is making the decision to respond? Is that the State
21 or is that the local agency? And that's one of the
22 issues.

23 The other issue is that they have been
24 litigating these issues since 1968. So it's not a new
25 duty.

Commission on State Mandates – May 26, 2011

1 MR. BOHAN: That's really the major point.
2 This has been around. They've been sued, and they have
3 had that since the beginning of the Act. The same
4 statutes didn't add to that.

5 So it's true that when you get sued, you may
6 need to respond. You may be right, but that's been there
7 forever.

8 CHAIR REYES: And Mr. Petersen's point is that
9 back in '68, there were ten causes for you to be sued,
10 now we have 120.

11 MS. SHELTON: Right.

12 CHAIR REYES: You still have cause to react.
13 But now, the number of opportunities to have to react
14 have increased.

15 MS. SHELTON: Right.

16 MR. PETERSEN: Plus, there's never been an
17 affirmative duty for the public agency to litigate.

18 The way you phrased your response seems to
19 indicate you still think there was a duty to litigate.
20 The public agency never had a duty to commence
21 litigation, and they have no legal standing to use this
22 code section.

23 CHAIR REYES: Okay. So in the absence of
24 additional comments from Board members, is there a
25 motion?

Commission on State Mandates – May 26, 2011

1 MEMBER LUJANO: Move approval.
2 CHAIR REYES: Move approval of staff's
3 recommendation.
4 Is there a second?
5 MEMBER OLSEN: Second.
6 CHAIR REYES: It's been moved and seconded.
7 Any additional comments from the public?
8 *(No response)*
9 CHAIR REYES: Any additional comments from
10 Board members?
11 *(No response)*
12 CHAIR REYES: Please call the roll.
13 MR. BOHAN: Mr. Alex?
14 MEMBER ALEX: Yes.
15 MR. BOHAN: Mr. Chivaro?
16 MEMBER CHIVARO: Yes.
17 MR. BOHAN: Mr. Lujano?
18 MEMBER LUJANO: Aye.
19 MR. BOHAN: Ms. Olsen?
20 MEMBER OLSEN: Aye.
21 MR. BOHAN: Mr. Worthley?
22 MEMBER WORTHLEY: Yes.
23 MR. BOHAN: And Mr. Reyes?
24 CHAIR REYES: Aye.
25 MR. BOHAN: The motion carries, 6-0.

Commission on State Mandates – May 26, 2011

1 CHAIR REYES: Thank you.

2 And consistent with what I have done before,
3 if we can substitute the roll call on Item 6 without
4 objection?

5 MR. BOHAN: Yes.

6 CHAIR REYES: Thank you. That will be the
7 order.

8 Item 7, *School Bus Safety*.

9 MR. LOUIE: Item 7 is the *School Bus Safety III*
10 test claim. It addresses various activities imposed
11 on school districts in regards to providing school bus
12 transportation. This includes providing safety notices
13 to students, purchasing school buses that are equipped
14 with seat belts, things of that nature.

15 Consistent with a prior court case and prior
16 Commission findings, we found that school bus
17 transportation is not a required activity; and all of
18 the activities imposed by the statutes are triggered
19 by that provision of school bus transportation. As a
20 result, we've denied -- we're recommending denial of the
21 whole test claim.

22 CHAIR REYES: Thank you.

23 Go ahead.

24 MR. LOUIE: Will the parties state their names
25 for the record?