



CITY OF NEWPORT BEACH

ADMINISTRATIVE SERVICES

Received
November 4, 2013
Commission on
State Mandates

November 1, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Commission Proposed Parameters and Guidelines
Peace Officers Procedural Bill or Rights II (POBOR II, 03-TC-18)

Dear Ms. Halsey,

The City of Newport Beach is pleased that the Commission staff included most of the provisions in its proposed POBOR II parameters and guidelines exactly as contained in the City's draft parameters and guidelines. However, the City requests that the Commission staff reconsider and restore all of the reimbursable activities it has removed. The Commission staff removed a few proposed reimbursable activities in the component to provide notice of possible or proposed discipline to an officer and also in the component to make a personnel file available to an officer.

Providing Notice to the Peace Officer

The Commission staff removed two tasks or activities are related to: (1) within one year of discovery of any misconduct, provide notice to the peace officer being investigated that he or she may face disciplinary action after the investigation is completed; and (2) after the investigation and any predisciplinary response or procedure utilized by the employer, notify the peace officer in writing that the employer has decided to impose discipline. Commission staff removed the City's proposed tasks of "serving and filing" of the required notices on the basis that they are not reasonably necessary to comply with statute. The City believes serving or providing the notices is necessary to insure they complied with the requirement to notify the officer. Filing the notices is necessary in the event there is a challenge the noticing has been completed and proof is required.

Make Personnel File Available

The City also requests the Commission restore the three tasks staff removed from its draft parameters and guidelines to make the personnel file or copy thereof available within a reasonable period of time after a request by the officer. The Commission staff removed the following: (1) scheduling an appointment to inspect personnel file, (2) monitoring the officer while he or she reviews information, and (3) paying the officer for time away from normal duty. Staff also added a provision to its proposed parameters and guidelines specifying these activities are not reimbursable.

1. Scheduling an appointment to inspect a personnel file is necessary to accommodate the officer and to insure there is the employer staff available to assist the officer. It is difficult to understand how scheduling an appointment is not a reasonable task to be performed.
2. Monitoring officers during the inspection of their personnel file is necessary to insure no documents are removed or tampered with during the inspection. Personnel files contain confidential information that the employer is legally required to maintain and is responsible to insure they are not altered.
3. Paying the officer from time away from normal duty would only be eligible for reimbursement if the officer cannot review his or her personnel file during off duty times. When officers can review their files during non-duty time, the agency would not be incurring costs to pay the officer. Since statute provides that officer shall be permitted to inspect their files "with no loss of compensation," it may be necessary to provide for inspection while the officer is on duty.

Controller Boilerplate

The City agrees with Commission staff proposal to make the minor changes to the boilerplate provisions to make it consistent with the Controller's current provisions. The City requests the boilerplate adopted contain the option to for local agencies to conduct time studies to claim costs.

Reasonable Reimbursement Methodology

The City hoped a reasonable reimbursement methodology (RRM) would be included in the parameters and guidelines. For a variety of reasons, the development of an RRM has not been completed. The City understands the Commission's position to proceed without an RRM at this time and is not objecting to the adoption of the proposed parameters and guidelines at the December hearing. The City is still exploring the development of an RRM and may file a request to amend the parameters and guidelines in the future.

Please contact Allan Burdick at (916) 203-3609 or allanburdick@gmail.com if you require further information.

Sincerely yours,



Evelyn Tseng
Revenue Manager