

ITEM 2

APPEAL OF EXECUTIVE DIRECTOR DECISION

California Code of Regulations, Title 2, Section 1181(c)

Denial of Request by CSBA to Postpone Item 5
Proposed Parameters and Guidelines and Statement of Decision Regarding:

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapter 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act

02-TC-10 and 02-TC-51

County of Los Angeles and Riverside Unified School District, Claimants

Allan P. Burdick, Executive Director, CSAC SB 90 Services, Appellant

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April 8, 2013

Halsey, Heather
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Received
April 08, 2013
Commission on
State Mandates

RE: Appeal of Executive Director's Decision to Allow Postponement of the adoption of the parameters and guidelines for the Public Records Act until the Local Government Associations, in cooperation with the test claimant, have an opportunity to prepare an RRM for the City, County and School Districts.

Dear Ms. Halsey:

In March 2013, the Commission on State Mandates (Commission) received the California School Boards Association (CSBA) request to postpone the April 19, 2013, hearing of the above matter. That letter states that: " here exists a reasonable opportunity to develop a proposed RRM with the Department of Finance and other local government associations, including CSAC, the League of Cities, and the CA Special Districts Association." The Executive Director denied the request for a postponement of a hearing, although commented there are continuing options available for the development of an RRM after the original Ps & Gs are adopted. The Executive Director, in her "Denial of Request for Postponement of Hearing on Parameters and Guidelines for the California Public Records Act, 02-TC-10 and 02-TC-52" stated:

The Commission regulations provide that any party may request the postponement to mean the test claimant(s) of a hearing on parameters and guidelines (P's and G's). The Commission's regulations define "party" to mean the test claimant(s), the Department of Finance, Office of State Controller, or affected state agency." There is no authority for interested parties to request a postponement of a hearing, although interested parties may request an extension of time to comment when it does not impact the scheduling of a matter ..."

While the executive director has authority to postpone a hearing on her own motion, that authority is only available for good cause. The executive director also has a statutory duty to "expedite all matters within the jurisdiction of the commission" and given Considerable backlog, fulfilling this duty is of paramount importance.

The Executive Director continues: "Though reimbursement for this program is a matter of statewide concern, there has been ample opportunity for the statewide associations to participate in this matter. However, no comments have been filed by either CSAC or CSBA. In addition, this matter has been set for hearing when the draft was issued on February, 2013, and neither the test claimants to this matter, Los Angeles County and Riverside Unified School District (both of whom are members of CSAC or CSBA, respectively), nor Finance has requested an extension of time for the purpose of coming to an agreement on a reasonable reimbursement methodology."

Given the short time frame, ten calendar days, not ten working days, the Executive Director of the CSAC SB 90 Service will provide the specific reasons for its appeal of the CSBA, and earlier CSAC requests to postpone the hearing, including the wasted time and both state and local resources that would be incurred by the denial of the CSAC and CSBA requests to develop an RRM in an expeditious fashion.

In conclusion, the Executive Director's decision flies directly in the face of the provisions of AB 1222 (Laird) of 2007, that gave statewide associations like CSAC and CSBA, for the first time, the right to be considered the same way a test claimant should be when adopting parameters and guidelines. In fact, CSBA can CSAC should be give precedence over Los Angeles County and the San Diego Unified School District on this matter.

I, along with witnesses, will provide additional commentary when the Executive Director is heard on April 19th. In the meantime, I will confer with the League of CA Cities to obtain written or testimony supporting the position that statewide associations should be given precedence to a test claimant.

Sincerely



Allan P. Burdick
Executive Director
CSAC SB90 Services

California State Association of Counties

Received
March 15, 2013
Commission on
State Mandates



March 15, 2013

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Ms. Heather Halsey, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

RE: Extension to Develop an RRM for Public Records Act (02-TC-10 and 02 TC-51)

Dear Ms. Halsey:


The California State Association of Counties (CSAC) requests an extension of the April 19, 2013 hearing date to file an amended set of parameters and guidelines for the Public Records Act (PRA) test claim to include an RRM. The RRM will only apply to back years, either FY 2011-12 or FY 2012-13 to the 2001-02 fiscal year and provide for actual costs claims only on a go-forward basis. The final fiscal year of the RRM will be determined by the Department of Finance. Based on our discussion with the CSAC SB 90 Service staff that met with the Department of Finance and State Controller (SCO) earlier this week, we believe staff there is a reasonable opportunity to develop a proposed RRM with the Department of Finance and other local government associations. If that effort fails, it is our intention to pursue an RRM through the Commission's other option without DOF. CSAC plans to work closely with the California School Boards Association (CSBA), League of CA Cities (LCC), California Special Districts Association (CSDA) and the two test claimants on this matter.

An overview of the proposed RRM plan and schedule as follows:

1. Complete Draft Survey – End of March
2. Visit local agencies with the State Controller to field test the survey instrument – April
3. Survey the participants – May
4. Analyze and calculate the survey results – Mid June
5. Negotiate with DOF staff to reach agreement on a RRM – June & July
6. Submit the proposed amendment to the CSM within a week after we reach agreement to jointly go forward or for local agencies to pursue the RRM without DOF. The local associations are committed to doing everything possible to reach agreement with DOF.

As you know, the Governor has proposed to suspend the Public Records Act (PRA) beginning with the 2013-14 fiscal year. One benefit of delaying the adoption of the P's and G's is to have enough data by the May Revise to give the Governor and Legislature a better estimate of the potential cost in order to evaluate the impact of the suspension. If the state suspends the P's and G's for the 2013-14 fiscal year, that can be noted in the final copy.

Regards,

A handwritten signature in blue ink, appearing to read "Jean Kinney Hurst", with a long horizontal flourish extending to the right.

Jean Kinney Hurst
Senior Legislative Representative

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
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March 18, 2013

Ms. Jean Kinney Hurst
Senior Legislative Representative
California State Association of Counties (CSAC)
1100 K Street, Suite 101
Sacramento, CA 95814

And Affected State Agencies and Interested Parties (See Mailing List)

Re: **Denial of Request for Hearing Postponement**
California Public Records Act, 02-TC-10 and 02-TC-51
Government Code Section 6253, et al.
County of Los Angeles and Riverside Unified School District, Claimants

Dear Ms. Kinney Hurst:

The Commission on State Mandates (Commission) has received your request to postpone the April 19, 2013 hearing of the above matter. Section 1183.01(c)(2) of the Commission's regulations provides that any party may request the postponement of a hearing on parameters and guidelines. In the Commission's regulations "Party" means the test claimant, the Department of Finance, Office of State Controller, or affected state agency. (2 CCR 1181.1(m).) If a request from the claimant is received more than 15 days before the hearing, Commission regulations (2 CCR 1183.01(c)(2)) state that the executive director *shall* grant a hearing postponement for good cause. The same section of Commission regulations state that the executive director *may* grant a hearing postponement when requested by a state agency.

However, there is no authority for interested parties (such as CSAC) to request a postponement of a hearing, although interested parties may request an extension of time to comment when it does not impact the scheduled hearing of a matter (2 CCR 1183.01(c)(1)).

Parameters and guidelines have not yet been adopted for this matter as that is what is set for hearing on April 19, 2013. As an interested party, CSAC may file a request to amend parameters and guidelines once there are parameters and guidelines to amend.

Your request for a postponement of the hearing on this matter is denied.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

COMMISSION ON STATE MANDATES

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 SACRAMENTO, CA 95814
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March 18, 2013

Ms. Jean Kinney Hurst
 Senior Legislative Representative
 California State Association of Counties (CSAC)
 1100 K Street, Suite 101
 Sacramento, CA 95814

And Affected State Agencies and Interested Parties (See Mailing List)

Re: **Denial of Request for Hearing Postponement**
California Public Records Act, 02-TC-10 and 02-TC-51
 Government Code Section 6253, et al.
 County of Los Angeles and Riverside Unified School District, Claimants

Dear Ms. Kinney Hurst:

The Commission on State Mandates (Commission) has received your request to postpone the April 19, 2013 hearing of the above matter. Section 1183.01(c)(2) of the Commission's regulations provides that any party may request the postponement of a hearing on parameters and guidelines. In the Commission's regulations "Party" means the test claimant, the Department of Finance, Office of State Controller, or affected state agency. (2 CCR 1181.1(m).) If a request from the claimant is received more than 15 days before the hearing, Commission regulations (2 CCR 1183.01(c)(2)) state that the executive director *shall* grant a hearing postponement for good cause. The same section of Commission regulations state that the executive director *may* grant a hearing postponement when requested by a state agency.

However, there is no authority for interested parties (such as CSAC) to request a postponement of a hearing, although interested parties may request an extension of time to comment when it does not impact the scheduled hearing of a matter (2 CCR 1183.01(c)(1)).

Parameters and guidelines have not yet been adopted for this matter as that is what is set for hearing on April 19, 2013. As an interested party, CSAC may file a request to amend parameters and guidelines once there are parameters and guidelines to amend.

Your request for a postponement of the hearing on this matter is denied.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
 Executive Director

Received

March 28, 2013

Commission on
State Mandates

March 27, 2013

Heather Halsey
Executive Director
CA Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

RE: Reconsideration of CSAC Request for an Extension to Develop an RRM for Public Records Act (02-TC-10 and 02 TC-51)

Dear Ms. Halsey:

The CA School Boards Association (CSBA) respectfully requests that you reconsider your decision to deny the request made by the California State Association of Counties (CSAC) for an extension of the April 19, 2013, hearing date to file an amended set of parameters and guidelines for the Public Records Act (PRA) test claim to include a Reasonable Reimbursement Methodology (RRM). We believe there exists a reasonable opportunity to develop a proposed RRM with the Department of Finance and other local government associations, including the CSAC, the League of CA Cities, and the CA Special Districts Association. Each of these associations represents the collective interests of their membership, just as CSBA represents nearly 1,000 school districts and county boards of education.

As you know, the Governor has proposed to suspend the Public Records Act (PRA) beginning with the 2013-14 fiscal year. The Legislative Analyst has recommended that the Legislature deny the Governor's proposal. One benefit of delaying the adoption of the P's and G's is to have enough data by the May Revision to give the Governor and Legislature a better estimate of the potential costs in order to evaluate the impact of a suspension.

Sincerely,

Dennis Meyers, CAE
Assistant Executive Director
Governmental Relations

COMMISSION ON STATE MANDATES

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March 29, 2013

Mr. Dennis Meyers
 Assistant Executive Director
 Governmental Relations
 California School Boards Association
 3251 Beacon Blvd.
 West Sacramento, CA 95691

And Affected State Agencies and Interested Parties (See Mailing List)

Re: **Denial of Request for Postponement of Hearing on Parameters and Guidelines**
California Public Records Act, 02-TC-10 and 02-TC-51
 Government Code Section 6253, et al.
 County of Los Angeles and Riverside Unified School District, Claimants

Dear Mr. Meyers:

The Commission on State Mandates (Commission) has received the California School Boards Association (CSBA) request to postpone the April 19, 2013 hearing of the above matter. Your request seeks a postponement of the hearing "to file an amended set of parameters and guidelines for the Public Records Act (PRA) test claim to include a Reasonable Reimbursement Methodology (RRM)." Your letter further states that "there exists a reasonable opportunity to develop a proposed RRM with the Department of Finance and other local government associations, including the CSAC, the League of Cities, and the CA Special Districts Association." For the reasons below, your request for a postponement of the hearing on these parameters and guidelines is denied.

As was mentioned in the March 18, 2013 denial of the California State Association of Counties' (CSAC's) request to postpone the hearing to develop an RRM with Finance, section 1183.01(c)(2) of the Commission's regulations provides that any "party" may request the postponement of a hearing on parameters and guidelines (Ps&Gs). The Commission's regulations define "party" to mean the test claimant(s), the Department of Finance (Finance), Office of State Controller, or affected state agency. (2 CCR 1181.1(m).) There is no authority for *interested* parties to request a postponement of a hearing, although *interested* parties may request an extension of time to comment when it does not impact the scheduled hearing of a matter. (2 CCR 1183.01(c)(1).)

While the executive director has authority to postpone a hearing on her own motion, that authority is only available for good cause shown. (2 CCR 1183.01(c)(2) and(3).) The executive director also has a statutory duty to "expedite all matters within the jurisdiction of the commission" (Gov. Code § 17530) and, given the Commission's considerable backlog, fulfilling this duty is of paramount importance.

Though reimbursement for this program is a matter of statewide concern, there has been ample opportunity for the statewide associations to participate in this matter. However, no comments have been filed by either CSAC or CSBA. In addition, this matter was set for hearing when the draft was issued on February 13, 2013, and neither the test claimants to this matter, Los Angeles County and Riverside Unified School District (both of whom are members of CSAC and CSBA, respectively), nor Finance has

Mr. Dennis Meyers

March 29, 2013

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requested an extension of time for the purpose of coming to an agreement on a reasonable reimbursement methodology (RRM).

Please also note the statutory and regulatory limitations for adopting a joint RRM or an RRM included in original Ps&Gs. A joint RRM is governed by Government Code section 17557.1, which specifies that, within 30 days of the issuance of the test claim decision, only *the test claimant(s) and the Department of Finance* may notify the executive director of the Commission of their intent to follow the process to develop a joint RRM. The test claim decision on this matter was issued May 26, 2011. Notification has not been filed in this case and the time has now passed for utilizing the joint RRM process.

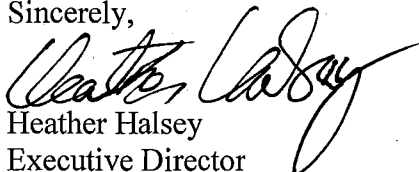
Under Government Code section 17557 and section 1183.131 of the Commission's regulations, any party or interested party may propose consideration of an RRM to be included in original Ps&Gs at any time up until the close of the comment period on the draft Ps&Gs and statement of decision on the Ps&Gs. In this case, the comment period closed on March 6, 2013, and no comments or proposed RRMs were received by either CSAC or CSBA. Your request for postponement only states that "there exists a reasonable opportunity to develop a proposed RRM." Therefore, granting this request, without evidence showing a likelihood of achieving the stated objective, would only delay this claim further. For this reason, good cause has not been established for the postponement of the hearing on the Ps&Gs, and the request is denied.

There are continuing options available for the development of an RRM after original Ps&Gs are adopted. Original Ps&Gs may later be amended to include an RRM developed by an interested party for some or all of the activities, pursuant to Government Code sections 17518.5 and 17557(d)(2)(C). Government Code section 17557(d)(1) provides, however, that only "[a] local agency, school district, or the state may file a written request with the commission to amend the parameters or guidelines." That section further provides that "A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines..." Therefore, if an agreement is reached with Finance on an RRM and a local agency, school district, or the state is willing to file a parameters and guidelines amendment to include an RRM in the Ps&Gs within 90 days of the claiming deadline for initial claims, which is roughly seven months from the date the original Ps&Gs are adopted, the RRM can relate back to the beginning of the period of reimbursement identified in the original Ps&Gs. If an agreement on an RRM cannot be reached, or the RRM does not meet the substantial evidence requirements, there will be no further delay on this matter and all eligible claimants may seek reimbursement based on their actual costs under the parameters and guidelines.

The Commission welcomes and highly values the active participation of statewide associations in the matters under its consideration. However, approving this request to postpone the April 19, 2013 hearing would be prejudicial to the parties' interest in a timely resolution. Unless a request to postpone the hearing on this matter is made by one of the parties to this claim in accordance with section 1183.01 (c)(2) of the Commission's regulations, I do not intend to grant a hearing postponement.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,


Heather Halsey
Executive Director