



CITY OF COSTA MESA

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RECEIVED
August 23, 2018
Commission on
State Mandates

August 22, 2018

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

Interested Party Response to Draft Proposed Decision:
Test Claim U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01

Dear Ms. Halsey,

The City of Costa Mesa would like to submit this response and declaration as evidence to staff's Draft Proposed Decision on the UVISA Test Claim.

We are pleased and agree with the Commissions finding that the passage of Penal Code Section 679.10 constitutes a reimbursable State Mandate program.

As you know, the City of Costa Mesa was first to file a Test Claim on this same program, however, our filing was denied because we waited to submit our Test Claim until we knew we had incurred over \$1,000 in costs for the activities mandated by Penal Code Section 679.10. Unfortunately for us, by waiting until we could prove our costs were over \$1,000, we had exceeded your filing eligibility requirements.

In your February 8th letter (See page 3 of the attached February 8, 2018 Notice of Incomplete Test Claim letter) you stated, "Costa Mesa first incurred costs... in calendar year 2016, but neither the narrative nor the declarations specify the date that the test claimant *first* incurred increased costs as a result of new activities and modified existing activities required by this statute as required by section 1183.1 of the Commissions regulations."

Further, you continue in your letter, "even if the Commission were to adopt your novel theory that the date of first incurred costs means the date that at least \$1000 have been incurred in a fiscal year, there is no evidence in this filing that \$1000 has been incurred in a particular fiscal year."

Commission regulations we learned strictly interpreted "first incurred costs" as the first date costs were incurred, not the date when the agency noticed that their costs first "exceeded" \$1,000.

It appears now that you are arguing the other side of the coin and recommendation to deny the City of Claremont "who filed their Test Claim within the required 12 months after incurring first cost" because you do not think that their Test Claim proved their costs exceeded \$1,000 in a fiscal year. It is not fair to have it both ways.

If this is true, then your regulations have violated the intent of article XIII B of the California Constitution which states its purpose is "to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."

Some State Mandated programs have a slow or delayed impact on local agencies. Sometimes it takes years for a programs full impact to be felt. By placing these filing barriers that a city must both "prove" its cost exceeded \$1,000 in a fiscal year and that the filing is done within 12 months of the first observed costs unfairly stacks the deck against small sized agencies whose costs from a mandated program are slow in coming.

An agency must file a Test Claim immediately in order to preserve their right to file a future claim for State Reimbursement. If they file correctly when they first incur costs, yet if costs at the time of Test Claim do not exceeded the \$1000 mark, they lose. Then if they do not file right away because their costs are too low, but when the costs do go over the \$1000 it can be too late to file because more than a year has passed – so they lose again. Clearly both interpretations cannot be correct and would violate the intent of the legislature.

Another topic I would like to address is the one of time and cost to process a UVISA request.

Based on my actual process and experience as the Costa Mesa Police Department lieutenant, I estimate that it takes me an average of 45 minutes to process each UVISA request. Given that each UVISA case is unique and some are significantly more complex and require more time to gather process, it is my opinion and believe that the City of Claremont's approximate 1-hour request to process its first request is not an unreasonable amount of time.

Finally, I disagree with Commissions recommendation that one-time start-up costs to Update Department Policies and Procedures is not required as a result of the mandate. Law enforcement agencies that certify UVISA are mandated by DHS to have a policy/practice in place and are compelled to educate staff on the process and use UVISA certification. When there is a change or an update to law or statute law enforcement agencies must update their policies to ensure consistent and legal responses to State mandate statutes.

We appreciate your time and consideration and are happy to provide any additional information required. I can be reached at (714) 754-5395

Sincerely,



Lieutenant Edwin Everett
Costa Mesa Police Department

DECLARATION OF EDWIN EVERETT

I, Edwin Everett, make the following declaration under oath and under penalty of perjury under the laws of the State of California that the following statements are true and correct:

- 1) I am a Lieutenant for the City of Costa Mesa. I have been employed by the City in this capacity since 2015 and have been a law enforcement officer since 1995. As part of my duties, I am, and have been directly involved and have personal knowledge of the UVISA program, process, and activities performed by the City of Costa Mesa which were required by Penal Code 679.10, added by Senate Bill 674, Statutes of 2015 (referred to as the UVISA program).
- 2) I estimate that it takes me an average of 45 minutes to complete the activities required to comply with the requirements of the UVISA program.
- 3) Based on my actual process and experience as the Costa Mesa Police Department Lieutenant, I estimate that it takes me an average of 45 minutes to process each UVISA request.
- 4) Given that each UVISA case is unique and some are significantly more complex and require more time to gather process, it is my believe that the City of Claremont's approximately 1 hour request to process its first request is not unreasonable
- 5) The City of Costa Mesa incurred over \$1000 in actual costs during FY 2017-18 to comply with the UVISA program.
- 6) Based on my knowledge of the UVISA program and my experience in law enforcement, the number of UVISA requests received state-wide will likely increase substantially in the future as immigrants become more aware of the existence of this program.

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 items 1) 2) 3) 5) and 6) are true and correct based upon my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that item 4) is true to the best of my information and belief.

Executed this 22nd day of August, 2018 in Costa Mesa, California.



Edwin Everett
Lieutenant,
Costa Mesa Police Department



Sent via email to: ACHinnCRS@aol.com and sdunivent@costamesaca.gov

February 8, 2018

Ms. Annette Chinn
Cost Recovery Systems, Inc.
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Folsom, CA 95630

Mr. Stephen Dunivent
Costa Mesa Police Department
PO Box 1200
Costa Mesa, CA 92626-1200

RE: Notice of Incomplete Test Claim

U Visa 918 Form, Victims of Crime: Non-immigrant status

Dear Ms. Chinn and Mr. Dunivent:

On December 14, 2017, the Costa Mesa Police Department filed a Test Claim with the Commission on State Mandates (Commission) on the above-named matter.

Upon initial review, Commission staff finds this Test Claim to be incomplete because it was not timely filed: it was not filed within 12 months of the effective date of the test claim statute or within 12 months of the date that costs were first incurred based on the evidence submitted with the filing.¹

To Be Considered Timely Filed Under Government Code 17551(c) a Test Claim Must Be Filed Not Later Than 12 Months Following the Effective Date of a Statute or Executive Order or, as Supported with Evidence in the Record, Within 12 Months of First Incurring Increased Costs as a Result of a Statute or Executive Order.

Government Code section 17551(c) requires a local agency to file a test claim “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”

In addition, 1183.1(c) of the Commission’s regulations, states in pertinent part, “[f]or purposes of claiming based on *the date* of first incurring costs, ‘within 12 months’ means by June 30 of

¹ Please note that there were numerous other completeness issues found but because it does not appear that the threshold issue of timeliness can be overcome in this case, there is no need to attempt to cure them. For your reference for future filings, those issues were the following: 1) Failure to identify “a city manager, director of finance, or other officer with a delegation by ordinance or resolution from the city council” as the claimant (Tit. 2 CCR §1183.1(a).); 2) Failure to include the applicable statute, and chapter in Section 4 of the test claim form; 3) Failure to support evidence of first incurring costs with evidence in the record based on personal knowledge under penalty of perjury (hearsay evidence is not sufficient in itself to support a finding of fact, though such evidence may be used to bolster other evidence); and 4) the filing lacked a complete description of “...the *new activities and costs that arise from the mandate, ...the existing activities and costs that are modified by the mandate, ...the actual increased costs* incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate” and “the *actual or estimated annual costs that will be incurred* by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed” as required by Government Code section 17553(b)(1). Note that cost estimates are required by fiscal, not calendar, year.

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the fiscal year following the fiscal year in which increased costs were *first incurred* by the test claimant.” (Emphasis added.)

In this case, the narrative indicates:

The City believes its additional costs to implement this mandated program did not exceed \$1,000 (the minimum claimable amount) until a complete year from program effective date or by the end of calendar year 2016. State mandate claiming guidelines do not allow for submission of costs/claims unless they exceed \$1,000 in a given fiscal year. Therefore, Fiscal Year 2016-2017 would be the City’s first year of costs greater than the minimum claiming threshold. This test claim is therefore submitted within one year after the City first incurred costs in excess of \$1,000 resulting from the mandate program. Costs for the FY 17-18 fiscal year are estimated to be about the same.²

First, this statement regarding not having costs of at least \$1000 in 2015-2016 is not supported by any evidence in the record. Even the chart in the narrative purporting to show that \$1000 in costs were not incurred in 2015-2016 does not provide any dates for when the costs were incurred or separate costs incurred in 2015-2016 from 2016-2017 to support this assertion. Please note that all representations of fact made to the Commission “shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant’s personal knowledge, information or belief.” (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) If written representations of fact are made, they must be supported with documentary evidence. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.³

Additionally, this statement conflates two separate standards that apply to the filing of test claims: 1) the date costs were *first* incurred for purposes of determining a timely filing more than 12 months after the effective date of the test claim statute pursuant to Government Code section 17551 and California Code of Regulations section 1183.1(c); and 2) whether the requirement that a claim exceed \$1000 has been met pursuant to Government Code section 17564.

The test claim statute pled became effective on January 1, 2016.⁴ Twelve months following the effective date of January 1, 2016 would have been January 1, 2017 and the end of the fiscal year following the fiscal year in which increased costs were first incurred (2015-2016) would have been the end of fiscal year 2016-2017, or June 30, 2017. However, this Test Claim was filed nearly six months later, on December 14, 2017.

² Test Claim, page 6-7 (Narrative).

³ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

⁴ Test Claim, page 1.


Further, the declaration of Steve Dunivent states, “the City of Costa Mesa first incurred costs as a result of this Test Claim statute in Calendar Year 2016...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 stated upon information or belief...”⁵ Both the narrative and declaration of costs provide the same chart that indicates that costs were incurred during part of fiscal year 2015-2016 and part of fiscal year 2016-2017 (calendar year 2016), and the declaration of Mr. Dunivent indicates that costs were first incurred in calendar year 2016, but neither the narrative nor the declarations specify *the date* that the test claimant *first* incurred increased costs as a result of new activities and modified existing activities required by this statute as required by section 1183.1 of the Commission’s regulations.

However, to the extent that costs were incurred in 2015-2016 as reflected in the evidence (i.e. the declaration) you have filed, those costs were incurred on or before June 30, 2016. Thus, even assuming that costs were first incurred June 30, 2016 and applying the currently applicable standard that provides that for purposes of first incurring costs: “‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by test claimant” the claim would have had to be filed no later June 30, 2017.

Finally, even if the Commission were to adopt your novel theory that the date of first incurring costs means the date that at least \$1000 have been incurred in a fiscal year, there is no evidence in this filing that \$1000 has been incurred in a particular fiscal year.

Generally, in the case of an incomplete test claim, a claimant has 30 days from the notice of incomplete test claim to cure the filing, which would be **March 12, 2018** in this case. However, based on the evidence submitted with this filing, curing this filing appears to be an impossibility.

Sincerely,



Heather Halsey
Executive Director

⁵ Test Claim, page 10 (Declaration of Steve Dunivent).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 8, 2018 I served via e-mail to ACHinnCRS@aol.com and sdunivent@costamesaca.gov the:

Notice of Incomplete Test Claim

U Visa 918 Form, Victims of Crime: Non-immigrant status

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 8, 2018 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

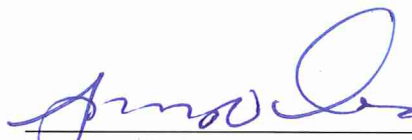
On August 24, 2018, I served the:

- **Interested Party's Comments on the Draft Proposed Decision filed August 23, 2018**

U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01
Penal Code Section 679.10; Statutes 2015, Chapter 721 (SB 674)
City of Claremont, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 24, 2018 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/23/18

Claim Number: 17-TC-01

Matter: U Visa 918 Form, Victims of Crime: Nonimmigrant Status

Claimant: City of Claremont

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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