

# **CITY OF OAKLAND**

Revised Audit Report

## **PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM**

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,  
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;  
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;  
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

*July 1, 2001, through June 30, 2004*



**JOHN CHIANG**  
California State Controller

February 2009



**JOHN CHIANG**  
**California State Controller**

February 13, 2009

The Honorable Ronald V. Dellums  
Mayor of the City of Oakland  
One Frank Ogawa Plaza, Third Floor  
Oakland, CA 94612

Dear Mayor Dellums:

The State Controller's Office (SCO) audited the costs claimed by the City of Oakland for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2001, through June 30, 2004.

This revised final report supersedes the previously issued revised final report dated October 5, 2007. This revised final report revises the SCO's finding and comment in Finding 1 related to unsupported costs based on time study documentation. As the result of a time study which the city conducted in fiscal year 2007-08, allowable costs increased by \$430,971.

The city claimed \$3,497,273 for the mandated program. Our audit disclosed that \$432,158 is allowable and \$3,065,115 is unallowable. The costs are unallowable because the city claimed ineligible costs (\$2,743,609), claimed costs supported with estimates that included ineligible costs (\$298,753), and overstated costs due to computational errors (\$22,753). The State paid the city \$31. The State will pay allowable costs claimed that exceed the amount paid, totaling \$432,127, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at [www.csm.ca.gov](http://www.csm.ca.gov) (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at [csminfo@csm.ca.gov](mailto:csminfo@csm.ca.gov).

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

*Original signed by*

**JEFFREY V. BROWNFIELD**  
Chief, Division of Audits

JVB/jj:wm:vb

cc: William Noland, Director  
    Finance and Management Agency  
    City of Oakland  
Peter Fitzsimmons  
    Fiscal Services Manager  
    City of Oakland  
Ace Tago, Controller  
    City of Oakland  
Todd Jerue, Program Budget Manager  
    Corrections and General Government  
    Department of Finance  
Carla Castaneda  
    Principal Program Budget Analyst  
    Department of Finance  
Paula Higashi, Executive Director  
    Commission on State Mandates

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# Revised Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Oakland for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2001, through June 30, 2004.

The city claimed \$3,497,273 for the mandated program. Our audit disclosed that \$432,158 is allowable and \$3,065,115 is unallowable. The costs are unallowable because the city claimed ineligible and unsupported costs. The State paid the city \$31. The State will pay allowable costs claimed that exceed the amount paid, totaling \$432,127, contingent upon available appropriations.

## Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. CSM further defined that activities covered by due process are not reimbursable.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000, and corrected them on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative

Appeal, Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

## **Objective, Scope, and Methodology**

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2001, through June 30, 2004.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Conclusion**

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the City of Oakland claimed \$3,497,273 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$432,158 is allowable and \$3,065,115 is unallowable. The State paid the city \$31. The State will pay allowable costs claimed that exceed the amount paid, totaling \$432,127, contingent upon available appropriations.

## **Views of Responsible Official**

We issued a draft audit report on February 27, 2007. William Noland, Director, Finance and Management Agency, responded by letter dated April 11, 2007 (Attachment), agreeing with the audit results for Findings 3 and 4, and disagreeing with the results for Findings 1 and 2. We issued the final report on May 30, 2007.

We issued a revised final report on October 5, 2007, to correct the SCO's finding and comment in Finding 2 related to the review of complaints by police department command staff and/or legal counsel. The correction noted our concurrence with the city that these activities are reimbursable. The audit adjustments remained unchanged. We advised Ace Tago, Acting Controller, of the revisions on August 27, 2007.

This second revised final report revises the SCO's finding and comment in Finding 1 related to unsupported costs based on time study documentation. As the result of a time study completed by the police department in fiscal year 2007-08, allowable costs increased by \$430,971, from \$1,187 to \$432,158. We advised Ace Tago, Controller, of the revisions on January 8, 2009. He responded by e-mail on February 3, 2009, agreeing with the revisions.

**Restricted Use**

This report is solely for the information and use of the City of Oakland, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

February 13, 2009

**Revised Schedule 1—  
Summary of Program Costs  
July 1, 2001, through June 30, 2004**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2001, through June 30, 2002</u>				
Salaries	\$ 629,829	\$ 76,349	\$ (553,480)	Findings 1, 2
Benefits	316,764	38,395	(278,369)	Findings 1, 2
Total direct costs	946,593	114,744	(831,849)	
Indirect costs	132,264	16,033	(116,231)	Findings 1, 2
Total program costs	<u>\$ 1,078,857</u>	130,777	<u>\$ (948,080)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 130,777</u>		
<u>July 1, 2002, through June 30, 2003</u>				
Salaries	\$ 724,418	\$ 81,340	\$ (643,078)	Findings 1, 2, 3
Benefits	365,831	43,286	(322,545)	Findings 1, 2, 3, 4
Travel and training	490	490	—	
Total direct costs	1,090,739	125,116	(965,623)	
Indirect costs	154,815	17,697	(137,118)	Findings 1, 2, 3, 4
Total program costs	<u>\$ 1,245,554</u>	142,813	<u>\$(1,102,741)</u>	
Less amount paid by the State		(31)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 142,782</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Salaries	\$ 563,401	\$ 84,980	\$ (478,421)	Findings 1, 2
Benefits	433,931	49,857	(384,074)	Findings 1, 2, 4
Total direct costs	997,332	134,837	(862,495)	
Indirect costs	175,530	23,731	(151,799)	Findings 1, 2, 4
Total program costs	<u>\$ 1,172,862</u>	158,568	<u>\$(1,014,294)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 158,568</u>		
<u>Summary: July 1, 2001 through June 30, 2004</u>				
Salaries	\$ 1,917,648	\$ 242,669	\$(1,674,979)	Findings 1, 2, 3
Benefits	1,116,526	131,538	(984,988)	Findings 1, 2, 3, 4
Travel and training	490	490	—	
Total direct costs	3,034,664	374,697	(2,659,967)	
Indirect costs	462,609	57,461	(405,148)	Findings 1, 2, 3, 4
Total program costs	<u>\$ 3,497,273</u>	432,158	<u>\$(3,065,115)</u>	
Less amount paid by the State		(31)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 432,127</u>		



## Revised Schedule 1 (continued)

	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>Summary by Cost Component</u>				
Administrative Activities	\$ 1,187	\$ 1,187	\$ —	
Interrogation	1,336,032	15,893	(1,320,139)	
Adverse Comment	<u>2,160,054</u>	<u>415,078</u>	<u>(1,744,976)</u>	
Total program costs	<u>\$ 3,497,273</u>	<u>\$ 432,158</u>	<u>\$(3,065,115)</u>	

<sup>1</sup> See the Findings and Recommendations section.

# Revised Findings and Recommendations

## **FINDING 1— Unsupported costs based on time study documentation**

The city claimed unallowable employee salaries and benefits totaling \$262,384 for the audit period because its original time study documentation for eligible activities was based on estimated costs. Costs claimed for fiscal year (FY) 2001-02 also included ineligible costs that were not segregated from eligible costs. Related indirect costs totaled \$36,369. The unallowable amount for salaries and benefits decreased by \$373,597 due to the completion of a time study during FY 2007-08 that was based on actual costs incurred. Unallowable related indirect costs decreased by \$57,374.

The Police Department conducted a time study at the end of each fiscal year during the audit period. The results of the time studies were used as the basis for time claimed in the city's mandate reimbursement claims. The city used one methodology for FY 2001-02 and a separate methodology for FY 2002-03 and FY 2003-04.

For FY 2001-02, the city's mandated cost consultant used average time segment data developed by the Internal Affairs Division from case time logs to calculate the average duration of a case from its inception to completion. The consultant broke down the average hours to complete cases by small, medium, and large cases, and prepared a schedule that showed the percentages of time devoted separately to the Interrogation and Adverse Comment components. Based on these percentages, the consultant calculated the total number of hours spent for each cost category per completed case. The consultant then calculated the total number of hours spent during the year by multiplying the average number of hours per cost component by the number of cases completed during the year. Costs claimed under the Interrogation component were for ineligible activities that are identified in Finding 2. For costs claimed under the Adverse Comment component, the city did not segregate eligible costs from ineligible costs; consequently, costs claimed were unsupported. Furthermore, the log did not break down the amount of time spent by activity and only estimated the amount of time spent for the entire cost center.

For FY 2002-03 and FY 2003-04, the Internal Affairs Division developed average time segment information from case time logs using data from 10-15 completed cases. The logs included descriptions of the activities performed for each cost component and the time estimates for each activity. Based on the average time data for the sample of cases selected, the consultant calculated the number of hours claimed by cost component for cases completed during FY 2002-03. However, for FY 2003-04, instead of using cases completed, it appears that the calculation was based on the number of cases in process during the year. While the city's claim reports that 308 cases were completed during FY 2003-04, an analysis of the claim revealed that the city used 188 cases to calculate claimed costs.

For FY 2002-03 and FY 2003-04, the time study results were flawed because they were not based on actual time data. Instead, the time segments recorded to perform the various activities were based on the Investigating Sergeants' recollections of how long each activity took to perform. The city did not provide any source documents to corroborate the time estimates. The time studies included time spent performing activities that are not reimbursable under the mandated program. The city did separately record time increments for eligible and ineligible activities. The city developed the average number of hours per case from the estimated costs for eligible and ineligible activities. The ineligible costs are identified in Finding 2. The unsupported costs are identified in this finding. In addition, the city did not support its contention that the cases selected by the city for review were representative of the population.

We also noted that the number of eligible cases included in each year's claim was misstated. For FY 2001-02, FY 2002-03, and FY 2003-04, the city's claims reported 300 cases, 300 cases, and 308 cases, respectively. During the audit for the same periods, the city provided additional information that it actually completed 315 cases, 310 cases, and 337 cases respectively, an understatement of 54 cases. In addition, as noted above, the city's claim for FY 2003-04 was based on 188 cases. Because all costs claimed were already determined to be unallowable, we did not confirm the actual number of eligible cases completed by the city for the audit period.

During the audit exit conference, we advised the city representatives that they would be allowed to conduct a time study to determine the amounts of time spent performing eligible activities under the mandated program during the current year. We would then apply the time study results retroactively to the audit period.

The city initiated a six-week time study effective August 6, 2007, through September 14, 2007. As a result of the time study, the city's allowable costs increased by \$430,971 (\$242,264 for salaries, \$131,333 for benefits, and \$57,374 in related indirect costs).

During the time study period, Police Department personnel recorded their time for the following activities:

- Legally reviewing for administrative hearings
- Preparing documents for administrative hearings
- Providing officers a notice of interrogation
- Paying overtime for interrogations
- Providing officers with prior recording of interrogation
- Reviewing circumstances leading to adverse comment
- Preparing notices of adverse comment
- Providing officers the notice of adverse comment

To arrive at yearly totals, the city projected the time study results to a full year. We met with city representatives on August 5, 2008, to review the city's time study methodology and the documentation supporting the time study results. We concluded that the city's methodology was adequate and fairly represented the workload for reimbursable activities under the mandated program on an annual basis.

However, our review revealed that four of the eight activities included in the time study were unallowable for reimbursement because they were either activities that are ineligible for reimbursement under the mandated program or were for activities that are not tasks that are repetitive in nature and, therefore, inappropriate for a time study. We also noted several errors that affected the calculation of allowable costs for the remaining four eligible activities.

### **Ineligible Activities**

We discussed the eligibility of reimbursement for the two administrative appeal activities included in the time study. City staff revealed that its appeal hearings usually involve the disciplinary actions of dismissal, demotion, suspension, reduction in pay, or written reprimand. The parameters and guidelines (section IV.B.2) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under due process. Moreover, the Commission recognized that, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute “costs mandated by the state” since the administrative appeal merely implements the requirements of the United States Constitution.

If officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement. Accordingly, city staff agreed to exclude the administrative appeal activities from the time study results due to these constraints.

### Non-repetitive Tasks

We also discussed with city staff the applicability of including the non-repetitive activities of overtime for interrogation and providing a prior recording of an interrogation to an officer. Activities applicable for a time study should be those that are repetitive in nature and these two activities can have significant variations in the amounts of time incurred. Accordingly, city staff agreed to also exclude these two activities from the time study results because they occur rarely and are not repetitive tasks.

### Calculation Errors

The city used a multiplication factor of 8.4 to project the results of the six-week time study to a full year. However, we determined that a multiplication factor of 8.67 was more accurate ( $52 \text{ weeks} \div 6 \text{ weeks} = 8.67$ ) and used this factor to compute allowable costs. We also noted several minor rounding errors involving the conversion of minutes to hours when city staff tabulated their time study results. City staff agreed with these adjustments.

The following table summarizes the revised calculation of unsupported costs for eligible activities. The amounts shown reflect the difference between the city’s original time study that was based on estimated costs and the actual time study that was recently conducted. We noted that allowable costs for FY 2003-04 actually exceeded the amount that was originally claimed for allowable activities.

	Fiscal Year			Total
	2001-02	2002-03	2003-04	
Interrogation and Adverse Comment:				
Salary costs	\$ (149,270)	\$ (32,016)	\$ 6,963	\$ (174,323)
Benefit costs	(75,092)	(17,054)	4,085	(88,061)
Subtotal	(224,362)	(49,070)	11,048	(262,384)
Indirect costs	(31,347)	(6,967)	1,945	(36,369)
Audit adjustment	\$ (255,709)	\$ (56,037)	\$ 12,993	\$ (298,753)

The parameters and guidelines for the Peace Officers Procedural Bill of Rights Program, adopted by the Commission on State Mandates (CSM) on July 27, 2000, define the criteria for procedural protections for the county's peace officers. The parameters and guidelines, Section IV, Reimbursable Activities, outline specific tasks that are deemed beyond due process. The statement of decision on which the parameters and guidelines was based noted that due process activities were not reimbursable.

The parameters and guidelines (Section VA1, Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

The parameters and guidelines (Section VI, Supporting Data) also require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

#### Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

#### City's Response

##### **Reasonability**

Given the size of the City of Oakland's Police Department, and the number of internal affairs cases that the Department processes each year, it is reasonable to expect that the City will have a significant number of cases that fall under the Peace Officer Procedural Bill of Rights Program (POBARs), and indeed it does. Every fiscal year, the City of Oakland applies the Peace Officer Procedural Bill of Rights standards to hundreds of cases. And yet, the State Controller's draft audit findings show that only \$1,187 of the \$3,497,273 is reimbursable due to a variety of factors, including:

- Insufficient documentation
- Ineligible activities
- Overstated productive hourly rates
- Misstated benefit rates

If the State Controller disagrees with the City's methodology for claiming costs several years after the fact, it must certainly admit that some reasonable method must exist to account for some of the costs of running this highly sensitive program each year. That cost is certainly much higher than \$1,187 over the course of three fiscal years for an agency the size of Oakland.

### **The POBARs Mandate was Performed by Oakland**

The State has historically stated that local agencies must show evidence that the mandate was performed, and indeed, Oakland has provided the State Controller with numerous documents showing that POBAR rights are recognized by the City and care is given to ensure that each sworn officer receives the level of protection that the State of California has mandated.

Since there is no dispute over performance of the mandate, it is clear that the City of Oakland is entitled to reimbursement for some reasonable level of costs incurred performing this program.

### **Documentation Standards**

In the draft report, the State Controller took issue with the type and method of documentation provided by the City of Oakland for the POBAR services. While the State Controller is entitled to its opinion related to documentation developed by the City, it is indisputable that the City performed time studies each year in an attempt to fairly capture the staff time and costs associated with the mandated aspects of the POBAR program, and that the City submitted claims to the State Controller on an annual basis for the entire audit period using this methodology. For five years, the State Controller received these claims and at no time questioned the time study methodology used by the Oakland Police Department.

Furthermore, the State Controller did not have time study guidelines available to local agencies until 2005. To the best of its ability, the City of Oakland complied with the State Controller's claiming instructions for this program and did use contemporaneous information and data as the basis for the claims it filed.

The City of Oakland believes that it is unfair for the State Controller to retroactively reject the Police Department's time study methodology in 2007, which effectively wipes out the City's claims going back to 2001. The Department would be more than happy to craft a methodology prospectively based on input from the State Controller for tracking staff times and costs, however, the State Controller had six years to inform the City that it disagreed with its method of tracking time and failed to do so. To argue otherwise exposes the futility of the State's claiming system, the unfair audit standards employed by the State Controller's Office, and flies in the face of Article XIII B, Section 6 of the State Constitution.

### **SCO's Comment**

The finding and recommendation was revised to include \$430,971 of allowable costs as a result of the time study which the city conducted in FY 2007-08. Ace Tago, Controller, agrees with the revisions identified in this revised final report.

The city claims in its response to the February 27, 2007 draft report that our audit employed unfair audit standards and is basically in violation of the provisions of the State Constitution. The city did not provide the SCO with any evidence supporting its contention. The SCO auditors conducted the audit in accordance generally accepted Government

Auditing Standards. These standards include the provision that auditors obtain sufficient, competent, and relevant evidence to afford a reasonable basis for their findings and conclusions, and the auditors did so.

The city also states in its response to the February 27, 2007 draft report that the SCO did not inform the city in a timely manner that there were problems with its time study methodology, having had six years in which to do so. This is our first audit of the city's POBOR claims during that six-year period. In addition, the city did not provide with its claims any details of its time study methodology with which our office could make a determination as to the validity of the methodology the city used. The city did not contact our office at any time during the aforementioned six-year period to ascertain whether or not its time study methodology was valid. The statement that the SCO is now precluded from taking an audit finding on the city's time study methodology after it performed an audit of the city's claims is not valid.

We concur that the city performed time studies each year in an attempt to capture costs, and it performed reimbursable activities under the mandated program. However, the city did not mention in its response that the supporting documentation for its time studies was based entirely on estimates, which themselves were based on recollections of its staff as to how long the staff took to perform certain activities. Accordingly, we were unable to determine the extent of reimbursable activities performed based on the evidence, or lack of evidence, provided by the city. The city's statement that it used contemporaneous information and data to support its claims is inconsistent with the information the city provided to our auditors during the course of the audit. The city did not provide any source documents or corroborating evidence supporting actual costs incurred.

The city was provided the option of conducting a valid time study during the current fiscal period, the results of which could then be applied retroactively to the audit period. We noted this option during the audit exit conference held on December 14, 2005, in the draft audit report dated February 27, 2007, and in the final audit report dated October 5, 2007. The city's statement that it is *entitled* to a "reasonable" level of reimbursement of costs incurred during the audit period is valid if it can support such costs with source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

As noted in the body of the finding, the unallowable costs subsequently decreased by \$430,971 (from \$729,724 to \$298,753) as a result of the time study conducted by the city in FY 2007-08, the results of which were applied to the audit period. The \$430,971 amount consists of \$15,893 for the Interrogations cost component and \$415,078 for the Adverse Comment cost component.



**FINDING 2—  
Ineligible activities  
claimed**

The city claimed unallowable salary and benefit costs totaling \$2,378,086 for the audit period because activities were claimed that are not identified in the parameters and guidelines as reimbursable costs. Related indirect costs totaled \$365,523.

Following is a summary of the ineligible costs:

	Fiscal Year			Total
	2001-02	2002-03	2003-04	
Salary costs:				
Interrogations:				
Pre-interrogation	\$(268,839)	\$ —	\$ —	\$ (268,839)
Interrogation activities	(135,371)	(199,271)	(144,672)	(479,314)
Total Interrogations	<u>(404,210)</u>	<u>(199,271)</u>	<u>(144,672)</u>	<u>(748,153)</u>
Adverse Comment:				
Pre-interrogation	—	(299,597)	(279,766)	(579,363)
Prepare case summary reports and conduct final case reviews	<u>—</u>	<u>(106,695)</u>	<u>(60,946)</u>	<u>(167,641)</u>
Total Adverse Comment	<u>—</u>	<u>(406,292)</u>	<u>(340,712)</u>	<u>(747,004)</u>
Total salary costs	(404,210)	(605,563)	(485,384)	(1,495,157)
Benefit costs	<u>(203,277)</u>	<u>(305,809)</u>	<u>(373,843)</u>	<u>(882,929)</u>
Subtotal	(607,487)	(911,372)	(859,227)	(2,378,086)
Related indirect costs	<u>(84,884)</u>	<u>(129,415)</u>	<u>(151,224)</u>	<u>(365,523)</u>
Audit adjustment	<u>\$(692,371)</u>	<u>\$(1,040,787)</u>	<u>\$(1,010,451)</u>	<u>\$(2,743,609)</u>

**Interrogations**

The parameters and guidelines state that specific identified Interrogation activities are reimbursable when a peace officer is under investigation or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C), Interrogation, identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines (Section IV(C)) state that claimants are not eligible for Interrogation activities when an interrogation of a peace officer is in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by

the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.

The parameters and guidelines (Section IV(C)) also state that the following activity is reimbursable.

Tape recording the interrogation when the peace officer employee records the interrogation.

However, the city claimed the following ineligible activities:

- Pre-interrogation meetings to discuss the nature of the interrogations with the subjects and their representatives;
- Interrogation of witnessing or accused officers during normal duty hours;
- Interrogators' time to conduct interrogations;
- Travel related to off-site interrogations during on-duty time; and
- Tape reviews and corrections.

#### **Adverse Comment**

Depending on the circumstances surrounding an Adverse Comment, the parameters and guidelines (Section IV(b)) allow some or all of the following four activities upon receipt of an Adverse Comment: providing notice of the adverse comment; providing an opportunity to review and sign the adverse comment; providing an opportunity to respond to the adverse comment within 30 days; and noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The parameters and guidelines, Section IV(b), also state that:

...included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an advance comment, preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

However, the city claimed the following ineligible activities.

- Gathering reports, log sheets, and evidence;
- Reviewing evidence prior to interrogations;
- Preparing questions for interrogations; and
- Preparing case summary reports and conducting final reviews of completed cases.

The parameters and guidelines for POBOR, adopted by the CSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers. The parameters and guidelines, Section IV, Reimbursable Activities, outline specific tasks that are deemed beyond due process. The statement of decision on which parameters and guidelines was based noted that due process activities were not reimbursable.

### Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

### City's Response

#### **Adverse Comment**

In its analysis of the Parameters and Guidelines for this program, the State Controller appeared to misunderstand or misstate the activities claimed by the City in the Adverse Comments section of the 2000 version of the Ps and Gs. The key aspect of costs for this component from the City's perspective is in the review of circumstances to determine if a complaint rises to the level of an adverse comment. In the 2007 undated version of the Ps and Gs for this program, the Commission of State Mandates agrees with the City's perspective and provides the following guidance:

#### **The following adverse comment activities are reimbursable:**

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.
2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

#### **The following activities are not reimbursable:**

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

When the Police Department receives a complaint involving an officer, the complaint must be reviewed by several layers of supervisors and, in some cases, legal counsel, to determine if the circumstances and graveness of the situation elevate the complaint to the status of an "adverse comment." This is important for several reasons. First, complaints do not lead disciplinary action for a police officer, but an adverse comment could. Secondly, adverse comments become part of the officer's permanent file, and this could affect their future standing

with the department as it relates to promotions, transfers or other staff assignments. This level of specificity and review only occurs with sworn officers and is specifically performed by the Police Department as a result of POBARs. Time spent in investigations and investigation reports is not an eligible aspect of this mandate and was not claimed as such by the City.

The City hopes that this clarification of the City's process, as well as how it meshes with the Ps and Gs for this program will provide a satisfactory basis for the restoration of the \$747,004 eliminated from the Adverse Comments section in the draft audit report.

#### SCO's Comment

The finding and recommendation remains unchanged, with the exception of clarifying reimbursable Adverse Comment activities.

For the Interrogations cost component, the city did not comment on ineligible activities claimed.

For the Adverse Comment cost component, the city states that we misunderstood the activities it claimed and describes why it believes that the activities it performs are consistent with the parameters and guidelines. The city also quotes the definition of reimbursable activities under the cost component of Adverse Comment from the amended parameters and guidelines adopted on December 4, 2006, which are applicable for reimbursable activities performed beginning on July 1, 2006. The city then states that \$747,004 included in this audit finding under Adverse Comment should be restored, based on what it believes was our misunderstanding.

We concur that reviewing a complaint filed against a peace officer by Police Department command staff and/or legal counsel could be a reimbursable activity under the cost component of Adverse Comment. In addition, the allowable Adverse Comment activities of reviewing circumstances leading to an adverse comment, preparing notices of adverse comment, and providing officers the notice of adverse comment were included in the time study recently conducted by the city, as noted in Finding 1.

**FINDING 3—  
Overstated productive  
hourly rates claimed**

For FY 2002-03, the city claimed unallowable costs totaling \$8,276 due to overstated productive hourly rates. The related indirect costs totaled \$1,175. The city overstated productive hourly rates because the employee classifications used to calculate the rates were for employees who did not perform mandate-related activities. The city used employee classifications PS178 for sergeants and PS167 for police officers, instead of using classifications PS179 (PERS) for sergeants and PS168 (PERS) for police officers. The rates were overstated by \$2.35 for sergeants and \$3.64 for police officers. The finding for police officers is immaterial based on the total number of hours claimed.

For FY 2001-02, the rates were overstated by \$2.21 for sergeants and \$1.65 for police officers. However, the total costs claimed were already unallowable in Findings 1 and 2.

For FY 2003-04, productive hourly rates for sergeants were overstated by \$0.06 for FY 2003-04, which is immaterial.

Following is a summary of the adjustment due to overstated productive hourly rate for sergeants during FY 2002-03.

	Fiscal Year 2002-03
Interrogation and Adverse Comment:	
Productive hourly rate adjustment	\$ (2.35)
Allowable hours	× 2,340
Unallowable salary costs	(5,499)
Benefit costs	(2,777)
Subtotal	(8,276)
Related indirect costs	(1,175)
Audit adjustment	<u>\$ (9,451)</u>

The parameters and guidelines (Section V(A1), Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines (Section VI, Supporting Data) require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City’s Response

The city agreed with this finding.

**FINDING 4—  
Misstated employee  
benefit rates claimed**

The city overstated employee benefit costs by \$11,221. Related indirect costs totaled \$2,081.

The misstatements occurred because the city understated fringe benefit rates by 2.73% for FY 2002-03 and overstated fringe benefit rates by 18.35% for FY 2003-04. The allowable benefit rates were verified to the city’s schedules of negotiated rates for bargaining units UN1 and PP1, as outlined in the City of Oakland Administrative Instructions. The city also overstated the employee benefit rate by 0.01% for FY 2001-02, which is immaterial.

Following is a summary of the understated (overstated) costs related to misstated fringe benefit rates.

	Fiscal Year		Total
	2002-03	2003-04	
Interrogation and Adverse Comment:			
Salary costs claimed	\$ 724,418	\$ 563,401	
Less unallowable costs, Finding 1	(605,563)	(485,384)	
Less unallowable costs, Finding 4	(5,499)	—	
Subtotal	113,356	78,017	
Benefit rate adjustment	× 2.73%	× (18.35)%	
Total benefit costs	3,095	(14,316)	\$ (11,221)
Related indirect costs	439	(2,520)	(2,081)
Audit adjustment	\$ 3,534	\$ (16,836)	\$ (13,302)

The parameters and guidelines (Section V(A1), Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines (Section VI, Supporting Data) require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City’s Response

The city agreed with this finding.

**Attachment—  
City's Response to  
Draft Audit Report**

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CITY OF OAKLAND



LIONEL J. WILSON BUILDING • 150 FRANK H. OGAWA PLAZA, SUITE 5215 • OAKLAND, CALIFORNIA 94612

Finance & Management Agency  
William E. Noland  
Director

(510) 238-2220  
FAX (510) 238-2059  
TDD (510) 238-3254

April 11, 2007

Mr. Jim L. Spano  
Chief of Compliance Audits Bureau  
State Controller's Office, Division of Audits  
P.O. Box 942850  
Sacramento, CA 94250-5874

Dear Mr. Spano:

The City of Oakland has received the State Controller's draft audit findings for the Peace Officer Bill of Rights state mandated cost program. The City appreciates the opportunity to respond to the audit, however, we do not agree with a substantial number of the findings contained within this document.

Our comments and arguments are attached. Please contact me or Ace A. Tago, Acting Controller, at (510) 238-3916 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to be 'W. Noland', written over a faint rectangular box.

William Noland  
Director, Finance and Management Agency

Cc: Ace A. Tago, Acting Controller  
Osborn Solitei, Financial Analyst  
Peter Fitzsimmons, OPD Fiscal



# City of Oakland

## *Response to State Controller's Draft Audit Findings*

### **Peace Officers Procedural Bill of Rights Program**

Chapter 465, Statutes of 1976, 1173, 1174, and 1178  
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;  
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;  
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990.  
Period of Audit: July 1, 2001 through June 30, 2004

### **General Discussion**

Article XIII B, Section 6a of the California Constitution imposes a requirement on the State to reimburse local government for the cost of performing state mandated programs:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service

It is abundantly evident through the plain reading of this text that the onus of paying for state mandates is on the State.

### **Reasonability**

Given the size of the City of Oakland's Police Department, and the number of internal affairs cases that the Department processes each year, it is reasonable to expect that the City will have a significant number of cases that fall under the Peace Officer Procedural Bill of Rights Program (POBARs), and indeed it does. Every fiscal year, the City of Oakland applies the Peace Officer Procedural Bill of Rights standards to hundreds of cases. And yet, the State Controller's draft audit findings show that only \$1,187 of the \$3,497,273 is reimbursable due to a variety of factors, including:

- Insufficient documentation
- Ineligible activities
- Overstated productive hourly rates
- Misstated benefit rates

If the State Controller disagrees with the City's methodology for claiming costs several years after the fact, it must certainly admit that some reasonable method must exist to account for some of the costs of running this highly sensitive program each year. That cost is certainly much higher than \$1,187 over the course of three fiscal years for an agency the size of Oakland.

### **The POBARs Mandate was Performed by Oakland**

The State has historically stated that local agencies must show evidence that the mandate was performed, and indeed, Oakland has provided the State Controller with numerous documents showing that POBAR rights are recognized by the City and care is given to ensure that each sworn officer receives the level of protection that the State of California has mandated.

Since there is no dispute over performance of the mandate, it is clear that the City of Oakland is entitled to reimbursement for some reasonable level of costs incurred performing this program.

### **Documentation Standards**

In the draft report, the State Controller took issue with the type and method of documentation provided by the City of Oakland for the POBAR services. While the State Controller is entitled to its opinion related to documentation developed by the City, it is indisputable that the City performed time studies each year in an attempt to fairly capture the staff time and costs associated with the mandated aspects of the POBAR program, and that the City submitted claims to the State Controller on an annual basis for the entire audit period using this methodology. For five years, the State Controller received these claims and at no time questioned the time study methodology used by the Oakland Police Department.

Furthermore, the State Controller did not have time study guidelines available to local agencies until 2005. To the best of its ability, the City of Oakland complied with the State Controller's claiming instructions for this program and did use contemporaneous information and data as the basis for the claims it filed.

The City of Oakland believes that it is unfair for the State Controller to retroactively reject the Police Department's time study methodology in 2007, which effectively wipes out the City's claims going back to 2001. The Department would be more than happy to craft a methodology prospectively based on input from the State Controller for tracking staff times and costs, however, the State Controller had six years to inform the City that it disagreed with its method of tracking time and failed to do so. To argue otherwise exposes the futility of the State's claiming system, the unfair audit standards employed by the State Controller's Office, and flies in the face of Article XIII B, Section 6 of the State Constitution.

### **Adverse Comments**

In its analysis of the Parameters and Guidelines for this program, the State Controller appeared to misunderstand or misstate the activities claimed by the City in the Adverse Comments section of the 2000 version of the Ps and Gs. The key aspect of costs for this component from the City's perspective is in the review of circumstances to determine if a complaint rises to the level of an adverse comment. In the 2007 updated version of the Ps and Gs for this program, the Commission on State Mandates agrees with the City's perspective and provides the following guidance:

**The following adverse comment activities are reimbursable:**

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The City hopes that this clarification of the City's process, as well as how it meshes with the Ps and Gs for this program will provide a satisfactory basis for the restoration of the \$747,004 eliminated from the Adverse Comments section in the draft audit report.

### **Summary**

The City concurs with Findings Three and Four, however, disagrees with the findings and interpretations shown in Findings One and Two. There is no dispute that Oakland performed the Peace Officer Bill of Rights program. It is incumbent upon the State of California to fairly reimburse the City for complying with the mandated program. The City of Oakland would be happy to work cooperatively with the State Controller to arrive at a fair and equitable solution to this matter.

**State Controller's Office  
Division of Audits  
Post Office Box 942850  
Sacramento, CA 94250-5874**

**<http://www.sco.ca.gov>**