

CITY OF PALO ALTO

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, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

August 2008



JOHN CHIANG
California State Controller

August 13, 2008

The Honorable Larry Klein
Mayor of the City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

Dear Mr. Klein:

The State Controller's Office audited the costs claimed by the City of Palo Alto 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, 2003, through June 30, 2006.

The city claimed \$273,503 (\$274,503 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$111,213 is allowable and \$162,290 is unallowable. The unallowable costs resulted primarily because the city claimed ineligible costs. The State paid the city \$13,332. Allowable costs claimed exceed the amount paid by \$97,881.

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 (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at 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/vb

cc: Lalo Perez, Director of Administrative Services
City of Palo Alto
Joyce Jackson-White, Senior Financial Analyst
City of Palo Alto
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Palo Alto 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, 2003, through June 30, 2006.

The city claimed \$273,503 (\$274,503 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$111,213 is allowable and \$162,290 is unallowable. The unallowable costs resulted primarily because the city claimed ineligible costs. The State paid the city \$13,332. Allowable costs claimed exceed the amount paid by \$97,881.

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 determined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000, and corrected it on August 17, 2000. The parameters and guidelines categorized reimbursable activities in the following four 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, 2003, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the city's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

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 Palo Alto claimed \$273,503 (\$274,503 less a \$1,000 penalty for filing a late claim) for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$111,213 is allowable and \$162,290 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payment to the city. Our audit disclosed that \$98,098 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$98,098, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the city. Our audit disclosed that \$5,422 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$5,422, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the city \$13,332. Our audit disclosed that \$7,693 is allowable. The State will offset \$5,639 from other mandated program payments due the city. Alternatively, the city may remit this amount to the State.

**Views of
Responsible
Officials**

We issued a draft audit report on June 13, 2008. Lalo Perez, Director of Administrative Services, responded by letter dated July 9, 2008 (Attachment), partially agreeing with the audit results for Finding 1. The city did not respond to Finding 2. This final audit report includes the city's response.

Restricted Use

This report is solely for the information and use of the City of Palo Alto, 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

August 13, 2008

**Schedule 1—
Summary of Program Costs
July 1, 2003, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 101,209	\$ 43,678	\$ (57,531)	Findings 1, 2
Benefits	63,863	28,078	(35,785)	Findings 1, 2
Total direct costs	165,072	71,756	(93,316)	
Indirect costs	63,357	27,342	(36,015)	Findings 1, 2
Total direct and indirect costs	228,429	99,098	(129,331)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 227,429</u>	98,098	<u>\$ (129,331)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 98,098</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries	\$ 12,471	\$ 2,430	\$ (10,041)	Finding 1
Benefits	7,645	1,490	(6,155)	Finding 1
Total direct costs	20,116	3,920	(16,196)	
Indirect costs	7,707	1,502	(6,205)	Finding 1
Total program costs	<u>\$ 27,823</u>	5,422	<u>\$ (22,401)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 5,422</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 8,859	\$ 3,734	\$ (5,125)	Findings 1, 2
Benefits	4,386	1,849	(2,537)	Findings 1, 2
Total direct costs	13,245	5,583	(7,662)	
Indirect costs	5,006	2,110	(2,896)	Findings 1, 2
Total program costs	<u>\$ 18,251</u>	7,693	<u>\$ (10,558)</u>	
Less amount paid by the State		(13,332)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (5,639)</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2003, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 122,539	\$ 49,842	\$ (72,697)	
Benefits	75,894	31,417	(44,477)	
Total direct costs	198,433	81,259	(117,174)	
Indirect costs	76,070	30,954	(45,116)	
Total direct and indirect costs	274,503	112,213	(162,290)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 273,503</u>	111,213	<u>\$ (162,290)</u>	
Less amount paid by the State		<u>(13,332)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 97,881</u>		
<u>Summary by Cost Component</u>				
Administrative Activities	\$ 28,945	\$ 30,290	\$ 1,345	
Administrative Appeal	—	—	—	
Interrogations	39,728	11,292	(28,436)	
Adverse Comment	205,830	70,631	(135,199)	
Subtotal	274,503	112,213	(162,290)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 273,503</u>	<u>\$ 111,213</u>	<u>\$ (162,290)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Overstated salaries
and benefits**

The city claimed \$198,433 in salaries and benefits, and \$76,070 in related indirect costs for the audit period. The city claimed unallowable salaries and benefits totaling \$118,585 for the audit period. These costs are unallowable because the activities claimed were not identified in the parameters and guidelines as reimbursable costs. Related indirect costs totaled \$45,655. For each fiscal year, the city claimed costs for activities that were protected under the due-process clause of the United States and California Constitutions. Therefore, these costs did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.

The following table summarizes the claimed, allowable, and unallowable costs, by cost component, for the audit period:

	Claimed Costs	Allowable Costs	Audit Adjustment
Salaries and benefits:			
Administrative Activities	\$ 20,918	\$ 20,918	\$ —
Administrative Appeals	—	—	—
Interrogations	28,748	7,901	(20,847)
Adverse Comment	<u>148,767</u>	<u>51,029</u>	<u>(97,738)</u>
Total salary and benefit costs	198,433	79,848	(118,585)
Related indirect costs	<u>76,070</u>	<u>30,415</u>	<u>(45,655)</u>
Total	<u>\$ 274,503</u>	<u>\$ 110,263</u>	<u>\$ (164,240)</u>

Administrative Activities

For the Administrative Activities cost component, the city claimed \$20,918 in salaries and benefits for the audit period (\$20,286 for FY 2003-04, \$443 for FY 2004-05, and \$189 for FY 2005-06). We determined that the entire amount is allowable.

Interrogation

The city claimed \$28,748 in salaries and benefits for the Police Department to conduct interrogations for the audit period (\$13,774 for FY 2003-04, \$ 6,470 for FY 2004-05, and \$8,504 for FY 2005-06). We determined that \$20,847 is unallowable (\$11,074 for FY 2003-04, \$5,782 for FY 2004-05, and \$3,991 for FY 2005-06) because the city claimed unallowable activities.

The program’s parameters and guidelines identify specific interrogation activities that 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), also state that claimants are not eligible for reimbursement of interrogation activities when an interrogation of a peace officer is in the normal course of duty. They further state:

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 [claims are reimbursable].

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 POBOR was enacted.

The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:

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

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.

The city claimed the following activities that are reimbursable:

- Transcription for accused/subject and witness officers (accused/subject officers receive a copy); and
- Preparation and service of administrative notices.

However, the city claimed the following activities that are not reimbursable:

- Interrogations of accused and peace officers during on-duty hours;
- Interrogations of witnessing peace officers during on-duty hours;
- Travel time by investigators;
- Pre-interrogation meetings;
- Investigators' time to conduct interrogations;
- Tape review and corrections;
- Gathering reports and log sheets;
- Reviewing complaints, reports, and evidence; and
- Interrogation question preparation.

Adverse Comment

For the Adverse Comment cost component, the city claimed \$148,767 in salaries and benefits for the audit period (\$131,012 for FY 2003-04, \$13,203 for FY 2004-05 and \$4,552 for FY 2005-06). We determined that \$97,738 is unallowable (\$83,586 for FY 2003-04, \$10,414 for FY 2004-05, and \$3,738 for FY 2005-06) because the city claimed activities that are not reimbursable under the mandated program. We also noted that the city combined some interrogation activities with adverse comment activities and claimed them under the Adverse Comment cost component.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines allow reimbursement of 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.

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 adverse 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 department claimed the following activities that are not reimbursable:

- Investigators' time to gather reports and log sheets;
- Review complaints, reports, and evidence (investigative activity);
- Travel time by investigators;
- Interview question preparation;
- Case summary and IA review; and
- Interview non-officer witnesses.

The city claimed the reimbursable activity of command staff review and findings.

Summary

The following table summarizes the overstated costs by fiscal year:

	Fiscal Year			Total
	2002-03	2003-04	2004-05	
Salaries and benefits:				
Police department	\$ (94,660)	\$ (16,196)	\$ (7,729)	\$ (118,585)
Related indirect costs	(36,531)	(6,205)	(2,919)	(45,655)
Audit adjustment	<u>\$ (131,191)</u>	<u>\$ (22,401)</u>	<u>\$ (10,648)</u>	<u>\$ (164,240)</u>

The parameters and guidelines for POBOR, adopted by the CSM on July 27, 2000, and corrected on August 17, 2000, define the criteria for procedural protections for the city’s peace officers.

The parameters and guidelines, section IV (Reimbursable Activities), outline specific tasks that are deemed to go beyond due process. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines, section V(A)(1) (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), 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 city 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

Although we do not entirely agree with the disallowances included in the Findings 1 section of the draft, we agree that because the costs were based on the original Parameters and Guidelines, our interpretation of those may be contrary to the views of the State. We also appreciate and agree with the State’s recommendation that the city should establish and implement procedures based on the recently amended Parameters and Guidelines date June 3, 2008.

SCO’s Comment

The finding and recommendation remain unchanged.

Our audit was based on reimbursable activities included in the parameters and guidelines adopted by the CSM on July 27, 2000, and corrected on August 17, 2000. This mandate has already been plead twice before the CSM. Chapter 72, Statutes of 2005, section 6 (AB 138), added section 3313 to the Government Code and directed the CSM to review the statement of decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal. 4th 859 and other applicable court decisions. The CSM reviewed its original findings and adopted a statement of decision upon reconsideration on May 1, 2006. The amended parameters and guidelines were adopted on December 4, 2006, for costs incurred subsequent to July 1, 2006.

Except for changes to allowable activities for the cost components of Administrative Appeal for probationary and at-will peace officers (pursuant to amended Government Code section 3304) and Adverse Comment (for punitive actions protected by due process), reimbursable activities did not change from the original parameters and guidelines, although the newly adopted parameters and guidelines provided much greater clarity as to what activities are and are not allowable under the mandated program.

Our audit finding accurately reflects the eligible activities as described in the adopted parameters and guidelines.

**FINDING 2—
Understated productive
hourly rates**

The city understated allowable salaries by \$865 (\$824 for FY 2003-04 and \$41 for FY 2005-06) and allowable benefits by \$546 (\$520 for FY 2003-04 and \$26 for FY 2005-06) for the audit period. Related indirect costs totaled \$539. This error occurred because the city reported understated productive hourly rates in its FY 2003-04 and 2005-06 claims. The city misstated the rates because it used group classifications instead of actual annual salaries and benefits to calculate productive hourly rates for the employee classifications of Police Sergeant, Police Agent, and Police Officer. We re-calculated allowable productive hourly rates by using the city’s compensation plan, police personnel rates, and SEIU bargaining unit salary rates.

The following table summarizes the understated costs by object account and cost component:

<u>Cost Category</u>	<u>Administrative Activities</u>	<u>Interrogation</u>	<u>Adverse Comment</u>	<u>Total</u>
Salaries	\$ 596	\$ 172	\$ 97	\$ 865
Benefits	376	107	63	546
Indirect costs	<u>373</u>	<u>105</u>	<u>61</u>	<u>539</u>
Audit adjustment	<u>\$ 1,345</u>	<u>\$ 384</u>	<u>\$ 221</u>	<u>\$ 1,950</u>

The parameters and guidelines, section V(A)(1) (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 city 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 did not respond to this finding.

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

City of Palo Alto
Administrative Services Department

July 9, 2008

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

Dear Mr. Spano:

The City of Palo Alto 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.

Although we do not entirely agree with the disallowances included in the Findings 1 section of the draft, we agree that because the costs were based on the original Parameters and Guidelines, our interpretation of those may be contrary to the views of the State. We also appreciate and agree with the State's recommendation that the city should establish and implement procedures based on the recently amended Parameters and Guidelines dated June 3, 2008.

Please contact me or a member of my staff if you have any questions.

Sincerely,



Lalo Perez
Director of Administrative Services

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