

VENTURA COUNTY

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, 2002, through June 30, 2005



JOHN CHIANG
California State Controller

November 2007



JOHN CHIANG
California State Controller

November 28, 2007

The Honorable Christine L. Cohen
Auditor-Controller
Ventura County, Hall of Administration
800 South Victoria Avenue
Ventura, CA 93009

Dear Ms. Cohen:

The State Controller's Office audited the costs claimed by Ventura County 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, 2002, through June 30, 2005.

The county claimed \$587,525 for the mandated program. Our audit disclosed that \$245,230 is allowable and \$342,295 is unallowable. The unallowable costs resulted primarily from the county claiming costs that were ineligible for reimbursement or were not supported with adequate source documents. The State paid the county \$8. The State will pay allowable costs claimed that exceed the amount paid, totaling \$245,222, contingent upon available appropriations.

For the unsupported costs, if the county subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the audit report as appropriate.

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/sk

cc: Tom Dawson, Financial Analyst III
Auditor-Controller's Office
Ventura County
Carla Castaneda
Principal Program Budget Analyst
Department of Finance
Paula Higashi, Executive Director
Commission on State Mandates

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Ventura County 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, 2002, through June 30, 2005. The last day of fieldwork was November 6, 2006.

The county claimed \$587,525 for the mandated program. Our audit disclosed that \$245,230 is allowable and \$342,295 is unallowable. The unallowable costs resulted primarily from the county claiming costs that were ineligible for reimbursement or were not supported with adequate source documents. The State paid the county \$8. The State will pay allowable costs claimed that exceed the amount paid, totaling \$245,222, 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. The 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. The 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. The CSM adopted the parameters and guidelines on July 27, 2000, and corrected them on August 17, 2000. The parameters and guidelines categorized 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 to assist local agencies in claiming reimbursable mandated program 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, 2002, through June 30, 2005.

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 county'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 county'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 county claimed \$587,525 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$245,230 is allowable and \$342,295 is unallowable. The State paid the county \$8. The State will pay allowable costs claimed that exceed the amount paid, totaling \$245,222, contingent upon available appropriations.

Views of Responsible Officials

We issued a draft report on September 28, 2007. Christine L. Cohen, Auditor-Controller, responded by letter dated October 26, 2007, agreeing with the audit results. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of Ventura County 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

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

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Salaries	\$ 125,760	\$ 54,626	\$ (71,134)	Finding 1
Benefits	43,284	18,548	(24,736)	Finding 1
Services and supplies	309	309	—	
Training	692	692	—	
Total direct costs	170,045	73,175	(96,870)	
Indirect costs	52,153	21,952	(30,201)	Finding 1
Total program costs	<u>\$ 222,198</u>	95,127	<u>\$ (127,071)</u>	
Less amount paid by the State		(8)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 95,119</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Salaries	\$ 79,002	\$ 34,333	\$ (44,669)	Finding 1
Benefits	35,807	14,653	(21,154)	Finding 1
Services and supplies	264	264	—	
Training	80	80	—	
Total direct costs	115,153	49,330	(65,823)	
Indirect costs	33,349	14,206	(19,143)	Finding 1
Total program costs	<u>\$ 148,502</u>	63,536	<u>\$ (84,966)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 63,536</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Salaries	\$ 100,346	\$ 41,464	\$ (58,882)	Finding 1
Benefits	69,836	25,499	(44,337)	Findings 1,2
Services and supplies	445	445	—	
Training	79	79	—	
Total direct costs	170,706	67,487	(103,219)	
Indirect costs	46,119	18,080	(28,039)	Findings 1,2
Total program costs	<u>\$ 216,825</u>	85,567	<u>\$ (131,258)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 85,567</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2002, through June 30, 2005</u>				
Salaries	\$ 305,108	\$ 130,423	\$ (174,685)	
Benefits	148,927	58,700	(90,227)	
Services and supplies	1,018	1,018	—	
Training	<u>851</u>	<u>851</u>	<u>—</u>	
Total direct costs	455,904	190,992	(264,912)	
Indirect costs	<u>131,621</u>	<u>54,238</u>	<u>(77,383)</u>	
Total program costs	<u>\$ 587,525</u>	245,230	<u>\$ (342,295)</u>	
Less amount paid by the State		<u>(8)</u>		
Allowable cost claimed in excess of (less than) amount paid		<u>\$ 245,222</u>		
<u>Summary by Cost Component</u>				
Administrative activities	\$ 43,771	\$ 43,771	\$ —	
Administrative appeals	11,432	—	(11,432)	
Interrogations	435,321	151,085	(284,236)	
Adverse comment	<u>97,001</u>	<u>50,374</u>	<u>(46,627)</u>	
Total program costs	<u>\$ 587,525</u>	<u>\$ 245,230</u>	<u>\$ (342,295)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Unallowable salary
and benefit costs, and
related indirect costs**

The county claimed \$454,035 in salaries and benefits, and \$131,621 in related indirect costs for the audit period. Salaries and benefits totaling \$262,793 were unallowable because the activities claimed were not identified in the program’s parameters and guidelines as reimbursable costs or because eligible costs were not adequately documented. Related indirect costs total \$76,811.

Following is a summary of the claimed, allowable, and unallowable costs for the audit period:

	Claimed Costs	Allowable Costs	Audit Adjustment
<u>Salaries and Benefits</u>			
Administrative Activities:			
Sheriff’s Department	\$ 34,078	\$ 34,078	\$ —
Administrative Appeals:			
Sheriff’s Department	8,827	—	(8,827)
Interrogations:			
Sheriff’s Department	310,114	118,089	(192,025)
District Attorney’s Office	25,646	—	(25,646)
Total, Interrogations	<u>335,760</u>	<u>118,089</u>	<u>(217,671)</u>
Adverse Comment:			
Sheriff’s Department	75,370	39,075	(36,295)
Total salaries and benefits	454,035	191,242	(262,793)
Related indirect costs	131,621	54,810	(76,811)
Total	<u>\$ 585,656</u>	<u>\$ 246,052</u>	<u>\$ (339,604)</u>
Recap by department:			
Sheriff’s Department	\$ 552,974	\$ 246,052	\$ (306,922)
District Attorney’s Office	32,682	—	(32,682)
Total	<u>\$ 585,656</u>	<u>\$ 246,052</u>	<u>\$ (339,604)</u>

Administrative Activities

For Administrative Activities, the Sheriff’s Department claimed \$34,078 in salary and benefit costs for the audit period. We determined that all of the costs are allowable.

The parameters and guidelines allow the following ongoing activities:

1. Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities;
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and
3. Updating the status of the Police Officers Procedural Bill of Rights (POBOR) cases.

The Sheriff’s Department claimed costs for all three reimbursable activities. No audit adjustments were noted.

Administrative Appeals

For Administrative Appeals, the Sheriff's Department claimed \$8,827 in salary and benefit costs for the audit period. We determined that the entire amount was unallowable because costs were claimed for ineligible administrative appeal hearings that were conducted as a result of disciplinary actions that are not eligible for reimbursement under the mandated program.

The parameters and guidelines 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.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

The Sheriff's Department claimed costs for legal review and assistance with civil service appeal cases resulting from disciplinary actions involving suspensions and dismissals. The Commission on State Mandates (CSM) addressed this issue in its statement of decision for the Peace Officers Procedural Bill of Rights Program that it adopted on November 30, 1999.

On page 11 of this document, the CSM stated:

Thus, 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 CSM determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal under the due process clause. Moreover, the CSM 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,” as the administrative appeal merely implements the requirements of the United States Constitution.

Interrogations

For Interrogations, the county claimed \$335,760 in salary and benefit costs (\$310,114 by the Sheriff’s Department and \$25,646 by the District Attorney’s Office) for the audit period. We determined that \$217,671 was unallowable (\$192,025 due to ineligible Sheriff’s Department activities, \$10,291 due to ineligible District Attorney’s Office activities, and \$15,355 for District Attorney Office costs that were based entirely on estimates and were not supported by any corroborating documentation).

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) 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 takes place during 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’s Final Staff Analysis to the adopted parameters and guidelines state:

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 was enacted.

The parameters and guidelines, Section IV(C), also state that claimants are not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities.

Sheriff's Department

The Sheriff's Department claimed \$192,025 for the unallowable activities of conducting interrogations of accused and witness officers during regular duty hours, interrogator's time to conduct interrogations, transcribing statements when officers did not record their interrogations, and reviewing non-discipline cases.

District Attorney's Office

The District Attorney's Office claimed \$10,291 for the unallowable activities of performing special investigations for officer-involved shootings involving employees of other agencies within the county. These investigations did not involve employees of the District Attorney's Office and are therefore, ineligible for reimbursement. The activities claimed included preliminary investigations, responding to the scene of alleged incidents and conducting scene investigations, meeting with attorneys, and preparing reports for officer-involved shooting cases.

In addition, the department claimed \$15,355 for internal affairs cases for officers who were employed by the District Attorney's Office, although these costs were based entirely on estimates. We noted that most of the activities claimed were for the unallowable activities of conducting investigations, writing reports, interrogators' time to conduct interrogations, and correspondence with complainants. However, we also noticed that the department performed the eligible activities of informing the officer about the nature of the interrogation and performing command staff review of proposed discipline, although the department should have properly claimed this activity under the cost component of Adverse Comment.

Adverse Comment

For Adverse Comment, the Sheriff's Department claimed \$75,370 for the audit period. We determined that \$36,295 was unallowable because the department claimed certain costs that were based entirely on estimates and were not supported by any other corroborating documentation. We noted that the estimated costs claimed included the eligible activities of command staff review (Commander), presenting the notice of adverse comment to the subject officer (Commander), and review of the response to the adverse comment (Chief Deputy).

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

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.

During the audit exit conference, we advised county representatives that they would be allowed to conduct a time study during the current year to determine the amounts of time spent performing eligible activities that were not sufficiently supported during the audit period. We would then apply the time study results retroactively to the audit period.

The parameters and guidelines for POBOR, adopted by the CSM on July 27, 2000, define the criteria for procedural protection for the county's peace officers.

The parameters and guidelines, Section IV, Reimbursable Activities, outline specific tasks that are deemed above the due process clause. 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 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, 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 ensure that claimed costs include only eligible costs and that claimed costs are based on actual costs that are properly supported.

County's Response

We have reviewed the enclosed draft report and concur with the summary findings and recommendations indicated in the report.

**FINDING 2—
Overstated benefit
rates**

The county overstated allowable benefit costs by the net amount of \$2,119 for FY 2004-05 because the Sheriff's Department misstated benefit rates. Related indirect costs totaled \$572. The misstatement occurred because the department used an incorrect workers' compensation benefit rate in their benefit rate calculations. As a result, costs claimed for Administrative Activities were overstated by \$592, costs for Interrogations were overstated by \$1,553, and costs for Adverse Comment were understated by \$26.

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 ensure that claimed costs include only eligible costs and that claimed costs are based on actual costs that are properly supported.

County's Response

We have reviewed the enclosed draft report and concur with the summary findings and recommendations indicated in the report.

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

CHRISTINE L. COHEN
AUDITOR-CONTROLLER
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009-1540



CHIEF DEPUTIES
LOUISE WEBSTER
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October 26, 2007

Jim L. Spano, Chief
Mandated Cost Audits Bureau
State Controllers Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

SUBJECT: PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM DRAFT AUDIT FINDINGS

Dear Mr. Spano:

The purpose of this letter is to respond as requested to the draft of the State Controller's Office report regarding the claims of Ventura County 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, 2002, through June 30, 2005.

We have reviewed the enclosed draft report and concur with the summary findings and recommendations indicated in the report.

If you have any questions, please contact Joanne McDonald, Chief Deputy Auditor-Controller, at (805) 654-3191.

Sincerely,

CHRISTINE L. COHEN
Auditor-Controller

Enclosure

Cc: Bob Brooks, Sheriff
Gregory D. Totten, District Attorney

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

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