

CITY AND COUNTY OF SAN FRANCISCO

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, 1994, through June 30, 2003



JOHN CHIANG
California State Controller

February 2008



JOHN CHIANG
California State Controller

February 22, 2008

Edward Harrington, Controller
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 316
San Francisco, CA 94102

Dear Mr. Harrington:

The State Controller's Office audited the costs claimed by the City and County of San Francisco 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, 1994, through June 30, 2003.

The city and county claimed \$24,014,018 for the mandated program. Our audit disclosed that \$1,557,587 is allowable and \$22,456,431 is unallowable. The unallowable costs occurred because the city and county claimed unsupported and ineligible costs. The State paid the city and county \$5,697,448. The amount paid exceeds allowable costs claimed by \$4,139,861.

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:wm

cc: Todd Jerue, Program Budget Manager
Corrections and General Government
Department of Finance
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Commission on State Mandates

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City and County of San Francisco 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, 1994, through June 30, 2003.

The city and county claimed \$24,014,018 for the mandated program. Our audit disclosed that \$1,557,587 is allowable and \$22,456,431 is unallowable. The unallowable costs occurred because the city and county claimed unsupported and ineligible costs. The State paid the city and county \$5,697,448. The amount paid exceeds allowable costs claimed by \$4,139,861.

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 defines 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 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, 1994, through June 30, 2003.

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

We asked the city and county's representative to submit a written representation letter regarding the city and county's accounting procedures, financial records, and mandated cost claiming procedures as recommended by *Government Auditing Standards*. However, the city and county did not submit a representation letter.

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 and County of San Francisco claimed \$24,014,018 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$1,557,587 is allowable and \$22,456,431 is unallowable.

For the fiscal year (FY) 1994-95 claim, the State paid the city and county \$403,071. Our audit disclosed that \$91,446 is allowable. The State will offset \$311,625 from other mandated program payments due the city and county. Alternatively, the city and county may remit this amount to the State.

For the FY 1995-96 claim, the State paid the city and county \$477,746. Our audit disclosed that \$106,942 is allowable. The State will offset \$370,804 from other mandated program payments due the city and county. Alternatively, the city and county may remit this amount to the State.

For the FY 1996-97 claim, the State paid the city and county \$334,041. Our audit disclosed that \$102,603 is allowable. The State will offset \$231,438 from other mandated program payments due the city and county. Alternatively, the city and county may remit this amount to the State.

For the FY 1997-98 claim, the State paid the city and county \$485,481. Our audit disclosed that \$131,734 is allowable. The State will offset \$353,747 from other mandated program payments due the city and county. Alternatively, the city and county may remit this amount to the State.

For the FY 1998-99 claim, the State paid the city and county \$750,846. Our audit disclosed that \$134,599 is allowable. The State will offset \$616,247 from other mandated program payments due the city and county. Alternatively, the city and county may remit this amount to the State.

For the FY 1999-2000 claim, the State paid the city and county \$1,866,163. Our audit disclosed that \$140,251 is allowable. The State will offset \$1,725,912 from other mandated program payments due the city and county. Alternatively, the city and county may remit this amount to the State.

For the FY 2000-01 claim, the State paid the city and county \$1,379,889. Our audit disclosed that \$269,740 is allowable. The State will offset \$1,110,149 from other mandated program payments due the city and county. Alternatively, the city and county may remit this amount to the State.

For the FY 2001-02 claim, the State made no payment to the city and county. Our audit disclosed that \$282,902 is allowable. The State will pay that amount, contingent upon available appropriations.

For the FY 2002-03 claim, the State paid the city and county \$211. Our audit disclosed that \$297,370 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$297,159, contingent upon available appropriations.

**Views of
Responsible
Officials**

We issued a draft audit report on May 18, 2007. Edward M. Harrington, Controller, responded by letter dated July 12, 2007 (Attachment), disagreeing with the audit results. This final audit report includes the city and county's response.

Based on the comments to the draft report received from the city and county, we re-examined the unallowable activities within the time study and determined that certain activities were allowable. The details of our review are contained within the SCO response to Finding 2. This information was initially communicated to the Controller's Office by e-mail on September 21, 2007.

Accordingly, unallowable costs decreased by \$307,816, from \$22,764,247 to \$22,456,431. On January 15, 2008, we e-mailed to the Controller's Office detailed spreadsheets showing the changes in allowable costs from the draft report to the final report for all three departments included within the city and county's claims (Sheriff's Department, Police Department, and Office of Citizen Complaints). The city and county did not respond to the change made to allowable costs.

Restricted Use

This report is solely for the information and use of the City and County of San Francisco, 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 22, 2008

Schedule 1— Summary of Program Costs July 1, 1994, through June 30, 2003

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 1994, through June 30, 1995</u>				
Direct costs:				
Salaries and benefits	\$ 888,691	\$ 83,132	\$ (805,559)	Findings 1, 2
Services and supplies	4,500	—	(4,500)	Findings 1, 2
Total direct costs	893,191	83,132	(810,059)	
Indirect costs	68,533	8,314	(60,219)	Findings 1, 2
Total program costs	<u>\$ 961,724</u>	91,446	<u>\$ (870,278)</u>	
Less amount paid by the State		(403,071)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (311,625)</u>		
<u>July 1, 1995, through June 30, 1996</u>				
Direct costs:				
Salaries and benefits	\$ 875,425	\$ 82,862	\$ (792,563)	Findings 1, 2
Services and supplies	2,760	—	(2,760)	Findings 1, 2
Total direct costs	878,185	82,862	(795,323)	
Indirect costs	261,713	24,080	(237,633)	Findings 1, 2
Total program costs	<u>\$ 1,139,898</u>	106,942	<u>\$ (1,032,956)</u>	
Less amount paid by the State		(477,746)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (370,804)</u>		
<u>July 1, 1996, through June 30, 1997</u>				
Direct costs:				
Salaries and benefits	\$ 617,844	\$ 80,283	\$ (537,561)	Findings 1, 2
Services and supplies	—	—	—	
Total direct costs	617,844	80,283	(537,561)	
Indirect costs	179,175	22,320	(156,855)	Findings 1, 2
Total program costs	<u>\$ 797,019</u>	102,603	<u>\$ (694,416)</u>	
Less amount paid by the State		(334,041)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (231,438)</u>		
<u>July 1, 1997, through June 30, 1998</u>				
Salaries and benefits	\$ 905,825	\$ 103,521	\$ (802,304)	Findings 1, 2
Services and supplies	1,175	—	(1,175)	Findings 1, 2
Total direct costs	907,000	103,521	(803,479)	
Indirect costs	251,351	28,213	(223,138)	Findings 1, 2
Total program costs	<u>\$ 1,158,351</u>	131,734	<u>\$ (1,026,617)</u>	
Less amount paid by the State		(485,481)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (353,747)</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 1998, through June 30, 1999</u>				
Direct costs:				
Salaries and benefits	\$ 1,151,689	\$ 104,545	\$ (1,047,144)	Findings 1, 2
Services and supplies	8,829	—	(8,829)	Findings 1, 2
Total direct costs	1,160,518	104,545	(1,055,973)	
Indirect costs	308,933	30,054	(278,879)	Findings 1, 2
Total program costs	<u>\$ 1,469,451</u>	134,599	<u>\$ (1,334,852)</u>	
Less amount paid by the State		(750,846)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (616,247)</u>		
<u>July 1, 1999, through June 30, 2000</u>				
Direct costs:				
Salaries and benefits	\$ 3,447,495	\$ 112,530	\$ (3,334,965)	Findings 1, 2
Services and supplies	439,794	—	(439,794)	Findings 1, 2
Total direct costs	3,887,289	112,530	(3,774,759)	
Indirect costs	565,354	27,721	(537,633)	Findings 1, 2
Total program costs	<u>\$ 4,452,643</u>	140,251	<u>\$ (4,312,392)</u>	
Less amount paid by the State		(1,866,163)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (1,725,912)</u>		
<u>July 1, 2000, through June 30, 2001</u>				
Direct costs:				
Salaries and benefits	\$ 1,984,930	\$ 230,231	\$ (1,754,699)	Findings 1, 2
Services and supplies	3,124,802	—	(3,124,802)	Findings 1, 2
Total direct costs	5,109,732	230,231	(4,879,501)	
Indirect costs	160,075	39,509	(120,566)	Findings 1, 2
Total program costs	<u>\$ 5,269,807</u>	269,740	<u>\$ (5,000,067)</u>	
Less amount paid by the State		(1,379,889)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (1,110,149)</u>		
<u>July 1, 2001, through June 30, 2002</u>				
Direct costs:				
Salaries and benefits	\$ 2,072,013	\$ 244,066	\$ (1,827,947)	Findings 1, 2
Services and supplies	3,727,356	—	(3,727,356)	Findings 1, 2
Total direct costs	5,799,369	244,066	(5,555,303)	
Indirect costs	167,098	38,836	(128,262)	Findings 1, 2
Total program costs	<u>\$ 5,966,467</u>	282,902	<u>\$ (5,683,565)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 282,902</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Direct costs:				
Salaries and benefits	\$ 1,908,543	\$ 256,966	\$ (1,651,577)	Findings 1, 2
Services and supplies	—	—	—	
Total direct costs	1,908,543	256,966	(1,651,577)	
Indirect costs	890,115	40,404	(849,711)	Findings 1, 2
Total program costs	<u>\$ 2,798,658</u>	297,370	<u>\$ (2,501,288)</u>	
Less amount paid by the State		(211)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 297,159</u>		
<u>Summary: July 1, 1994, through June 30, 2003</u>				
Direct costs:				
Salaries and benefits	\$ 13,852,455	\$ 1,298,136	\$(12,554,319)	
Services and supplies	7,309,216	—	(7,309,216)	
Total direct costs	21,161,671	1,298,136	(19,863,535)	
Indirect costs	2,852,347	259,451	(2,592,896)	
Total program costs	<u>\$ 24,014,018</u>	1,557,587	<u>\$(22,456,431)</u>	
Less amount paid by the State		(5,697,448)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (4,139,861)</u>		
<u>Summary by Cost Component</u>				
Administrative activities	\$ 2,804,069	\$ 228,411	\$ (2,575,658)	
Administrative appeal	3,711,906	233,006	(3,478,900)	
Interrogations	9,291,729	695,677	(8,596,052)	
Adverse comment	8,206,314	400,493	(7,805,821)	
Total program costs	<u>\$ 24,014,018</u>	<u>\$ 1,557,587</u>	<u>\$(22,456,431)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Unsupported costs

The city and county claimed \$24,014,018 in salaries and benefits, services and supplies, and related indirect costs for the audit period. We initially determined that all costs were unallowable because they were based entirely on estimates. However, the city and county determined in its time study that claimed costs totaling \$15,379,118 were unallowable because the activities claimed were not mandate-related.

Unsupported Claimed Costs

We initially met with staff from each of the four departments that participated in the claim: the Police Department, Sheriff's Department, Office of Citizen Complaints (OCC), and Probation Department. We determined that total claimed costs were based entirely on estimates and were thus unallowable. The city and county used employee declarations to corroborate estimated costs. Services and supplies costs were not supported by adequate documentation showing how they were related to mandated activities.

Time Study

We allowed the city and county to prepare a time study to show what mandate-reimbursable costs it had incurred over the audit period. The city and county submitted a time study plan on March 4, 2004, and submitted the results on June 30, 2004. The plan proposed to determine reimbursable costs based on the level of effort spent by department staff performing mandate-related activities. Using an annual blended productive hourly rate, the city and county determined time spent in one work day per employee classification during the time study period and multiplied the time by the number of employees assigned annually to perform mandate-related activities.

We determined that this time study methodology was not valid for determining reimbursable costs because it included time spent performing non-reimbursable activities. Also, the methodology assumed that time spent by employee classifications performing mandate-related activities during the time study period was consistently incurred throughout the nine-year audit period.

On April 12, 2005, the city and county proposed two other methodologies for determining claimed costs using the data derived from their time study: (1) "by case," in which the city and county would apply an annual blended productive hourly rate to the average amount of time spent in a day performing mandate-related activities to the number of days in each of the nine years of the audit period; or (2) "by full-time equivalents (FTEs)," in which the city and county would apply an annual blended productive hourly rate to the amount of time spent in one day to the total number of FTEs performing mandate-related activities in a year.

In a letter dated October 25, 2005, we allowed the city and county, on a one-time basis, to determine reimbursable costs using a level-of-effort methodology identified as “by case” for the nine-year audit period. We informed the city and county that it should exclude from the time study activities that were not reimbursable under the mandate program and those that were not task-repetitive in nature. We further recommended that the city and county support future claims with actual cost documentation or a valid time study that projects the claimant’s time spent on reimbursable activities during the claim period.

Following completion of the time study, the city and county reduced total claimed costs by \$15,379,118, from \$24,014,018 to \$8,634,900. The following table summarizes the reduction of claimed costs resulting from the city and county’s time study.

<u>Fiscal Year</u>	<u>Salaries and Benefits</u>	<u>Services and Supplies</u>	<u>Indirect Costs</u>	<u>Total</u>
1994-95	\$ (413,417)	\$ (4,500)	\$ (21,006)	\$ (438,923)
1995-96	(395,320)	(2,760)	(119,626)	(517,706)
1996-97	(172,006)	—	(53,900)	(225,906)
1997-98	(459,057)	(1,175)	(128,969)	(589,201)
1998-99	(714,970)	(8,829)	(182,749)	(906,548)
1999-2000	(2,921,381)	(439,794)	(435,657)	(3,796,832)
2000-01	(606,793)	(3,124,802)	48,183	(3,683,412)
2001-02	(536,905)	(3,727,356)	53,966	(4,210,295)
2002-03	(338,077)	—	(672,218)	(1,010,295)
Total	<u>\$ (6,557,926)</u>	<u>\$ (7,309,216)</u>	<u>\$ (1,511,976)</u>	<u>\$ (15,379,118)</u>

The program’s parameters and guidelines for the Peace Officers Procedural Bill of Rights Program (POBOR), adopted by the Commission on State Mandates (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.

City and County's Response

Costs Were Unsupported

I. Audit History The SCO's audit mischaracterizes events and information, particularly those surrounding the time study through which the City provided proxy claiming estimates. The City's rigorous time study was approved by the SCO and incorporated all SCO-specified requirements.

II. Timely and Good Faith Effort From the time that the original claiming instructions were issued for the POBOR mandated program, the City has operated in good faith and has made every effort to track costs and file claims that are in accordance with the SCO's claiming instructions. The SCO's audit process demonstrates the extreme dichotomy between the state constitutional requirement to reimburse local governments for the cost of performing state-mandated programs and the State's application of that requirement.¹

I. Audit History

A history of key events that have occurred since fiscal year 2002-03 are summarized below, as well as in the enclosed POBOR Key Dates table. This summary demonstrates the City's willingness to timely and completely respond to any SCO request, including subsequent information analysis of the time study.

Fiscal Year 2003-04

- The entrance conference for this audit was held in San Francisco on December 17, 2003, nearly four years ago. The SCO quickly determined that the City lacked adequate documentation necessary to support costs claimed during the audit period. The City acknowledged that contemporaneous time records did not exist, but all parties agreed that this level of documentation could not have existed because much of the audit period occurred prior to the approval of the POBOR mandate by the Commission on State Mandates, the development of the subsequent Ps and Gs, and the issuance of the POBOR claiming instructions. So in good faith, the City agreed and believes that the SCO was amenable to consideration of an SCO-approved time study approach, which could be conducted during 2004 to provide proxy documentation for eligible cost components claimed in earlier years.
- On February 4, 2004, representatives from the City met with the SCO's auditor and audit manager to discuss the structure of the time study, eligibility of the components, and the manner by which the Ps and Gs for POBOR would impact the City's processes. A member of the OCC staff, a state-recognized expert in POBOR, was tasked with developing the City's POBOR time study and used the approved Ps and Gs as the basis for the study document.

¹ Of particular note here and as also included in the SCO's audits notes, Ps and Gs for this program were not adopted until July 27, 2000, some six years after the start of the audit period. The State's delays in processing test claims and establishing Ps and Gs effectively prevented many counties from adequately tracking costs for past periods in a manner that is reasonably appropriate, especially in light of audit standards being retroactively required by the SCO.

- The time study document developed by the City was sent to the SCO's audit manager on March 4, 2004 for review and comments.
- On a letter dated April 8, 2004, the SCO's audit manager provided written comments with proposed recommendations to the City's time study proposal.
- On April 29, 2004, representatives from the City met with the SCO's audit manager and auditor to discuss the specifics of the time study. The City suggested audit standards that were consistent with other programs throughout the City regarding sample size, level of rigor, and units of time measurement. At that meeting, the audit manager rejected the suggestions of the City and required the following time study standards:
 - The audit period would be for a six-week period of time;
 - 100 percent of all open cases during that period would need to be tracked;
 - 100 percent of all staff from the Police, Sheriff and Office of Citizen Complaints (OCC), who were involved with either eligible or ineligible aspects of the POBOR process, would be required to track their time contemporaneously; and
 - Tasks would be recorded on time sheet in one-minute increments.

The City agreed to the SCO's requested methodology even though the level of detail stipulated far exceeded that of any other time study the City has performed for any other state or federal program. It also far exceeded any standards used by recognized auditors, including the Government Accountability Office (GAO).

At that time, the City understood the SCO's audit manager had approved the City's time study and associated methodology with all SCO-requested modifications being made. There was no objection to any of the activities included in the time study. The City followed up with a letter dated April 30, 2004 to the SCO audit manager thanking him for the meeting on April 29, 2004 and summarizing resolutions and agreements to time study timeline, methodology, and data interpretation concerns. Subsequently, the City initiated its extensive POBOR time study on May 3, 2004, with full results of the time study being submitted to the SCO on June 30, 2004 for review and comments.

Fiscal Year 2004-05

- The time study was discussed and audited by the SCO's audit manager during two separate meetings with the City during July and August 2004. In late August 2004, the SCO requested case sampling of open cases included in the time study, which the City timely provided during additional on-site meetings with the Police Department and Office of Citizen Complaints on September 14 and 15, 2004.
- The original exit conference was scheduled by the SCO for October 6, 2004, and was subsequently cancelled by the SCO's audit manager.

- After considerable energy spent undertaking an exhaustive time study that tracked all time in multiple departments in one-minute increments as agreed to by the SCO, the City documented our position through a letter to State Controller Westly on December 3, 2004 in an attempt to reach resolution on the POBOR matter. For a variety of reasons, this meeting did not take place.
- Beginning in January 2005, the SCO made additional requests for time study data to be summarized in various ways, including 1) costs by case, 2) costs by task, and 3) costs by staff member. This process continued for over a year, through March 2006.

Fiscal Year 2005-06

- Additional SCO staff and managers visited the City in mid-2006 to conduct additional sampling, including some of the same cases that had been examined by the previous auditor.
- The SCO had a second exit conference on January 26, 2007 and issued the draft report on May 18, 2007.

II. Timely and Good Faith Effort

From the time that the original claiming instructions were issued for the POBOR mandated program, the City has operated in good faith and has made every effort to track costs and file claims that are in accordance with the SCO's claiming instructions. The City considered conducting a time study related to POBOR prior 2004, but postponed it for two reasons:

- Statewide confusion over the scope of this mandate; and
- Lack of SCO time study guidelines, which were not issued until January 31, 2005.

The SCO indicated that insufficient documentation existed for the City's earliest claims, which were for activities conducted under POBOR during years when there were no available guidelines to determine which POBOR cost components would one day be eligible for reimbursement. As a result, City staff spent hundreds of hours developing and implementing a very complex time study. The City and the SCO's original audit manager understood and agreed that the City would study only eligible POBOR tasks, and not include any activities that would be covered under either the XIV Amendment to the U.S. Constitution or the so-called Skelly rights provided for public employees in California.

The City chose to follow the SCO's time study methodology to the letter in 2004, and was subsequently told by the SCO that in the opinion of the SCO legal counsel, many of the time study elements tracked during this event were not part of POBOR, but were covered under the XIV Amendment or Skelly. The City does not agree.

SCO's Comment

The city and county provided a detailed sequence of events that occurred during the audit period. We concur that city and county staff were responsive to SCO requests for information and were cooperative during the entire course of the audit. We also concur that this has been a long

and difficult audit process for all concerned. This was one of the first Peace Officer Procedural Bill of Rights (POBOR) audits performed by our office.

Our audit was based on our understanding of the reimbursable activities included in parameters and guidelines, adopted by the Commission on State Mandates (CSM) on July 27, 2000. We concur that these parameters and guidelines are lacking in specificity and have been the subject of widespread disagreement as to what activities are actually reimbursable.

This mandate has already been plead twice before CSM, resulting in the adoption of the original statement of decision, dated November 30, 1999, and parameters and guidelines, dated July 27, 2000. In 2005, Statutes 2005, chapter 72, section 6 (AB 138), added Section 3313 to the Government Code and directed the Commission 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.

CSM reviewed its original findings and adopted a statement of decision upon reconsideration on May 1, 2006. 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 the due process clause), reimbursable activities did not change from the original parameters and guidelines, though much greater clarity was provided as to what activities are and are not allowable under the mandated program.

We believe that our audit findings accurately reflect the eligible activities as described in adopted parameters and guidelines. If the city and county still disagrees, it can file an Incorrect Reduction Claim with the CSM.

However, we disagree with the city and county's statement that our office had no objections to any of the activities included in its time study before the time study was actually conducted. In a letter to the city and county dated April 8, 2004, the Audit Manager in charge of the audit at that time commented on our review of the time study plan submitted to our office. Included in the letter were the following two statements: "Some of the activities and cases included in the time study may not be reimbursable. Further review of reimbursable activities and cases will be made upon completion of the time study." The city and county was on notice from that date that we would perform a further review of the activities included in the time study and determine which activities were reimbursable and which were not. We conducted a thorough review of time study activities after the city and county completed its time study and submitted the results to our office for review.

**FINDING 2—
Unallowable salary
and benefit costs, and
related indirect costs**

Subsequent to completion of its time study, the city and county claimed \$7,294,528 in salaries and benefits and \$1,340,372 in related indirect costs for the audit period. We determined that salary and benefit costs totaling \$5,996,392 were unallowable because the activities claimed were not identified in the parameters and guidelines as reimbursable costs or were for certain activities that were non-repetitive in nature and, therefore, not eligible for inclusion in the time study.

The time study did not include all county departments that claimed costs. The Probation Department, which claimed costs totaling \$1,016,618 during the audit period, chose not to participate.

The city and county's original claim also included \$7,309,216 for services and supplies costs. During the audit, we determined that \$6,852,158 of these costs should have been classified as salary and benefit costs, and the remaining \$457,058 of the costs were for activities that were not adequately documented. The city and county's revised claim totals, based upon its completed time study, did not include any costs for services and supplies.

The following table summarizes the claimed, allowable, and unallowable costs for the audit period.

<u>Cost Component/Department</u>	<u>Claimed Costs</u>	<u>Allowable Costs</u>	<u>Audit Adjustment</u>
Salaries and Benefits:			
Administrative Activities:			
Sheriff's Department	\$ 453,466	\$ 26,071	\$ (427,395)
Police Department	2,278,264	87,698	(2,190,566)
Office of Citizen Complaints	690,479	80,075	(610,404)
Total Administrative Activities	3,422,209	193,844	(3,228,365)
Administrative Appeals:			
Sheriff's Department	—	—	—
Police Department	152,821	125,531	(27,290)
Office of Citizen Complaints	59,525	71,370	11,845
Total Administrative Appeals	212,346	196,901	(15,445)
Interrogations:			
Sheriff's Department	242,643	135,204	(107,439)
Police Department	541,167	259,202	(281,965)
Office of Citizen Complaints	642,859	189,511	(453,348)
Total Interrogations	1,426,669	583,917	(842,752)
Adverse Comment:			
Sheriff's Department	579,778	165,861	(413,917)
Police Department	308,284	157,613	(150,671)
Office of Citizen Complaints	1,345,242	—	(1,345,242)
Total Adverse Comment	2,233,304	323,474	(1,909,830)
Total salaries and benefits	7,294,528	1,298,136	(5,996,392)
Related indirect costs	1,340,372	259,451	(1,080,921)
Total	\$ 8,634,900	\$ 1,557,587	\$ (7,077,313)
Recap by Department:			
Sheriff's Department	\$ 1,549,699	\$ 407,638	\$ (1,132,061)
Police Department	3,595,169	774,896	(2,820,273)
Office of Citizen Complaints	3,490,032	375,053	(3,114,979)
Total	\$ 8,634,900	\$ 1,557,587	\$ (7,077,313)

Administrative Activities

For Administrative Activities, the city and county claimed \$3,422,209 in salaries and benefits (\$453,466 by the Sheriff's Department, \$2,278,264 by the Police Department, and \$690,479 by the OCC) for the audit period. We determined that \$3,228,365 was unallowable—\$2,190,566 due to ineligible Police Department activities, \$427,395 due to ineligible Sheriff's Department activities, and \$610,404 due to ineligible OCC activities.

Parameters and guidelines allow the following ongoing activities.

- Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities;
- Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and
- Updating the status of the POBOR cases.

However, the city and county departments claimed ineligible activities to collect case data, administer POBOR cases (copy cases, document the receipt and closure of cases, document the receipt of complaints, file and store cases, prepare letters and miscellaneous mailings, and retrieve case files), prepare reports and documentation for submission of POBOR mandate claims, and maintain an inventory of materials used to process cases. In addition, developing procedures for the collection of case data is not an activity that is task-repetitive in nature and it should not have been included in the time study. One activity code included in the time study (A1-100—Administrative Procedure) included the allowable activity of developing procedures, but also included the ineligible activities of discussing case statute of limitations and responding to POBOR audits. We were unable to separate the eligible activity from the ineligible activities for this activity code.

Administrative Appeals

For Administrative Appeals, the city and county claimed \$212,346 in salaries and benefits (\$152,821 by the Police Department and \$59,525 by the OCC) for the audit period. We determined that \$15,445 was unallowable—\$27,290 because the Police Department claimed ineligible activities less \$11,845 underclaimed by the OCC. The OCC costs were underclaimed due to changes in allowable costs and the associated blended productive hourly rates used to calculate allowable costs, based on the methodology used by the city and county in its time study.

The parameters and guidelines, Section IV(B), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

- 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);

- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- 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.

Section IV(B) also states:

Included in the foregoing are the preparation and review of the 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.

However, the city and county claimed the Police Department and OCC activities of communicating with other agencies. Communicating with other agencies is not an allowable activity.

Interrogations

For Interrogations, the city and county claimed \$1,426,669 in salaries and benefits (\$242,643 by the Sheriff's Department, \$541,167 by the Probation Department, and \$642,859 by the OCC) for the audit period. We determined that \$857,139 was unallowable—\$107,439 due to ineligible Sheriff's Department costs, \$281,965 due to ineligible Police Department costs, and \$467,735 due to ineligible OCC costs.

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 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 was enacted.

The parameters and guidelines, Section IV(C), also states that tape recording the interrogation, when the peace officer employee records the interrogation, is reimbursable.

However, the city and county claimed time for the ineligible activities of conducting investigations, coordinating hearings between investigative staff and officers, establishing or verifying the identity of officers, preparing interview questions, conducting legal research, notifying officers and civilians of the status of case investigations, reviewing case findings with officers, and performing undefined clerical tasks.

Adverse Comment

For Adverse Comment, the city and county claimed \$2,233,304 in salaries and benefits (\$579,778 by the Sheriff's Department, \$308,284 by the Police Department, and \$1,345,242 by the OCC). We determined that \$1,895,443 was unallowable—\$413,917 due to ineligible Sheriff's Department costs, \$150,671 due to ineligible Police Department costs, and \$1,330,855 due to ineligible OCC costs. Depending on the circumstances surrounding an Adverse Comment, the parameters and guidelines, Section IV(B), allows 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.

Section IV(B) also states:

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 city and county claimed the ineligible activities of taking in and documenting civilian complaints, determining the nature of complaints, notifying civilians of the outcome of cases, preparing case summary reports, reviewing allegations of officer misconduct, and interviewing civilians.

None of the costs claimed by the OCC under this cost category were allowable because the department is ineligible to claim reimbursable activities due to the nature of its role in peace officer cases and its authority to sustain case findings, administer disciplinary action, and hear appeals. The OCC is merely an advisory agency to the Police Commission and conducts investigations of officers on the Commission's behalf. The OCC has the authority to conduct investigations based upon citizen complaints, develop case findings, and recommend disciplinary action. However, the Police Commission is not required to accept any sustained findings or disciplinary actions that the OCC recommends. In addition, it is the Police Commission's responsibility to hear any appeals of sustained findings, take disciplinary actions against an officer, and review and place adverse comments in a peace officer's personnel file.

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 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.

City and County's Response

III. Office of Citizen Complaints: San Francisco's Unique Citizen Agency

It is clear from the draft report that even after a nearly four-year audit process, SCO staff do not fully understand how the City is structured and how City departments comply with the POBOR mandate. The draft audit report demonstrates a complete lack of understanding about the mission, operations and powers of the Office of Citizen Complaints (OCC). Many of the POBOR costs claimed by the City for activities performed by the OCC were disallowed by the SCO using the following argument:

“the department (OCC) is ineligible to claim reimbursable activities due to the nature of its role in peace officer cases and its authority to sustain case findings, administer disciplinary action, and hear appeals. The OCC is merely an advisory agency to the Police Commission and conducts investigation of officers on the Commissions behalf. The OCC has the authority to conduct investigations based upon citizen complaints, develop case findings, and recommend disciplinary action. However, the Police Commission is not required to accept any sustained findings or disciplinary actions that the OCC recommends.”

Proposition A of 1983 and G of 1987, the original voter-approved Charter amendments that created and supported the OCC, made it clear that the OCC would be an independent, non-sworn arm of the City that would assume many of the traditional roles of the Police Department's Internal Affairs Division. This new department was designed to be more objective and to cost less than the sworn equivalent staff at the Police Department.

The OCC is required to provide disciplinary recommendations to the Police Commission in the same way as an Internal Affairs division of any police department. The SCO's attempt to disqualify the OCC from participation in this claim has no logical or legal basis. The State mandate requires the City to provide certain protections to its peace officers. If those tasks are performed by OCC staff, the net result is a cost savings for both the City and the State. The OCC staff are not volunteers, and many of the POBOR requirements are handled by this agency within our City.

IV. Eligibility of Activities

In our opinion, the SCO's staff lacked a clear understanding of the scope of the POBOR mandate at the time the 2004 time study was constructed and implemented. The SCO's audit manager had several weeks to review the City's time study document and provide feedback. He did ask for clarification on several activities and asked that certain tasks be excluded from the time study.

The City constructed its time study using the following framework. The Ps and Gs for the POBOR program were to be the general guideline for the study. Each category from the Ps and Gs was listed on our document and our expert team determined what specific tasks and activities conducted by San Francisco fit under each Ps and Gs

component. It was a primary consideration from the beginning of time study design through completion that XIV Amendment and Skelly activities were specifically and intentionally excluded.

What was reasonable to the SCO at the beginning of this time study turned out to not be reasonable by 2006. The City stands by its understanding of the POBOR Ps and Gs, as well as its interpretation of how San Francisco's processes fit within the POBOR reimbursement framework.

Frankly, there should be no discussion or disagreement related to eligibility at this point in the process between the SCO and the City. These discussions took place at length over the course of several months back in 2004, and our two agencies had an agreement in place, requiring tracking time in one-minute increments. Accordingly, the City revised its time study methodology until it was to the SCO's liking and concurrence at that time. It is inconceivable to us that 95 percent of the City's POBOR claim be deemed unallowable after this long and rigorous process.

SCO's Comment

Unallowable Costs

The city and county states that it does not agree that activities included in its time study were covered under the XIV Amendment (federal due-process) or under Skelly rights provided for public employees in the State of California. For the most part, we deemed unallowable very few activities included in the time study because they were considered to be part of federal due process. These activities were identified in the audit report under the cost component of Interrogations and included such activities as conducting investigations, identifying involved officers and witnesses, preparing interrogation questions, conducting legal research (as part of the investigative process), and preparing summary reports. Most of the unallowable time study activities were unallowable because they were for activities not identified in the parameters and guidelines as activities eligible for reimbursement under the mandated program.

Based upon the city and county's comments to the draft audit report, we conducted a second review of the time study activities that were deemed unallowable. We determined that time claimed for the B-100 and B-200 activities series under the Administrative Appeals cost component by the San Francisco Police Department (SFPD) and the Office of Citizen Complaints (OCC) were allowable. We had previously deemed these activities unallowable because they included review of tapes. However, we subsequently determined that the costs of reviewing tapes were not significant.

In addition, we determined that time claimed under the D2-1000, D3-900, D3-1100, and D3-1300 series of activities by the Sheriff's Department and SFPD under the cost component of Adverse Comment are allowable. We determined that all of these activities essentially involve command staff review of adverse comments. As a result, allowable costs for the audit period increased by \$307,816 (from \$1,249,771 to \$1,557,587).

However, as noted in the Summary by Cost Component on Schedule 1, while allowable costs for Administrative Appeal and Adverse Comment increased, allowable costs for Administrative Activities and Interrogations decreased. This was due to decreases in the blended productive hourly rates for the Sheriff's Department and SFPD caused by the manner in which the time study calculated the allowable costs. An analysis of the changes to the blended productive hourly rate calculations revealed that the additional activities involved a considerable amount of clerical hours that had lower productive hourly rates. This caused an overall reduction in the blended productive hourly rates that were used to determine allowable costs for all cost components. Accordingly, we e-mailed to the Controller's Office on January 15, 2008, detailed spreadsheets showing the changes in allowable costs for all three departments (Sheriff, SFPD, and OCC) from the draft report to the final audit report. The city and county did not respond to the changes in allowable costs.

We also inquired with the city and county about time claimed under the A1-200, A1-300, and A1-400 series of activities by SFPD under the cost component of Administrative Activities. These activities substantially involve the one-time activity of developing and implementing administrative procedures. Our inquiry concerned the amount of costs claimed by SFPD within the city and county's time study and what the SFPD actually performed within these activities. The city and county was unable to respond to our inquiry about these costs.

Office of Citizen Complaints

The city and county quoted language from the draft audit report specifically related to the Adverse Comment cost component. The city and county is correct in its assertion that we did not allow any activities claimed under the Adverse Comment cost component. However, we allowed the activity of updating the status of POBOR cases under the Administrative Activities cost component, as well as 14 activities under the Interrogations cost component.

The parameters and guidelines for the mandated program, under the cost category of Adverse Comment, notes that the reimbursable costs include a "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."

We believe that an independent review commission established by the voters of the city and county cannot be considered part of the command staff of SFPD. Based on the documentation provided by the city and county in its response to the draft report, the OCC is an advisory agency that is independent, by design, from the normal command structure of the city's Police Department. Therefore, it is on this basis that costs claimed by OCC under the cost category of Adverse Comment are unallowable. OCC did not claim costs for the reimbursable activities of preparation of

comment and review for accuracy, notification and presentation of adverse comment to officer and notification of rights concerning same, review of response to the adverse comment, and attaching same to adverse comment and filing.

Eligibility of Activities

We disagree that SCO staff lacked a clear understanding of the scope of the POBOR mandate when the city and county's time study was conducted in 2004. As noted in our response to Finding 1, our audit was based on our understanding of the reimbursable activities included in parameters and guidelines, adopted by CSM on July 27, 2000.

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



Edward Harrington
Controller

Monique Zmuda
Deputy Controller

July 12, 2007

Mr. Jim L. Spano
Chief of Compliance Audits Bureau
State Controller's Office, Division of Audits
300 Capitol Mall
Sacramento, CA 95814

Dear Mr. Spano:

The City and County of San Francisco has received the State Controller's Office draft audit findings for the Peace Officer Bill of Rights state mandated cost program. The City appreciates the opportunity to respond. As discussed in the attached response, we do not agree with the draft audit findings. We will pursue subsequent remedy by filing an incorrect reduction claim with Commission on State Mandates.

Please contact me or Todd Rydstrom of my staff at (415) 554-4809 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward M. Harrington".

Edward M. Harrington
Controller

Enclosures:

Response to State Controller's Office Draft Audit Findings
Text of San Francisco propositions creating the Office of Citizen Complaints
POBOR Key Dates
POBOR Claim and Time Study Results - City and County of San Francisco

City & County of San Francisco

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, 1994 through June 30, 2003

Introduction and General Discussion

In this response, the City and County of San Francisco (City) presents its key disagreements with the State Controller's Office (SCO) findings in its audit of the Peace Officer Bill of Rights (POBOR) program, and the inconsistent and unfair audit standards applied by the SCO in this process.

In addition to this response, three items are attached to our letter to illustrate key points made below: the text of the San Francisco propositions that created the Office of Citizen Complaints; a table of POBOR Key Dates; and a table of POBOR Claim and Time Study Results – City and County of San Francisco.

The SCO's audit contains two principal findings. The recommendations for both findings are the same: "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." The City believes that the costs claimed were eligible and properly supported based on documentation approved by the SCO and reasonably available given the lengthy retroactive time period under review. We address the findings as follows:

Costs Were Unsupported

- I. **Audit History** The SCO's audit mischaracterizes events and information, particularly those surrounding the time study through which the City provided proxy claiming estimates. The City's rigorous time study was approved by the SCO and incorporated all SCO-specified requirements.
- II. **Timely and Good Faith Effort** From the time that the original claiming instructions were issued for the POBOR mandated program, the City has operated in good faith and has made every effort to track costs and file claims that are in accordance with the SCO's claiming instructions. The SCO's audit process demonstrates the extreme dichotomy between the state constitutional requirement to reimburse local governments for the cost of performing state-mandated programs and the State's application of that requirement.¹

¹ Of particular note here and as also included in the SCO's audit notes, Ps and Gs for this program were not adopted until July 27, 2000, some six years after the start of the audit period. The State's delays in processing test claims and

Costs Were Unallowable

- III. **Office of Citizen Complaints: San Francisco's Unique Citizen Agency** The SCO disallowed adverse comment costs due to an apparent misunderstanding of the OCC's purpose and function which, while it may be unique to San Francisco, does conduct adverse comment activities consistent with the POBOR Program.²
- IV. **Eligibility of Activities** The SCO's narrow, literal interpretation of covered activities in the parameters and guidelines were applied after the City's time study was approved and conducted, further reducing allowable costs. What was reasonable to the SCO at the beginning of this time study turned out to not be reasonable by 2006. The City stands by its understanding of the POBOR Ps and Gs, as well as its interpretation of how San Francisco's processes fit within the POBOR reimbursement framework.

I. Audit History

A history of key events that have occurred since fiscal year 2002-03 are summarized below, as well as in the enclosed POBOR Key Dates table. This summary demonstrates the City's willingness to timely and completely respond to any SCO request, including subsequent information analysis of the time study.

Fiscal Year 2003-04

- The entrance conference for this audit was held in San Francisco on December 17, 2003, nearly four years ago. The SCO quickly determined that the City lacked adequate documentation necessary to support costs claimed during the audit period. The City acknowledged that contemporaneous time records did not exist, but all parties agreed that this level of documentation could not have existed because much of the audit period occurred prior to the approval of the POBOR mandate by the Commission on State Mandates, the development of the subsequent Ps and Gs, and the issuance of the POBOR claiming instructions. So in good faith, the City agreed and believes that the SCO was amenable to consideration of an SCO-approved time study approach, which could be conducted during 2004 to provide proxy documentation for eligible cost components claimed in earlier years.
- On February 4, 2004, representatives from the City met with the SCO's auditor and audit manager to discuss the structure of the time study, eligibility of the components, and the

establishing Ps and Gs effectively prevented many counties from adequately tracking costs for past periods in a manner that is reasonably appropriate, especially in light of audit standards being retroactively required by the SCO.² Particularly in light of a lack of any legislation or language in the POBOR Ps and Gs that prescribes the organizational structure counties must use to conduct adverse comment activities. Moreover, the attached ballot arguments from the voter information pamphlets for Proposition A in 1983 and Proposition G in 1987 illustrate the intent and purpose behind the creation of the OCC.

manner by which the Ps and Gs for POBOR would impact the City's processes. A member of the OCC staff, a state-recognized expert in POBOR, was tasked with developing the City's POBOR time study and used the approved Ps and Gs as the basis for the study document.

- The time study document developed by the City was sent to the SCO's audit manager on March 4, 2004 for review and comments.
- On a letter dated April 8, 2004, the SCO's audit manager provided written comments with proposed recommendations to the City's time study proposal.
- On April 29, 2004, representatives from the City met with the SCO's audit manager and auditor to discuss the specifics of the time study. The City suggested audit standards that were consistent with other programs throughout the City regarding sample size, level of rigor, and units of time measurement. At that meeting, the audit manager rejected the suggestions of the City and required the following time study standards:
 - The audit period would be for a six-week period of time;
 - 100 percent of all open cases during that period would need to be tracked;
 - 100 percent of all staff from the Police, Sheriff and Office of Citizen Complaints (OCC), who were involved with either eligible or ineligible aspects of the POBOR process, would be required to track their time contemporaneously; and
 - Tasks would be recorded on time sheet in one-minute increments.

The City agreed to the SCO's requested methodology even though the level of detail stipulated far exceeded that of any other time study the City has performed for any other state or federal program. It also far exceeded any standards used by recognized auditors, including the Government Accountability Office (GAO).

At that time, the City understood the SCO's audit manager had approved the City's time study and associated methodology with all SCO-requested modifications being made. There was no objection to any of the activities included in the time study. The City followed up with a letter dated April 30, 2004 to the SCO audit manager thanking him for the meeting on April 29, 2004 and summarizing resolutions and agreements to time study timeline, methodology, and data interpretation concerns. Subsequently, the City initiated its extensive POBOR time study on May 3, 2004, with full results of the time study being submitted to the SCO on June 30, 2004 for review and comments.

Fiscal Year 2004-05

- The time study was discussed and audited by the SCO's audit manager during two separate meetings with the City during July and August 2004. In late August 2004, the SCO requested case sampling of open cases included in the time study, which the City timely provided during additional on-site meetings with the Police Department and Office of Citizen Complaints on September 14 and 15, 2004.

- The original exit conference was scheduled by the SCO for October 6, 2004, and was subsequently cancelled by the SCO's audit manager.
- After considerable energy spent undertaking an exhaustive time study that tracked all time in multiple departments in one-minute increments as agreed to by the SCO, the City documented our position through a letter to State Controller Westly on December 3, 2004 in an attempt to reach resolution on the POBOR matter. For a variety of reasons, this meeting did not take place.
- Beginning in January 2005, the SCO made additional requests for time study data to be summarized in various ways, including 1) costs by case, 2) costs by task, and 3) costs by staff member. This process continued for over a year, through March 2006.

Fiscal Year 2005-06

- Additional SCO staff and managers visited the City in mid-2006 to conduct additional sampling, including some of the same cases that had been examined by the previous auditor.
- The SCO had a second exit conference on January 26, 2007 and issued the draft report on May 18, 2007.

II. Timely and Good Faith Effort

From the time that the original claiming instructions were issued for the POBOR mandated program, the City has operated in good faith and has made every effort to track costs and file claims that are in accordance with the SCO's claiming instructions. The City considered conducting a time study related to POBOR prior 2004, but postponed it for two reasons:

- Statewide confusion over the scope of this mandate; and
- Lack of SCO time study guidelines, which were not issued until January 31, 2005.

The SCO indicated that insufficient documentation existed for the City's earliest claims, which were for activities conducted under POBOR during years when there were no available guidelines to determine which POBOR cost components would one day be eligible for reimbursement. As a result, City staff spent hundreds of hours developing and implementing a very complex time study. The City and the SCO's original audit manager understood and agreed that the City would study only eligible POBOR tasks, and not include any activities that would be covered under either the XIV Amendment to the U.S. Constitution or the so-called Skelly rights provided for public employees in California.

The City chose to follow the SCO's time study methodology to the letter in 2004, and was subsequently told by the SCO that in the opinion of the SCO legal counsel, many of the time study elements tracked during this event were not part of POBOR, but were covered under the XIV Amendment or Skelly. The City does not agree.

III. Office of Citizen Complaints: San Francisco's Unique Citizen Agency

It is clear from the draft report that even after a nearly four-year audit process, SCO staff do not fully understand how the City is structured and how City departments comply with the POBOR mandate. The draft audit report demonstrates a complete lack of understanding about the mission, operations and powers of the Office of Citizen Complaints (OCC). Many of the POBOR costs claimed by the City for activities performed by the OCC were disallowed by the SCO using the following argument:

“the department (OCC) is ineligible to claim reimbursable activities due to the nature of its role in peace officer cases and its authority to sustain case findings, administer disciplinary action, and hear appeals. The OCC is merely an advisory agency to the Police Commission and conducts investigation of officers on the Commissions behalf. The OCC has the authority to conduct investigations based upon citizen complaints, develop case findings, and recommend disciplinary action. However, the Police Commission is not required to accept any sustained findings or disciplinary actions that the OCC recommends.”

Propositions A of 1983 and G of 1987, the original voter-approved Charter amendments that created and supported the OCC, made it clear that the OCC would be an independent, non-sworn arm of the City that would assume many of the traditional roles of the Police Department's Internal Affairs Division. This new department was designed to be more objective and to cost less than the sworn equivalent staff at the Police Department.

The OCC is required to provide disciplinary recommendations to the Police Commission in the same way as an Internal Affairs division of any police department. The SCO's attempt to disqualify the OCC from participation in this claim has no logical or legal basis. The State mandate requires the City to provide certain protections to its peace officers. If those tasks are performed by OCC staff, the net result is a cost savings for both the City and the State. The OCC staff are not volunteers, and many of the POBOR requirements are handled by this agency within our City.

IV. Eligibility of Activities

In our opinion, the SCO's staff lacked a clear understanding of the scope of the POBOR mandate at the time the 2004 time study was constructed and implemented. The SCO's audit manager had several weeks to review the City's time study document and provide feedback. He did ask for clarification on several activities and asked that certain tasks be excluded from the time study.

The City constructed its time study using the following framework. The Ps and Gs for the POBOR program were to be the general guideline for the study. Each category from the Ps and Gs was listed on our document and our expert team determined what specific tasks and activities conducted by San Francisco fit under each Ps and Gs component. It was a primary consideration from the beginning of time study design through completion that XIV Amendment and Skelly activities were specifically and intentionally excluded.

What was reasonable to the SCO at the beginning of this time study turned out to not be reasonable by 2006. The City stands by its understanding of the POBOR Ps and Gs, as well as its interpretation of how San Francisco's processes fit within the POBOR reimbursement framework.

Frankly, there should be no discussion or disagreement related to eligibility at this point in the process between the SCO and the City. These discussions took place at length over the course of several months back in 2004, and our two agencies had an agreement in place, requiring tracking time in one-minute increments. Accordingly, the City revised its time study methodology until it was to the SCO's liking and concurrence at that time. It is inconceivable to us that 95 percent of the City's POBOR claim be deemed unallowable after this long and rigorous process.

Conclusion

The City fundamentally disagrees with the State Controller's findings that POBOR claims costs were unsupported and for unallowable activities. This report mischaracterizes the events surrounding the City's time study conducted to support claims costs and shows a fundamental disagreement on activity eligibility, driven in large measure by a lack of understanding of the purpose and functions of the City's Office of Citizen Complaints.

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

The plain reading of this text indicates that the onus of paying for state mandates is on the State. There can be no dispute that San Francisco performed all aspects of the Peace Officer Bill of Rights program, and did its best to comply with the mandate imposed on it by the State of California. The City then operated in good faith to track activities and costs necessary to estimate state mandate cost reimbursement claims with the State based on instructions issued by the SCO. The City then fully cooperated with the SCO's staff in every possible way to reach an equitable audit finding related to this program. In short, San Francisco has done its part.

The futility of California's current state mandate reimbursement process is evident in this case. In the case of the POBOR program, the claiming instructions were issued approximately six years after the original test claim was filed, which afforded the City and other local agencies with virtually no reasonable chance of providing what would later be deemed "adequate documentation" to support their claims. The City conducted a time study that examined every open case, by every staff member, down to single minute time increments – all under the direct methodological review of the SCO. City staff responded to numerous deadlines for meetings, data collection and transmission, case testing, interviews and official responses over the past four years, from fiscal year 2003-04 through fiscal year 2006-07. The City conducted the time study

based on representation by the SCO that they had approved the methodology. Subsequently, SCO staff revisited the time study, changed their direction and determined that it measured ineligible POBOR activities.

The City did everything in its power to cooperate with the SCO's requests and timelines through this nearly four-year process. The City participated in all aspects of this field audit with the overriding belief that devoting the extensive staff commitment would ultimately yield a fair and equitable outcome. The end result is a 95 percent disallowance of the claims filed during the nine-year audit period. The contents of the SCO's draft report indicate that the City's participation in this audit process was futile. We will pursue subsequent remedy by filing an incorrect reduction claim with Commission on State Mandates.

A

SFPD Citizen Complaint Office

PROPOSITION A

Shall an Office of Citizens Complaints be established in the Police Department with authority to investigate complaints made by citizens of police misconduct and recommend action to the Chief of Police?

Analysis

By Ballot Simplification Committee

THE WAY IT IS NOW: The Police Department has an Internal Affairs Division within the Department. This Division, staffed by police officers, investigates citizen complaints against police officers and makes recommendations for action to the Chief of Police. There is a civilian investigator who also investigates complaints and reports to the Police Commission.

THE PROPOSAL: Proposition A would create an Office of Citizen Complaints in the Police Department. The Director, appointed by the Police Commission, and the investigators and hearing officers shall never have been members of the Police Department. The Office shall investigate citizen complaints of police misconduct and shall recommend action to the Chief of

Police. This proposition does not eliminate the Internal Affairs Division. It does not prohibit the Department from investigating and taking action now permitted by the Charter. The Office shall make monthly summaries of complaints and quarterly reports concerning possible changes and amendments in Department policies and practices.

A YES VOTE MEANS: If you vote yes, you want to create an Office of Citizen's Complaints within the Police Department.

A NO VOTE MEANS: If you vote no, you want complaints by citizens to continue to be handled by the Internal Affairs Division and the civilian investigator.

Controller's Statement on "A"

City Controller John C. Farrell has issued the following statement on the fiscal impact of Proposition A:

Should the proposed Charter amendment be adopted, the increase in the cost of government would be determined by the Office of Citizen Complaints' approved annual budget. For fiscal year 1982-83 the cost increase could not exceed \$625,000 adjusted thereafter for inflation.

How Supervisors Voted on "A"

On May 24 the Board of Supervisors voted 8-3 on the question of placing Proposition A on the ballot. The Supervisors voted as follows:

YES: Supervisors Harry Britt, Richard Hongisto, Willie Kennedy, John Molinari, Louise Renne, Carol Ruth Silver, Nancy Walker and Doris Ward.

NO: Supervisors Lee Dolson, Quentin Kopp and Wendy Nelder.

**THE FULL LEGAL TEXT OF PROP A
BEGINS ON PAGE 86**

SFPD Citizen Complaint Office



ARGUMENT IN FAVOR OF PROPOSITION A

A YES vote on Proposition A will give us more police protection, increase the cost-effectiveness of the Police Department, and improve relations between citizens and the police.

In 1981, San Franciscans spent more than \$850,000 to have 16 police officers behind desks investigating citizens' complaints in the Police Department. Prop. A requires the Police Commission to hire trained civilian investigators to do this work, putting those 16 police officers on the street where they are needed to prevent crime.

Civilian investigators' salaries will cost the city less than those of police officers, whose benefits cost four times those of other city employees. Prop. A will limit the budget for investigating citizens' complaints to 60% of what was spent in 1981 — reducing the cost of these investigations by over \$350,000. That is money which will be spent for salaries of police officers who are back on the street. And the city will still have competent, fair investigations of complaints against the Police Department.

Being a cop is tough work — and the vast majority of our police officers do a good job. But San Franciscans are entitled to get a thorough, fair investigation of complaints against the Police Department when they have problems. It is difficult for police officers to investigate and recommend discipline against fellow police officers. Having trained civilians investigate complaints will be more impartial, and fairer for police officers and citizens.

Proposition A will NOT create a Civilian Review Board or a new bureaucracy. The Police Chief and Police Commission will still make decisions about discipline and police policy. Proposition A means they can do that with unbiased information.

Proposition A is a fair, responsible and cost-effective plan that San Franciscans have supported for many years.

A YES vote on Proposition A is a vote for professional law enforcement.

Submitted by the Board of Supervisors.

ARGUMENT IN FAVOR OF PROPOSITION A

A YES vote on Proposition A will:

- Put more police officers on the street fighting crime.
- Provide fair, efficient, professional investigators of citizens complaints.
- Save taxpayers in investigative costs.
- Help reward professional conduct in our police force and improve its respect in the community.

Join us in voting YES on Proposition A.

Art Agnos

Assemblyman

Jeff Brown

Public Defender

Jo Daly

Police Commissioner

Michael Hennessey

Sheriff

Louis Hop Lee

Civil Service Commissioner

ARGUMENT IN FAVOR OF PROPOSITION A

Proposition A would, after 1985 when a court ordered consent decree expires, allow a savings in salary costs that could be well over \$400,000 when high priced police officers are replaced with less expensive civilian investigators.

Furthermore, Proposition A will provide professional and unbiased investigations of complaints against police officers. Currently, police officers accused of misconduct are investigated by fellow officers. That's just not fair for the officer or for the person making the complaint.

Lastly, when only police officers can be used to investigate other police officers, an atmosphere of mistrust is engendered, as some think that they cannot be impartial because of the personal and professional friendships that develop between the investigator and the accused.

Proposition A makes fiscal sense and is just good government. Vote YES on Proposition A.

Supervisor Richard D. Hongisto



SFPD Citizen Complaint Office

ARGUMENT IN FAVOR OF PROPOSITION A

Vote Yes on Proposition A to ensure fair and impartial handling of citizen complaints against the police department.

Complaints of police misconduct are now investigated by police officers assigned to the Internal Affairs Bureau (I.A.B.). Proposition A would mandate the creation of an Office of Citizen Complaints (O.C.C.) staffed by professional civilian investigators, hired through civil service. Proposition A also affords persons filing complaints — and the accused officer — a hearing before a civilian hearing officer.

Proposition A will promote efficient, cost-effective investigation of citizen complaints: the O.C.C.'s budget is limited to 60% of the I.A.B.'s budget. The supervisory-rank police officers now staffing the I.A.B. can be reassigned to law enforcement work.

Most important, Proposition A will give the public and the police greater confidence that the complaint-resolution process is impartial. It is difficult for police officers to investigate complaints against co-workers. And complainants often feel intimidated or frustrated when one police officer investigates a complaint against another.

Police officers also will benefit, because O.C.C. investigations, unlike those of the I.A.B., will not be

subject to questions regarding favoritism, impartiality and fairness.

Proposition A does not create a civilian review board. The Police Commission, composed of five citizens appointed by the Mayor, will continue to manage the Police Department and serve as a disciplinary review board. Proposition A would not shift the department's disciplinary powers, which remain with the Police Chief and Commission. But Proposition A will better equip the Commission to carry out its responsibilities by providing a civilian investigative staff, the benefit of a hearing record, and the findings of a hearing officer in disciplinary cases arising out of citizen complaints.

Proposition A will not cripple the police in fighting crime. It does not change the police officer's authority to take necessary steps, including use of reasonable force, to apprehend criminal suspects.

For professional law enforcement, a stronger Police Commission and more public confidence in the S.F.P.D., vote Yes on A.

Submitted by:
Bar Association of San Francisco
Barristers Club of San Francisco

ARGUMENT IN FAVOR OF PROPOSITION A

Vote Yes on Proposition A

I urge you to vote for the Office of Citizen Complaints. Vote YES on Prop. A.

Doris M. Ward
Member, Board of Supervisors

ARGUMENT IN FAVOR OF PROPOSITION A

Reject Moscone-Milk "killer-cop" Dan White: YES on "A" ... Defeat BART Board's Eugene Garfinkle (whom Dan White ballot-sponsored in 1978).

— MOSCONE MEMORIAL DEMOCRATIC CLUB
Leland Tam
PRESIDENT OF MOSCONE MEMORIAL DEMOCRATIC CLUB

ARGUMENT AGAINST PROPOSITION A

REPUBLICAN COMMITTEEMEN OPPOSE!

- BART Candidate *Robert Silvestri*
- Republican Committeeman *Terence Faulkner*
- *David Sigal*

Don't demoralize policemen!!! VOTE NO.

- Robert Silvestri*
- BART Candidate
(Republican Committeeman)
- Terence Faulkner*
(Republican Committeeman)

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SFPD Citizen Complaint Office

A

ARGUMENT AGAINST PROPOSITION A

This is another ludicrous Hayden-Fonda "Committee for Economic Democracy" proposal embraced and sponsored locally by Supervisors Harry Britt and Nancy Walker. This charter amendment would add a totally redundant additional layer of bureaucracy to municipal government; \$625,000 worth of "fat" APPOINTIVE jobs the FIRST year!

It is absolutely irrational! The described functions of the "POLICE COMPLAINT DEPARTMENT" are precisely the Charter designated responsibilities of our

EXISTING Police Commission; a commission that has recently redoubled it's efforts to satisfy ALL citizen complaints promptly.

Surely our numerical minority of leftist Supervisors can "dream up" more creative ways to THROW AWAY \$625,000 each year, FOREVER! We urge a NO vote

W. F. O'Keeffe, Sr. President
SAN FRANCISCO TAX PAYERS ASSOCIATION

ARGUMENT AGAINST PROPOSITION A

Vote NO on Proposition A

The concept of this proposal is not a new one, but rather a product of the 1960's that has been abolished in nearly every major metropolitan police department in the country. Similar proposals have proven to be ineffective and costly without any discernible benefit to the department or the community in cities where these proposals have been tried.

The proponents of Proposition A would like our citizens to believe that complaints of misconduct against your police officers are not being investigated properly, and that disciplinary action is not being administered. These assertions are misleading, and in fact, incorrect. As a direct result of complaints lodged against police officers during the past six years, over six hundred officers have been reprimanded, suspended and terminated by the Chief or the Police Commission.

Recent changes within the police department now provide that all investigations are reviewed or re-investigated by a senior civilian investigator as well as reviewed by five Civilian Police Commissioners. These newly installed safeguards are working to the satisfaction of our citizens, as well as providing a sound mechanism for the effective administration of discipline.

SUCCESS DOES NOT COME EASY. Why add another layer of bureaucracy that will have an initial cost of \$625,000 that will rise dramatically year after year. Proposition A may sound like a "cure-all", but as an Administrator with thirty years of experience, I believe that this proposal is ill-conceived and will have little if any benefit to the citizens we are serving.

Vote NO on Proposition A

Cornelius P. Murphy
Chief of Police

Polls are open from 7 a.m. to 8 p.m.

Citizen Complaint Agency Budget

G

PROPOSITION G

Shall the limit on the annual budget of the Office of Citizen Complaints be eliminated?

YES 110 ➔
NO 111 ➔

Analysis

by Ballot Simplification Committee

THE WAY IT IS NOW: The Office of Citizen Complaints investigates citizen complaints against police officers; the Police Department Internal Affairs Bureau formerly investigated those complaints. The annual appropriation for costs of the Office of Citizen Complaints is determined through the regular City budget process. However, the costs may not exceed 60% of the costs incurred by the Police Department Internal Affairs Bureau for the fiscal year ending June 30, 1981, adjusted annually for inflation.

THE PROPOSAL: Proposition G would amend the Charter by removing the limitation

on annual costs for the Office of Citizen Complaints. The appropriation would continue to be made through the regular City budget process.

A YES VOTE MEANS: If you vote yes, you want to remove the limitation on costs of the Office of Citizen Complaints.

A NO VOTE MEANS: If you vote no, you want the annual costs of the Office of Citizen Complaints to be limited to 60% of the costs incurred by the Police Department Internal Affairs Bureau for the fiscal year ending June 30, 1981, adjusted annually for inflation.

Controller's Statement on "G"

City Controller John C. Farrell has issued the following statement on the fiscal impact of Proposition G:

"Should the proposed Charter amendment be enacted, in my opinion, it would not, in and of itself affect the cost of government. However, as a product of its possible future application additional costs might be incurred, the amount of which are indeterminate but should not be substantial."

How Supervisors Voted On "G"

On June 29 the Board of Supervisors voted 8-2 on the question of placing Proposition G on the ballot.

The Supervisors voted as follows:

YES: Supervisors Harry Britt, Jim Gonzalez, Richard Hongisto, Thomas Hsieh, Willie Kennedy, John Molinari, Carol Ruth Silver, and Doris Ward.

NO: Supervisors Bill Maher and Wendy Nelder.

**THE TEXT OF PROPOSITION G
APPEARS ON PAGE 119**

NEXT TIME YOU MOVE . . .

DON'T LEAVE YOUR VOTE BEHIND!

You must re-register to vote whenever you move.

G

Citizen Complaint Agency Budget

ARGUMENT IN FAVOR OF PROPOSITION G

The Office of Citizen Complaints was established in 1983 by an overwhelming vote to amend the City Charter. This sensitive unit was established directly under the supervision of the civilian Police Commission. It was clearly the intent of the voters that the OCC would act independently of the department itself in the impartial investigation of all complaints of misconduct made by citizens against police officers.

The Charter amendment establishing OCC set an unrealistically low ceiling for the annual appropriations for all costs to operate the unit. It fixed costs at no more than sixty percent of the cost to operate the Police Department's Internal Affairs Unit as of June, 1981. This constraint has put a severe burden on the

small staff to keep pace with the caseload of complaints.

Proposition G would remove the unrealistic cap and would permit the City to budget adequately for skilled civilian investigators to assure complaints are thoroughly and quickly investigated. The OCC, under Proposition G, would fully gain its rightful status as a watchdog against possible police misconduct or abuse. Ours is a fine police department, but it will be all the more professional with the OCC there to hold each officer accountable for any violations of the public trust.

Dianne Feinstein, Mayor

ARGUMENT IN FAVOR OF PROPOSITION G

For more professional and effective law enforcement, the Board of Supervisors urges a **YES** vote on Proposition G.

In 1982, the voters approved the creation of the Office of Citizen's Complaints. This was done in response to police misconduct which was not resulting in discipline under the investigation of the Police Department's Internal Affairs Bureau.

The OCC is now straining under an enormous caseload that threatens its ability to assure professional law enforcement. According to the Board of Supervisors Budget Analyst:

- the OCC is investigating **6 times** the number of complaints of police misconduct with **less than half** the number of investigators of the old IAB;
- Each OCC investigator is responsible for **580%** more cases than IAB investigators handled;
- 50% of OCC cases are more than 90 days old.

Despite this enormous workload, an arbitrary provision in the City Charter forces the OCC to operate with **only 60%** of the budget of the IAB. The OCC is the **only** city department with such a limitation on its ability to do its work.

If you make a complaint against a police officer in San Francisco, you have a right to have it investigated **quickly and carefully**. But the OCC's spending limit means that the OCC cannot hire the additional investigators it requires to resolve complaints quickly and fairly.

The OCC's inability to keep pace with its workload poses a serious threat to professional and fair law enforcement in San Francisco. If the city agency charged with preventing police misconduct has its hands tied by arbitrary budget limitations, San Franciscans cannot be assured that every contact they have with a police officer will be properly conducted.

It is important to understand that a YES vote on Proposition G **will not** itself increase city spending. Any increases in the OCC's budget must go through the city's thorough budget process—with reviews by the Police Commission, Mayor and finally the Board of Supervisors.

Allow the OCC to do the job for which the voters created it. **Vote YES** on Proposition G.

SUBMITTED BY THE BOARD OF SUPERVISORS

ARGUMENT IN FAVOR OF PROPOSITION G

As candidates for Mayor, we join together in recommending a YES vote on Proposition G.

We both agree that an effective Office of Citizens Complaints is vital to ensuring fair, professional law enforcement.

The current budget limitation on the Office of Citizen Complaints—the only such restriction in the city charter—is the major cause of the OCC's ineffectiveness. Severely understaffed, the OCC can't investigate citizen complaints carefully or

promptly.

Proposition G would enable the Mayor and Supervisors to determine the OCC's budget like other city departments—based on what it needs, not on outdated charter language.

Vote YES on Proposition G.

*Art Agnos
John Molinari*

ARGUMENT IN FAVOR OF PROPOSITION G

An adequately funded Office of Citizen Complaints, staffed by professionals, will assure that investigations of complaints can proceed, and disputes can be resolved, in a timely, fair and efficient manner. Proposition G represents our firm commitment

to the rule of law for all San Franciscans—residents and police officers alike. **PLEASE VOTE YES ON PROPOSITION G.**

Supervisor Jim Gonzalez

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Citizen Complaint Agency Budget

ARGUMENT IN FAVOR OF PROPOSITION G

The Office of Citizens Complaints does not now have an adequate budget. This change is badly needed. I strongly urge your support.

Submitted by
Supervisor Hongisto

ARGUMENT IN FAVOR OF PROPOSITION G

We urge you to vote YES on Proposition G.
San Franciscans have a right to an Office of Citizens Complaints which is quickly responding to any and all complaints against police officers.

But the law which established the OCC has one flaw which seriously limits that right — by setting a limit on the funds which the OCC can spend.

We believe that for the OCC to do its job, it must be in a position to hire additional investigators. This will simply not be possible without a YES vote on Proposition G.

In the interest of the most professional possible law enforcement in San Francisco, we urge your YES vote on Proposition G.

Frank Jordan, Chief of Police
Louis Giraud, President, Police Commission
David Sanchez, Police Commissioner
Juanita Owens, Police Commissioner
Owen Davis, Police Commissioner

ARGUMENT IN FAVOR OF PROPOSITION G

In the wake of considerable criticism of the Office of Citizen Complaints, Mayor Dianne Feinstein created our Special Advisory Committee to review the procedures and operations of the agency and make recommendations for its improvement. Some changes in the OCC's operations have already occurred and our recommendations of other changes will shortly be considered by the Police Commission.

Proposition G will allow the agency to be adequately funded — removing a major roadblock for effective civilian review of alleged misconduct within the Police Department.

The budget cap in the charter amendment which created the OCC has crippled its ability to promptly and thoroughly investigate complaints. The OCC must investigate more than 1200 complaints annually — nearly SIX TIMES as many as its predecessor, the SFPD Internal Affairs Bureau. Yet, because of the budget cap, the OCC has LESS THAN HALF the investigators and only 60% of the funding to do this massive job. Recently, the cap forced the OCC to reduce its full time investiga-

tive staff to only seven. Internal Affairs had sixteen!

Public officials cannot allocate sufficient money to do the job right until the cap is removed. The OCC budget will still be subject to the checks and balances of the normal city budget process.

Proposition G is essential to the on-going effort to give us the effective, independent police "watchdog" we demanded when the OCC was created.

Vote YES on G.

Mayor's Special Advisory Committee on the Office of Citizen Complaints:

Peter Mezey, Chair, Bar Association OCC Oversight Committee
Rev. Cecil Williams, Glide Memorial Church
Mary Noel Pepys, Former Commissioner on Status of Women
Jerry Berg, President, Board of Permit Appeals
Gordon Lau, Former Supervisor
Henry Morris, Business Executive
Naomi Gray, President, Black Leadership Forum
Fred Rodriguez, Recreation and Park Commissioner

ARGUMENT IN FAVOR OF PROPOSITION G

We urge you to vote YES on Proposition G.

Louise Renne, City Attorney
Michael Hennessey, Sheriff
Drucilla Ramey, Executive Director, Bar Association of San Francisco
Carole Migden, Chair, San Francisco Democratic Party
Lulann Sapp McGriff, President, San Francisco NAACP
Helen Grieco, President, San Francisco NOW

Marilyn Waller, Treasurer, National Lawyers Guild, San Francisco Bay Area Chapter Advocacy Fund
Ricardo Hernandez, President, Latino Democratic Club
Diana Christensen, Executive Director, Community United Against Violence
Dorothy Ehrlich, Executive Director, ACLU
Maurice Belote, President, Harvey Milk Lesbian & Gay Democratic Club
Henry Der, Chinese American community leader

ARGUMENT AGAINST PROPOSITION G

This is classic civic example of trying to "fix" a totally incompetent, sloppy, ineffective operation by "throwing more money at the problem"!

When the Office of Citizen's Complaints becomes even minimally effective with the existing staff of SIXTEEN, [YES, SIXTEEN!] it is remotely possible that they could justify adding

FIVE more tax-eating bureaucrats to the payroll. For now, VOTE NO!

San Francisco Taxpayers Association.
W. F. O'Keefe, Sr., President

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POBOR Key Dates

	Fiscal Year	Date	Description
<i>Audit Period Under Review</i>	FY 1994-95		
	FY 1995-96		
	FY 1996-97		
	FY 1997-98		
	FY 1998-99	Nov. 30, 1999	Commission on State Mandates (COSM) Adopted Statement of Decision, POBOR Reimbursable
	FY 1999-00		
	FY 2000-01	Jul. 27, 2000	COSM Adopted Parameters & Guidelines (Ps & Gs)
		Aug. 17, 2000	COSM Revised Parameters & Guidelines (Ps & Gs)
	FY 2001-02		
	FY 2002-03		
	FY 2003-04	Dec. 17, 2003	SCO Met with CCSF for Audit Entrance Conference
		Feb. 4, 2004	SCO Met with CCSF to Discuss Structure of Time Study
		Mar. 4, 2004	City & County of San Francisco (CCSF) Submitted Time Study Plan
		Jun. 30, 2004	CCSF Submitted Time Study Results, by Position Classification and in 1-Minute Increments
	FY 2004-05	Apr. 12, 2005	As requested, CCSF Submitted Additional Time Study Result Analyses - by Case & by Full-Time Equivalent
	FY 2005-06	Oct. 25, 2005	SCO Allowed City to Determine Reimbursable Costs Using 'by Case' Time Study Methodology
	FY 2006-07	Jan. 26, 2007	SCO Met with CCSF for Audit Exit Conference
		May 18, 2007	SCO Issued Draft Audit for FY 1994-95 to FY 2002-03 POBOR Claim by CCSF

POBOR Claim & Time Study Results - City & County of San Francisco

	City & County of San Francisco	State Controller's Office Allowance	% Allowance
Original Claim: Fiscal Years 1994-95 - 2002-03	\$ 24,014,018	\$ 1,249,771	5.2%
Time Study Proxy Claiming Estimates based on ...			
Average Job Classification	\$ 12,124,967		
Average FTE	\$ 8,823,580		
Average Case*	\$ 8,634,900	\$ 1,249,771	14.5%

* Authorized as acceptable methodology in 10/25/2005 Letter from SCO

**State Controller's Office
Division of Audits
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Sacramento, California 94250-5874**

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