

CITY OF BUENA PARK

Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

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

July 1, 2002, through June 30, 2003



JOHN CHIANG
California State Controller

November 2007



JOHN CHIANG
California State Controller

November 30, 2007

Sung Hyun
Director of Finance
City of Buena Park
P.O. Box 5009
Buena Park, CA 90622-5009

Dear Mr. Hyun:

The State Controller's Office audited the costs claimed by the City of Buena Park for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2002, through June 30, 2003.

The city claimed \$493,444 for the mandated program. Our audit disclosed that the entire amount is unallowable. The unallowable costs resulted from the city claiming \$477,118 in costs that were ineligible for reimbursement under the mandated program and \$16,326 in unsupported costs. The State made no payment to the city.

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

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

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk:wm

cc: Todd Jerue, Program Budget Manager
 Corrections and General Government
 Department of Finance
Carla Castaneda
 Principal Program Budget Analyst
 Department of Finance
Paula Higashi, Executive Director
 Commission on State Mandates

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Buena Park for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2002, through June 30, 2003. The last day of fieldwork was March 21, 2007.

The city claimed \$493,444 for the mandated program. Our audit disclosed that the entire amount is unallowable. The unallowable costs resulted from the city claiming \$477,118 in costs that were ineligible for reimbursement under the mandated program and \$16,326 in unsupported costs. The State made no payment to the city.

Background

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

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

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

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000, and corrected them on August 17, 2000. The parameters and guidelines categorized reimbursable activities into the four following components: Administrative Activities, Administrative Appeal, Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist local agencies and school districts in claiming mandated program reimbursable costs.

**Objective, Scope,
and Methodology**

We conducted the audit to determine whether costs claimed represent increased costs resulting from the POBOR Program for the period of July 1, 2002, 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 financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

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

Conclusion

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

For the audit period, the City of Buena Park claimed \$493,444 for costs of the POBOR Program. Our audit disclosed that the entire amount is unallowable. The State made no payment to the city. For the \$16,326 in unsupported costs, if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the final report as appropriate.

**Views of
Responsible
Official**

We issued a draft report on August 24, 2007. Sung Hyun, Director of Finance, responded by letter dated October 2, 2007 (Attachment), disagreeing with the audit results. This final audit report includes the city's response.

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

**Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2003**

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>	<u>Reference¹</u>
<u>July 1, 2002, through June 30, 2003</u>				
Salaries	\$ 8,325	\$ —	\$ (8,325)	Finding 1
Benefits	2,914	—	(2,914)	Finding 1
Services and supplies	<u>475,338</u>	<u>—</u>	<u>(475,338)</u>	Finding 2
Total direct costs	486,577	—	(486,577)	
Indirect costs	<u>6,867</u>	<u>—</u>	<u>(6,867)</u>	Findings 1, 3
Total program costs	<u>\$ 493,444</u>	<u>—</u>	<u>\$ (493,444)</u>	
Less amount paid by the State		<u>—</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>		
<u>Summary by Cost Component</u>				
Administrative Activities	\$ 2,141	\$ —	\$ 2,141	
Administrative Appeal Activities	477,648	—	477,648	
Interrogation Activities	9,996	—	9,996	
Adverse Comment Activities	<u>3,659</u>	<u>—</u>	<u>3,659</u>	
Total program costs	<u>\$ 493,444</u>	<u>\$ —</u>	<u>\$ (493,444)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Unallowable salaries
and benefits, and
related indirect costs**

The city claimed salaries and benefits totaling \$11,239, and related indirect costs totaling \$5,087 for the fiscal year (FY) 2002-03. The entire amount was unallowable because the activities claimed were based only on estimates and were not supported by actual time records or other corroborating documentation.

The following summarizes claimed, allowable, and unallowable costs for FY 2002-03:

	Claimed Costs	Allowable Costs	Audit Adjustment
Salaries and benefits:			
Administrative Activities	\$ 1,329	\$ —	\$ (1,329)
Administrative Appeals Activities	1,434	—	(1,434)
Interrogation Activities	6,205	—	(6,205)
Adverse Comment Activities	<u>2,271</u>	<u>—</u>	<u>(2,271)</u>
Total salary and benefit costs	11,239	—	(11,239)
Related indirect costs	<u>5,087</u>	<u>—</u>	<u>(5,087)</u>
Total	<u>\$ 16,326</u>	<u>\$ —</u>	<u>\$ (16,326)</u>

Administrative Activities

The Police Department claimed \$1,329 in salaries and benefits under the Administrative Activities cost component for the allowable activity of maintaining and/or updating the status of Peace Officers Procedural Bill of Rights (POBOR) cases.

The program’s parameters and guidelines allow the following ongoing activities:

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

However, we determined that all costs were unallowable because the activity claimed was based entirely on estimates and was not supported by actual time records or other corroborating documentation.

Administrative Appeal Activities

The Police Department claimed \$1,434 in salaries and benefits under the Administrative Appeals cost component. We determined that the entire amount was unallowable because the costs claimed were based entirely on estimates and were not supported by actual time records or other corroborating documentation.

The parameters and guidelines allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for permanent employees and the Chief of Police for the following disciplinary actions:

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

However, the city claimed costs for 18 hours spent by the Chief of Police for the conduct of administrative appeal hearings during the fiscal year. The time claimed was based entirely on estimates. We were not made aware of any administrative appeal hearings requested by the city's peace officers during FY 2002-03.

Interrogation Activities

The Police Department claimed \$6,205 in salaries and benefits under the Interrogations cost component. We determined that the entire amount was unallowable because the costs claimed were for activities that are not eligible for reimbursement under the mandated program.

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. The parameters and guidelines section IV(C) identify reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee. Section IV(C) also states that claimants are not eligible for Interrogation activities when an interrogation of a peace officer occurs in the normal course of duty.

Section IV(C) 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 Commission on State Mandates (CSM) Final Staff Analysis to the adopted the parameters and guidelines state:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

However, the city claimed \$6,205 for the unallowable activity of conducting interrogations during regular duty hours.

Adverse Comment Activities

The Police Department claimed \$2,271 in salaries and benefits under the Adverse Comment cost component. We determined that the entire amount was unallowable, either because costs were claimed for activities that are ineligible under the mandated program or because allowable costs claimed were based entirely on estimates.

Depending on the circumstances surrounding an Adverse Comment, the parameters and guidelines, section IV(B), allow some or all of the following four activities upon receipt of an Adverse Comment:

1. Providing notice of the Adverse Comment;
2. Providing an opportunity to review and sign the Adverse Comment;
3. Providing an opportunity to respond to the Adverse Comment within 30 days; and
4. 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 that:

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

However, the department claimed the activities of determining the complaint, scheduling interviews, and preparing interview questions; these are not reimbursable activities under the mandated program. The city did claim time for the allowable activities of preparing and reviewing the Adverse Comment for accuracy, notifying and presenting the Adverse Comment to the officer, and reviewing the response to the Adverse Comment. However, the time claimed for the eligible activities was co-mingled with the time claimed for the ineligible activities and we

could not determine the potential amount of eligible costs claimed. In addition, the time claimed was based entirely on estimates and no actual time records or other corroborating documentation were provided.

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

The parameters and guidelines, section VA-1, Salaries and Benefits, require the claimant to:

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI, Supporting Data, require that:

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the city ensure that claimed costs include only eligible costs that are properly supported.

City's Response

The City of Buena Park submitted cost reimbursement claims for the Peace Officers Procedural Bill of Rights Program for fiscal year 2002-2003, based on its understanding and interpretation of the initial guidelines that were available at the time. It is evident from your audit report that the existing guidelines have since been narrowed and differs from our interpretation of the initial guidelines.

As indicated during the audit process, the City believes that it has submitted a claim that complied with the program guidelines that were available at the time of filing.

SCO's Comment

The finding and recommendation remain unchanged.

Most of the costs discussed in Finding 1 were unallowable because the city provided no actual time records or other corroborating documentation to support its estimates of costs to perform mandated activities.

Concerning unallowable activities, our audit was based on reimbursable activities identified in the parameters and guidelines, adopted by the CSM on July 27, 2000.

This mandate has already been pled twice before the CSM. This resulted in the adoption of the original statement of decision, dated November 30, 1999, and the parameters and guidelines, dated July 27, 2000. Chapter 72, Statutes of 2005, section 6 (AB 138), added Section 3313 to the Government Code and directed the CSM to review the statement of decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal. 4th 859 and other applicable court decisions. The CSM reviewed its original findings and adopted a statement of decision upon reconsideration on May 1, 2006. The amended parameters and guidelines were adopted on December 4, 2006, for costs incurred subsequent to July 1, 2006.

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

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

**FINDING 2—
Overstated services
and supplies costs**

The city claimed services and supplies costs totaling \$475,338 for FY 2002-03. We determined that the entire amount was unallowable because the Police Department claimed attorney fees for defense and litigation costs that are not reimbursable under the mandated program.

According to city staff, claimed costs were incurred with the following legal firms for the following cases/reasons:

- Filarsky and Watt, LLP—Shea case, defense costs; Abraham case, parts of litigation are unknown
- Ferguson, Praet, & Sherman—Metcalf case, city staff did not have any information on this case
- Various Items—Court reporting and other activities, such as hearing time and audio recovery
- Richards, Watson, & Gershon—Catello v. City of Buena Park, search warrant litigation; Lucero v. City of Buena Park, use of excessive force; Soto v. City of Buena Park, use of excessive force; Shea case, defense costs; and Hamilton v. City of Buena Park, search warrant due to police officers going beyond court authority
- Creason & Aarvig, LLP—Lucero v. City of Buena Park, litigation against the city for use of excessive force
- Lister, Martin, & Thompson—Stephans v. City of Buena Park (civil case), city staff did not have any information on this case
- Lewis, Brisbois, Bisgaard, & Smith LLP—Lucero v. City of Buena Park, litigation against the city for use of excessive force

In addition, we were unable to reconcile the costs claimed for all cases with the attorney invoices provided. The city did not provide a spreadsheet of costs claimed under services and supplies showing the breakdown of costs incurred for attorney fees by each legal firm. City staff assisted the auditors with calculations of the attorney invoices, but was unable to match some subtotals to the totals of the invoices claimed. The case that did not match to the total claimed is “various items,” which included court reporting. Costs submitted by the legal firm of Richards, Watson, & Gershon, totaling \$131,045, could not be assigned to any particular case.

The parameters and guidelines, section IV, Reimbursable Activities, Sub-section B, Administrative Appeal, state that reimbursable activities under this cost component include:

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;
- 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 that:

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

The parameters and guidelines, section V, Claim Preparation and Submission, under Item 3, Contract Services, state:

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

None of the activities claimed by the city under services and supplies were related to an administrative appeal hearing requested by one of the city’s peace officers or the Chief of Police as a result of certain specific disciplinary actions taken against the employee. Accordingly, these costs should not have been included in the city’s claim.

Recommendation

We recommend that the city ensure that claimed costs include only eligible costs that are properly supported.

City's Response

The City of Buena Park submitted cost reimbursement claims for the Peace Officers Procedural Bill of Rights Program for fiscal year 2002-2003, based on its understanding and interpretation of the initial guidelines that were available at the time. It is evident from your audit report that the existing guidelines have since been narrowed and differs from our interpretation of the initial guidelines.

As indicated during the audit process, the City believes that it has submitted a claim that complied with the program guidelines that were available at the time of filing.

SCO's Comment

The finding and recommendation remain unchanged.

Unallowable costs in Finding 2 are not the result of a “narrowing” of the existing guidelines. As noted in the audit report, none of the activities claimed under services and supplies were related to an administrative appeal hearing requested by one of the city’s police officers or the Chief of Police as a result of specific disciplinary actions taken against the employee. Instead, all of the costs claimed were for the defense of lawsuits filed against the city for various actions allegedly committed by its police officers. These are unallowable activities under the mandated program and should not have been included in the city’s claim.

The parameters and guidelines, section I, Summary and Source of the Mandate, note that “. . . the test claim 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.” There is no wording within the test claim legislation nor the parameters and guidelines suggesting that litigation costs incurred by local agencies are reimbursable.

**FINDING 3—
Overstated indirect costs**

The city claimed \$6,867 for indirect costs for FY 2002-03. Unallowable indirect costs of \$5,087 were identified within Finding 1. The city also overstated indirect costs by \$1,780 because it calculated its indirect cost rate based on total direct salaries but applied the resulting indirect cost rate to salaries and benefits.

Claimed salaries	\$ 8,325
Indirect costs	× 61.1%
Allowable indirect costs	<u>5,087</u>
Claimed indirect costs	<u>(6,867)</u>
Audit adjustment	<u>\$ (1,780)</u>

The parameters and guidelines for the POBOR program state that indirect costs are defined as costs which are incurred for a common or joint purpose that benefit more than one program and are directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs are eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.

The parameters and guidelines for the POBOR program and Government Code section 17561 allow only reimbursement of actual increased costs incurred in the performance of mandated activities.

Recommendation

We recommend that the city ensure that the calculation of indirect costs is consistent with guidelines provided in OMB Circular A-87.

City’s Response

The city did not respond to this finding.

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



CITY OF BUENA PARK

DEPARTMENT OF FINANCE

October 2, 2007

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

RE: City of Buena Park's POBOR Audit Report

Dear Mr. Spano:

The City of Buena Park submitted cost reimbursement claims for the Peace Officers Procedural Bill of Rights Program for fiscal year 2002-2003, based on its understanding and interpretation of the initial guidelines that were available at the time. It is evident from your audit report that the existing guidelines have since been narrowed and differs from our interpretation of the initial guidelines.

As indicated during the audit process, the City believes that it has submitted a claim that complied with the program guidelines that were available at the time of filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Sung Hym", is written over a horizontal line.

Sung Hym
Director of Finance

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

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