

CITY OF EL MONTE

Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

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

July 1, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

February 2009



JOHN CHIANG
California State Controller

February 18, 2009

The Honorable Ernest Gutierrez
Mayor of the City of El Monte
City Hall East
11333 Valley Boulevard
El Monte, CA 91731

Dear Mayor Gutierrez:

The State Controller's Office audited the costs claimed by the City of El Monte for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The city claimed \$230,030 for the mandated program. Our audit disclosed that \$42,137 is allowable and \$187,893 is unallowable. The costs are unallowable because the city claimed ineligible costs and claimed eligible costs that were based on estimates and were not supported with corroborating documentation. The State paid the city \$7,402. Allowable costs claimed exceed the amount paid by \$34,735.

Regarding the estimated 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

cc: Marcie Medina, Deputy City Manager
Administrative Services
City of El Monte
Anne M. Crowder, Accountant
Finance Department
City of El Monte
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Contents

Audit Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Official	2
Restricted Use	3
Schedule 1—Summary of Program Costs.....	4
Findings and Recommendations	6
Attachment—City’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of El Monte for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The city claimed \$230,030 for the mandated program. Our audit disclosed that \$42,137 is allowable and \$187,893 is unallowable. The costs are unallowable because the city claimed ineligible costs and claimed eligible costs that were based on estimates and were not supported with corroborating documentation. The State paid the city \$7,402. Allowable costs claimed exceed the amount paid by \$34,735.

Background

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

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

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

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

**Objective, Scope,
and Methodology**

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2006.

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

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We also conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit findings and conclusions based on our audit objectives.

We did not audit the city's financial statements. We limited our review of the city's internal controls to gaining an understanding of the transaction flow and claim preparation procedures as necessary in order 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 El Monte claimed \$230,030 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$42,137 is allowable and \$187,893 is unallowable.

For the fiscal year (FY) 2005-06 claim, the State paid the city \$7,402. Our audit disclosed that \$0 is allowable. The State will offset \$7,402 from other mandated program payments due the city.

For the FY 2003-04 claim, the State made no payment to the city. Our audit disclosed that \$23,228 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$23,228, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the city. Our audit disclosed that \$18,909 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$18,909, contingent upon available appropriations.

**Views of
Responsible
Official**

We issued a draft audit report on November 25, 2008. Marcie Medina, Deputy City Manager, Administrative Services, responded by letter dated January 15, 2009 (Attachment), agreeing with the audit results except for Finding 1. This final audit report includes the city's response.

Restricted Use

This report is solely for the information and use of the City of El Monte, 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 18, 2009

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

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 52,877	\$ 11,765	\$ (41,112)	Finding 1
Benefits	36,165	8,047	(28,118)	Finding 1
Services and supplies	10,984	—	(10,984)	Finding 3
Travel and training	2,020	1,157	(863)	Finding 2
Total direct costs	102,046	20,969	(81,077)	
Indirect costs	10,152	2,259	(7,893)	Finding 1
Total program costs	<u>\$ 112,198</u>	23,228	<u>\$ (88,970)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 23,228</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries	\$ 52,282	\$ 7,929	\$ (44,353)	Finding 1
Benefits	39,929	6,066	(33,863)	Finding 1
Travel and training	5,920	3,262	(2,658)	Finding 2
Total direct costs	98,131	17,257	(80,874)	
Indirect costs	9,568	1,652	(7,916)	Findings 1, 4
Total program costs	<u>\$ 107,699</u>	18,909	<u>\$ (88,790)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 18,909</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 5,451	\$ —	\$ (5,451)	Finding 1
Benefits	3,744	—	(3,744)	Finding 1
Total direct costs	9,195	—	(9,195)	
Indirect costs	938	—	(938)	Finding 1
Total program costs	<u>\$ 10,133</u>	—	<u>\$ (10,133)</u>	
Less amount paid by the State		(7,402)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (7,402)</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2003, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 110,610	\$ 19,694	\$ (90,916)	
Benefits	79,838	14,113	(65,725)	
Services and supplies	10,984	—	(10,984)	
Travel and training	7,940	4,419	(3,521)	
Total direct costs	209,372	38,226	(171,146)	
Indirect costs	20,658	3,911	(16,747)	
Total direct and indirect costs	230,030	42,137	(187,893)	
Less late filing penalty	—	—	—	
Total program costs	<u>\$ 230,030</u>	42,137	<u>\$ (187,893)</u>	
Less amount paid by the State		(7,402)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 34,735</u>		
<u>Summary by cost component</u>				
Administrative Activities	\$ 79,975	\$ 42,137	\$ (37,838)	
Administrative Appeal	—	—	—	
Interrogation	73,447	—	(73,447)	
Adverse Comment	76,608	—	(76,608)	
Total program costs	<u>\$ 230,030</u>	<u>\$ 42,137</u>	<u>\$ (187,893)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Overstated salaries and benefits and related indirect costs

The city claimed \$190,448 in salaries and benefits and \$20,658 in related indirect costs for the audit period. Salaries and benefits totaling \$156,641 are unallowable because the city claimed costs for activities that are not identified in the program's parameters and guidelines as reimbursable costs. The related indirect costs totaled \$16,948.

For each fiscal year, the city claimed costs for activities that were already provided for under the due-process clauses of the United States and California constitutions. Therefore, these costs did not impose increased costs as a result of compliance with the mandated program and were ineligible for reimbursement. The city also claimed costs for allowable activities that were based solely on estimates and provided no corroborating documentation to support those estimated costs.

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

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

	<u>Claimed Costs</u>	<u>Allowable Costs</u>	<u>Audit Adjustment</u>
Salaries and benefits:			
Administrative Activities	\$ 64,995	\$ 33,807	\$ (31,188)
Administrative Appeal	—	—	—
Interrogations	56,314	—	(56,314)
Adverse Comment	<u>69,139</u>	<u>—</u>	<u>(69,139)</u>
Subtotal	190,448	33,807	(156,641)
Related indirect costs	<u>20,658</u>	<u>3,710</u>	<u>(16,948)</u>
Total	<u>\$ 211,106</u>	<u>\$ 37,517</u>	<u>\$ (173,589)</u>

Administrative Activities

For the Administrative Activities cost component, the city claimed \$64,995 in salaries and benefits for the audit period (\$28,938 for the fiscal year (FY) 2003-04, \$33,940 for FY 2004-05, and \$2,117 for FY 2005-06). We determined that \$31,188 is unallowable. The unallowable costs occurred primarily because the city claimed costs for activities that were not identified in the parameters and guidelines as reimbursable costs. In addition, the city estimated allowable costs associated with administrative activities and did not provide any corroborating documentation to support its estimates.

The parameters and guidelines allow for reimbursement of the following activities:

- Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities,

- Attendance at *specific training* [emphasis added] for human resources, law enforcement, and legal counsel regarding the requirements of the mandate, and
- Updating the status of the POBOR cases.

We determined that the city claimed \$7,366 (\$5,249 for FY 2003-04 and \$2,117 for FY 2005-06) for the following allowable administrative activities that were based on estimates and were not supported with adequate corroborating evidence:

- Revising and updating internal policies, procedures, manuals, and or other materials pertaining to the conduct of the mandated activities; and
- Maintaining the status of POBOR cases.

The costs incurred for these activities would have been reimbursable if they had been properly documented.

The city also claimed \$57,629 for training (\$23,689 for FY 2003-04 and \$33,940 for FY 2004-05). The city did not claim any training costs for FY 2005-06. We determined that \$23,822 was unallowable (\$3,877 for FY 2003-04 and \$19,945 for FY 2004-05).

The city claimed the following training classes that are reimbursable:

- Internal Affairs seminar;
- Discipline and internal investigations;
- Defeating police misconduct claims in California; and
- Advanced Internal Affairs seminar.

We made the audit adjustments because the city claimed the following classes that were not related to the mandated program:

- Basic Supervisory Course
- Improving Employee Performance through Coaching
- Officer Involved Shooting: Supervisor/Management Responsibilities
- Practical Methods for Solving Police Personnel Problems
- Legal Education Update
- Early Warning Intervention Systems
- Police Supervision
- Police Risk Management
- Canine Liability for Managers
- Supervisory Skills for First-Line Supervisors
- Legislative Update
- Family and Medical Leave Act/Fair Labor Standards Act
- New Development and Hot Topic
- Public Records Act
- Leadership and Accountability
- Supervisor Course
- Advanced Police Management

Administrative Appeal

The city did not claim costs in this category.

Interrogations

The city claimed \$56,314 in salaries and benefits under the Interrogations cost component (\$30,659 for FY 2003-04, \$21,283 for FY 2004-05, and \$4,372 for FY 2005-06). We determined that the entire amount is unallowable because the city claimed costs for activities that were not identified in the parameters and guidelines as reimbursable costs. In addition, the city estimated allowable costs associated with interrogations and did not provide corroborating documentation to support its estimates.

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

The parameters and guidelines (section IV(C)) state that claimants are not eligible for reimbursement when an interrogation of a peace officer is in the normal course of duty. This section 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.

The parameters and guidelines state that the following activities are reimbursable:

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers (included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation, determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of the notice or agency complaint to the peace officer),

Tape recording the interrogation when the peace officer employee records the interrogation (included in the foregoing is the cost of tape and storage and the cost of transcription), and

Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer. Included in the foregoing is the review of the complaints, notes, or tape recordings for issues of confidentiality by law enforcement, human relations, or counsel, cost of processing, service, and retention of copies.

The city claimed the following activities that would have been reimbursable if the costs had been properly documented:

- Providing prior notice to the subject officer regarding the investigation and allegations;
- Reviewing complaints or other documents to prepare the notice of interrogation; and
- Transcribing interrogations for accused and witness peace officers (when requested by the officer) and reviewing complaints, notes, or tape recordings for issues of confidentiality.

The city claimed the following activities that are not reimbursable:

- Interrogating accused and witnessing peace officers during regular on-duty hours (interrogatee's time);
- Travel by investigators to interrogation sites;
- Conducting pre-interrogation meetings;
- Investigators' time to conduct interrogations;
- Tape review and corrections;
- Gathering reports and log sheets;
- Preparing interrogation questions; and
- Preparing case summaries and Internal Affairs reviews.

Adverse Comment

The city claimed \$69,139 in salaries and benefits under the Adverse Comment cost component (\$29,445 for FY 2003-04, \$36,988 for FY 2004-05 and \$2,706 for FY 2005-06). We determined that the entire amount is unallowable because the city claimed costs for activities that were not identified in the parameters and guidelines as reimbursable costs. In addition, the city estimated allowable costs associated with adverse comment and did not provide corroborating documentation to support its estimates. We also noted that, for all fiscal years of the audit period, the city's claims combined interrogation activities with adverse comment activities and claimed them under the Adverse Comment cost component.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines allow all of the following four activities upon receipt of an adverse comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

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

The city claimed review and findings by command staff; this activity would have been reimbursable if the costs had been properly supported.

The city also claimed the following activities that are not reimbursable:

- Interrogating accused and witnessing peace officers during regular on-duty hours (interrogatee's time);
- Travel by investigators to interrogation sites;
- Conducting pre-interrogation meetings;
- Investigators' time to conduct interrogations;
- Tape review and corrections;
- Gathering reports and log sheets;
- Preparing interrogation questions; and
- Preparing case summaries and Internal Affairs reviews.

The following table summarizes the overstated salaries and benefits and related indirect costs by fiscal year for all cost components claimed:

	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Police Department:				
Salaries	\$ (41,112)	\$ (44,353)	\$ (5,451)	\$ (90,916)
Benefits	(28,118)	(33,863)	(3,744)	(65,725)
Subtotal	(69,230)	(78,216)	(9,195)	(156,641)
Related indirect costs	(7,893)	(8,117)	(938)	(16,948)
Audit adjustment	\$ (77,123)	\$ (86,333)	\$ (10,133)	\$ (173,589)

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

The parameters and guidelines (section IV, Reimbursable Activities) outline specific tasks that are deemed to go beyond the due process clause. The statement of decision on which the parameters and guidelines were based noted that due process activities are 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 city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

Regarding 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 audit findings as appropriate.

City's Response

The City does not dispute that a substantial portion of its time records are based on estimates that do not meet the Controller's actual time recording documentation requirements. The City believes, however, that the estimates are very reasonable and conservative and actually understate the full costs of complying with the POBOR mandate. The Controller has stated in its draft audit report that "if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, it will revise its findings." The City requests the Controller reconsider the evidence that supports the completion of the mandated activities and reasonableness of the time estimates contained in the claims.

This Controller's audit finding includes salary and benefit disallowance in 3 of the four individual cost component included in the Commission on State Mandates original set of parameters and guidelines. The four components are: (1) Administrative Activities, (2) Administrative Appeal Activities, (3) Interrogation Activities; and (4) Adverse Comment Activities. The City disagrees most [sic] of the proposed disallowances. The City has responded separately to each of the three below.

1. Administrative Activities

... At this time, the City is not contesting the Controller's disallowance of \$31,188 for 395 hours of staff training.

2. Administrative Appeal Activities

The city did not claim any costs in this category.

3. Interrogation Activities

... The City objects to the disallowance for its Police Department staff to perform the following eligible activities:

- Compensating the officer for interrogations during off-duty time; and*
- Notify the peace officer, reviewing complaints to prepare the notice of interrogation, determining the investigation officers, and redacting names.*

The Controller disallowed interrogation actives [sic] for interrogations that occurred during normal working hours. The City believes the costs incurred during normal business hours for completing the mandated interrogation activities in accordance

with regular department procedures required by the seriousness of the investigation are eligible costs. The City recommends the Controller re-examine the Commission on State Mandates Statement of Decision in which the Commission made the following finding with regard to interrogations:

Conducting the interrogation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts (Emphasis added.)

The use of the conjunctive “and” and the plural “requirements” refer to the fact that the Commission found that both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are reimbursable activities of the mandate.

The citing of the Commission’s Final Staff Analysis does not reflect the action taken by the Commission. The Commission’s staff comment that “Certainly, local agencies were performing these investigative activities before POBOR was enacted” has no relevance to whether or not a cost is eligible for reimbursement under the provisions of the California Constitution. The question is, were these activities required by pre-existing law. The actual practices of local agencies have no legal bearing on whether or not an activity is reimbursable.

The City requests the Controller allow for the reimbursement of these interrogation costs incurred by its Police Department during the audit period.

4. Adverse Comment Activities

... The Controller’s proposed disallowance includes the total of all cost claimed in the three fiscal years. The City has documentation supporting the completion of the eligible mandated adverse comments activities and can identify which officer carried out those activities.

Due to the demands on limitation of staff time, at this time, the City has not conducted a time study to support the costs it takes to complete the four mandated activities it must perform to process each POBOR case.

The City believes the information provided is sufficient for the State Controller’s Office to reverse those disallowed costs it has contested above. Should you have any further questions regarding this matter, or need clarification of any issue, please contact Anne Crowder, Accounting Manager, at (626) 580-2028.

SCO's Comment

The finding and recommendation remain unchanged.

The documentation requirements are not the State Controller's, but are found in the parameters and guidelines adopted by the CSM. Section VI (Supporting Data) states:

For audit purposes, all costs 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.

In addition, Section V (Supporting Documentation) states in subsection (2) that claimed costs for salaries and benefits must be supported by the following information:

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the *actual time* [emphasis added] devoted to each reimbursable activity

The parameters and guidelines require that claimants specify the actual time devoted to each reimbursable activity by each employee. By claiming estimated costs with no additional supporting or corroborating documentation, the city did not meet the requirement of reporting *actual* costs. In addition, the SCO is unable to verify whether the time claimed by the city was reasonable or not in the absence of actual time records.

We will address the rest of our comments for Finding 1 in the same order as they appear in the city's response.

Administrative Activities

The city does not dispute this finding.

Interrogations

The city is objecting to our finding that costs incurred for interrogations that occurred during normal working hours and for activities related to preparation of the notice of interrogation are unallowable.

The city's response does not provide any additional information as to why unallowable estimated costs for preparing notices of interrogation should be allowable and the city has not provided any additional documentation to support the costs claimed. Section IV(C)(2) of the parameters and guidelines allows reimbursement for providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. Included is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency

complaint to the peace officer. These are all activities that would be appropriate for a time study. We noted in the audit report that if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed (i.e., the number of interrogation notices prepared during the audit period), we will revise the audit report as appropriate.

For interrogations, the city is relying on specific language that appears on page 13 of the original statement of decision for the mandated program adopted by CSM on November 30, 1999. The city claims that the language cited in its response supports a CSM finding that interrogations conducted during on-duty hours are reimbursable and requests that we re-examine the statement of decision. However, the statement of decision does not define the reimbursable activities. These were written into regulation when CSM adopted the parameters and guidelines for POBOR on July 27, 2000, and corrected them on August 17, 2000.

We did re-examine the statement of decision and noted that the city is taking the language cited in its response out of context. The language cited by the city is found in the section of the statement of decision titled "Compensation and Timing of an Interrogation." The purpose of this section was to address the test claimant's assertion that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities.

The section begins on page 12 by stating that:

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do not apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor.

In addition, the parameters and guidelines (section IV(C), Interrogations) state that "claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or any other routine or unplanned contact with, a supervisor or any other public safety officer." The document goes on to specify five activities that are reimbursable.

Section IV(C)(1) describes the only reimbursable activity that relates to interrogations. It 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."

Further, the language used by CSM staff in their analysis for Item #10 (page 912 of the Proposed Parameters and Guidelines for Peace Officers Procedural Bill of Rights) heard on July 27, 2000, contains reference to Government Code section 3303, subdivision (a). The CSM states that this section of the test claim legislation:

. . . addresses only the compensation and timing of the interrogation. 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 staff analysis goes on to state:

Based on the foregoing, staff has modified Section IV(C) as follows:

~~"1. Conducting an interrogation of a peace officer while the officer is on duty or compensating~~ 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. (Gov. Code section 3303, subd.(a).)

To state that interrogations conducted during an officer's regular on-duty time are reimbursable is contrary to the other wording that appears in the statement of decision, the staff analysis for the proposed parameters and guidelines, and in the adopted parameters and guidelines. Therefore, the preponderance of evidence on this issue does not support the city's contention.

We also noted that at a subsequent CSM hearing held on December 4, 2006, one of the agenda items (item #13) concerned Requests to Amend Parameters and Guidelines for the POBOR Program. During testimony for this item, a San Bernardino County representative testified that the county had submitted an amendment to clarify what was adopted in the original statement of decision. The county representative disagreed with the CSM staff's conclusion regarding interrogations because it was inconsistent with the original statement of decision; the representative urged CSM to reconsider the amendment. The Chief Legal Counsel for the CSM responded that some statements in the original statement of decision were being taken out of context. She clarified that the test claim legislation does not mandate local agencies to interrogate an officer and it does not mandate local agencies to investigate. Rather, these activities are based on local policy and regulation.

Adverse Comment

We noted in the audit report that costs claimed by the city for review and findings by command staff would have been reimbursable if the costs had been properly supported. We concur that these activities were completed by Police Department personnel and that the city can identify who performed the activities. However, the time required to perform the activities was estimated and the city has not yet provided any additional documentation to support the actual time that it takes to perform the activities. The activities of review and findings by command staff are activities that would be eligible for a time study. If the city subsequently provides corroborating evidence to support the time it takes to perform these activities, we will revise the audit report as appropriate.

**FINDING 2—
Overstated travel
costs**

The city claimed travel costs totaling \$7,940 during the audit period (\$2,020 for FY 2003-04 and \$5,920 for FY 2004-05). We determined that \$3,521 is unallowable (\$863 for FY 2003-04 and \$2,658 for FY 2004-05) because the city claimed travel costs for attendance at training classes that were not related to the mandate (see Administrative Activities in Finding 1).

The parameters and guidelines state that attendance at specific training for human resource, law enforcement, and legal counsel regarding the requirements of the mandate is reimbursable.

The parameters and guidelines (section V(5), Claim Preparation and Submission) state that the cost of training an employee to perform the mandated activities is eligible for reimbursement. Reimbursable costs may include registration fees, transportation, lodging, and per diem.

Recommendation

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

City's Response

The city does not dispute this finding.

**FINDING 3—
Overstated services
and supply costs**

The city claimed \$10,984 for contract services costs for FY 2003-04 under the cost component of Interrogations. We determined that the entire amount is unallowable. The unallowable costs occurred because the activity was for services provided by a private investigator to investigate charges filed by two of the city's peace officers against the city. The city hired the third-party investigator because it determined that allowing the Internal Affairs Unit of the Police Department to conduct the investigation would lead to a conflict of interest for both parties. However, the services provided were for the benefit of the city and did not relate to the procedural protection of the city's peace officers. Therefore, the costs are unallowable.

The parameters and guidelines (section I, Summary and Source of the Mandate) state 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.

The parameters and guidelines (section IV, Interrogations) identify interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

Recommendation

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

City’s Response

The city does not dispute this finding.

**FINDING 4—
Understated indirect
cost rate**

The city understated its indirect cost rate for the Police Department by 2.54% for FY 2004-05, resulting in a \$201 understatement of allowable indirect costs.

While analyzing the city’s indirect cost rate proposal, we noted that the amount reported for Police Department salaries did not match the amount reported in the city’s expenditure report for FY 2004-05. After we adjusted it for the correct salary amount, the allowable indirect cost rate increased from 18.30% to 20.84%.

The following table summarizes the understated indirect costs:

	<u>Fiscal Year 2004-05</u>
Claimed indirect cost rate	18.30%
Audited indirect cost rate	<u>20.84%</u>
Understated indirect cost rate	2.54%
Allowable salaries	× \$ 7,929
Audit adjustment	<u>\$ 201</u>

The parameters and guidelines (section V(B), Claim Preparation and Submission–Indirect Costs) state that compensation for indirect costs is eligible for reimbursement via the procedure provided in Office of Management and Budgets (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.

Recommendation

We recommend that the city establish and implement procedures to ensure that its ICRPs are prepared in a manner that is consistent with the procedure provided in OMB Circular A-87.

City’s Response

The city does not dispute this finding.

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



CITY OF EL MONTE
ADMINISTRATIVE SERVICES DEPARTMENT

Marcie Medina
Deputy City Manager
for Administrative Services

Lettie T. De Dios
Assistant Administrative
Services Director

January 15, 2009

Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Dear Mr. Spano:

Please accept this letter as the City of El Monte's response to the State Controller's December, 3, 2008, Draft Final Audit Report of the City's Peace Officers Procedural Bill of Rights (POBOR) mandated cost claims for the three fiscal years between: July 1, 2003 to June 30, 2006. The Controller proposes to disallow \$188,094 of the \$230,030 claimed. The audit report concluded that "the costs are unallowable primarily because the city claimed allowable costs based only on estimates, claimed ineligible costs, and claimed unsupported costs."

The City does not dispute that a substantial portion of its time records are based on estimates that do not meet the Controller's actual time recording documentation requirements. The City believes, however, that the estimates are very reasonable and conservative and actually understate the full costs of complying with the POBOR mandate. The Controller has stated in its draft audit report that "if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, it will revise its findings." The City requests the Controller reconsider the evidence that supports the completion of the mandated activities and reasonableness of the time estimates contained in the claims.

The remainder of this letter contains the City's specific responses to the Controller audit findings. The Controller's draft audit report contained the following three audit findings:

- Finding 1 - Overstated salaries and benefits and related Indirect Costs
- Finding 2 - Overstated Travel Costs
- Finding 3 - Overstated Services and Supply Costs
- Finding 4 - Understated Indirect Cost Rate

The City of El Monte does not dispute finding 4, and would like to thank the Controller for its diligence in identifying the understated costs incurred by the City. The city does not dispute findings 2 and 3. The City does, however, takes exception to most of the disallowances contained in the Controller's "Finding 1" in which the Controller believes the activities claimed were not identified in the parameters and guidelines as reimbursable costs or because reimbursable costs were not supported with adequate documentation.



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Controller Finding 1 – Overstated Salaries and benefits

The city claimed \$190,448 in salaries and benefits and \$20,658 in related indirect costs for the audit period. The audit determined that salaries and benefits totaling \$33,807 are allowable and \$156,641 is unallowable.

City Response

This Controller's audit finding includes salary and benefit disallowances in 3 of the four individual cost component included in the Commission on State Mandates original set of parameters and guidelines. The four components are: (1) Administrative Activities, (2) Administrative Appeal Activities, (3) Interrogation Activities; and (4) Adverse Comment Activities. The City disagrees most of the proposed disallowances. The City has responded separately to each of the three below.

1. Administrative Activities

Summary of the Controller's Finding:

The Controller determined that \$31,188 in salaries and benefits were based the disallowance of training classes that were not related to the mandated program. It disallowed \$7,041 in related indirect costs.

City Response by Fiscal Year

At this time, the City is not contesting the Controller's disallowance of \$31,188 for 395 hours of staff training.

2. Administrative Appeal Activities

The city did not claim any costs in this category.

3. Interrogation Activities

Controller Finding:

The city claimed \$56,314 in salaries and benefits and \$6,149 in related indirect costs for the audit period. The unallowable costs occurred because the city estimated all costs associated with interrogations and did not provide any corroborating documentation to support claimed costs.

The city claimed the following activities that would have been reimbursable if the costs had been properly documented:

- Provide prior notice to the subject officer regarding investigation and allegations;
- Transcribe / review interview tapes, witness peace officers;
- Transcribe / review interview tapes, accused peace officers;
- Review complaints, reports & evidence / or other documents' to prepare the Notice of Interrogation.



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

- Interview and record statement of accused peace officers (On-duty hours);
- Interview and record statement of witness peace officers (On-duty hours);
- Travel time by investigator;
- Pre-Interrogation meetings;
- Investigator Time to conduct interrogations;
- Tape review and corrections;
- Gather reports and log sheets;
- Question preparation; and
- Case summary IA review.

City Response:

The City objects to the disallowance for its Police Department staff to perform the following eligible activities:

- Compensating the officer for interrogations during off-duty time; and
- Notify the peace officer, reviewing complaints to prepare the notice of interrogation, determining investigation officers, and redacting names.

The Controller disallowed interrogation activities for interrogations that occurred during normal working hours. The City believes the costs incurred during normal business hours for completing the mandated interrogation activities in accordance with regular department procedures required by the seriousness of the investigation are eligible costs. The City recommends the Controller re-examine the Commission on State Mandates Statement of Decision in which the Commission made the following finding with regard to interrogations:

Conducting the interrogation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts. (Emphasis added.)

The use of the conjunctive "and" and the plural "requirements" refer to the fact that the Commission found that both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are reimbursable activities of the mandate.

The citing of the Commission's Final Staff Analysis does not reflect the action taken by the Commission. The Commission's staff comment that "Certainly, local agencies were performing these investigative activities before POBOR was enacted" has no relevance to whether or not a cost is eligible for reimbursement under the provisions of the California Constitution. The question is, were these activities required by pre-existing law. The actual practices of local agencies have no legal bearing on whether or not an activity is reimbursable.



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The City requests the Controller allow for the reimbursement of these interrogation costs incurred by its Police Department during the audit period.

4. **Adverse Comment Activities**

Controller Finding:

The city claimed \$69,139 in salaries and benefits, all of which were unallowable because they were estimated and the city did not provide any corroborating documentation to support the estimates.

City Response:

The Controller's proposed disallowance includes the total of all cost claimed in the three fiscal years. The City has documentation supporting the completion of the eligible mandated adverse comments activities and can identify which officer carried out those activities.

Due to the demands on limitation of staff time, at this time, the City has not conducted a time study to support the costs it takes to complete the four mandated activities it must perform to process each POBOR case.

The City believes the information provided is sufficient for the State Controller's Office to reverse those disallowed costs it has contested above. Should you have any further questions regarding this matter, or need clarification of any issue, please contact Anne Crowder, Accounting Manager, at (626) 580-2028.

Sincerely,

Marcie Medina
Deputy City Manager of Administrative Services

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

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