

# **CITY OF FRESNO**

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

June 2008



**JOHN CHIANG**  
California State Controller

June 30, 2008

The Honorable Alan Autry  
Mayor of the City of Fresno  
2600 Fresno Street  
Fresno, CA 93721

Dear Mr. Autry:

The State Controller's Office audited the costs claimed by the City of Fresno 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 \$1,194,502 for the mandated program. Our audit disclosed that \$205,281 is allowable and \$989,221 is unallowable. The unallowable costs resulted primarily because the city claimed ineligible costs. The State paid the city \$374,998. The amount paid exceeds allowable costs claimed by \$169,717.

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

If you disagree with the audit finding, 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](http://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](mailto: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: Karen Bradley, CPA  
Interim Finance Director  
City of Fresno  
Kim Jackson, Deputy Controller  
City of Fresno  
Sharon Shaffer, Deputy Police Chief  
City of Fresno  
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

# Contents

## **Audit Report**

|   |          |
|---|----------|
| <b>Summary .....</b>                                    | <b>1</b> |
| <b>Background .....</b>                                 | <b>1</b> |
| <b>Objective, Scope, and Methodology .....</b>          | <b>2</b> |
| <b>Conclusion .....</b>                                 | <b>2</b> |
| <b>Views of Responsible Official .....</b>              | <b>2</b> |
| <b>Restricted Use .....</b>                             | <b>3</b> |
| <b>Schedule 1—Summary of Program Costs.....</b>         | <b>4</b> |
| <b>Finding and Recommendation .....</b>                 | <b>6</b> |
| <b>Attachment—City’s Response to Draft Audit Report</b> |          |

# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Fresno 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 \$1,194,502 for the mandated program. Our audit disclosed that \$205,281 is allowable and \$989,221 is unallowable. The unallowable costs resulted primarily because the city claimed ineligible costs. The State paid the city \$374,998. The amount paid exceeds allowable costs claimed by \$169,717.

## 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 parameters and guidelines establish the State mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000, and corrected it on August 17, 2000. The parameters and guidelines 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 Officer's Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2006.

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

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

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

**Conclusion**

Our audit disclosed an instance of noncompliance with the requirements outlined above. This instance is described in the accompanying Summary of Program Costs (Schedule 1) and in the Finding and Recommendation section of this report.

For the audit period, the City of Fresno claimed \$1,194,502 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$205,281 is allowable and \$989,221 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payment to the city. Our audit disclosed that \$61,017 is allowable. The State will pay allowable costs claimed, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the city. Our audit disclosed that \$64,140 is allowable. The State will pay allowable costs claimed, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the city \$374,998. Our audit disclosed that \$80,124 is allowable. The State will offset \$294,874 from other mandated program payments due the city. Alternatively, the city may remit this amount to the State

**Views of  
Responsible  
Official**

We issued a draft audit report on May 21, 2008. Karen Bradley, Interim Finance Director/City Controller, responded by letter dated June 23, 2008 (Attachment), disagreeing with the audit results. While disagreeing with our finding, Ms. Bradley stated that the city will conduct a time study to restore some of the unallowable costs. This final audit report includes the city's response.

**Restricted Use**

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

June 30, 2008

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

| Cost Elements  | Actual Costs<br>Claimed | Allowable<br>per Audit | Audit<br>Adjustment <sup>1</sup> |
|--|-------------------------|------------------------|----------------------------------|
| <u>July 1, 2003, through June 30, 2004</u>                   |                         |                        |                                  |
| Direct costs:  |                         |                        |                                  |
| Salaries   | \$ 199,144              | \$ 31,253              | \$ (167,891)                     |
| Benefits   | 36,458                  | 5,559                  | (30,899)                         |
| Total direct costs   | 235,602                 | 36,812                 | (198,790)                        |
| Indirect costs   | 138,933                 | 24,205                 | (114,728)                        |
| Total program costs  | <u>\$ 374,535</u>       | 61,017                 | <u>\$ (313,518)</u>              |
| Less amount paid by the State                                |                         | —                      |                                  |
| Allowable costs claimed in excess of (less than) amount paid |                         | <u>\$ 61,017</u>       |                                  |
| <u>July 1, 2004, through June 30, 2005</u>                   |                         |                        |                                  |
| Direct costs:  |                         |                        |                                  |
| Salaries   | \$ 159,718              | \$ 32,518              | \$ (127,200)                     |
| Benefits   | 31,429                  | 6,051                  | (25,378)                         |
| Total direct costs   | 191,147                 | 38,569                 | (152,578)                        |
| Indirect costs   | 115,479                 | 25,571                 | (89,908)                         |
| Total program costs  | <u>\$ 306,626</u>       | 64,140                 | <u>\$ (242,486)</u>              |
| Less amount paid by the State                                |                         | —                      |                                  |
| Allowable costs claimed in excess of (less than) amount paid |                         | <u>\$ 64,140</u>       |                                  |
| <u>July 1, 2005, through June 30, 2006</u>                   |                         |                        |                                  |
| Direct costs:  |                         |                        |                                  |
| Salaries   | \$ 255,873              | \$ 38,855              | \$ (217,018)                     |
| Benefits   | 36,684                  | 7,334                  | (29,350)                         |
| Total direct costs   | 292,557                 | 46,189                 | (246,368)                        |
| Indirect costs   | 220,784                 | 33,935                 | (186,849)                        |
| Total program costs  | <u>\$ 513,341</u>       | 80,124                 | <u>\$ (433,217)</u>              |
| Less amount paid by the State                                |                         | (374,998)              |                                  |
| Allowable costs claimed in excess of (less than) amount paid |                         | <u>\$ (294,874)</u>    |                                  |
| <u>Summary: July 1, 2003, through June 30, 2006</u>          |                         |                        |                                  |
| Direct costs:  |                         |                        |                                  |
| Salaries <sup>2</sup>  | \$ 614,735              | \$ 102,626             | \$ (512,109)                     |
| Benefits <sup>2</sup>  | 104,571                 | 18,944                 | (85,627)                         |
| Total direct costs   | 719,306                 | 121,570                | (597,736)                        |
| Indirect costs <sup>2</sup>                                  | 475,196                 | 83,711                 | (391,485)                        |
| Total program costs  | <u>\$ 1,194,502</u>     | 205,281                | <u>\$ (989,221)</u>              |
| Less amount paid by the State                                |                         | (374,998)              |                                  |
| Allowable costs claimed in excess of (less than) amount paid |                         | <u>\$ (169,717)</u>    |                                  |



## Schedule 1 (continued)

| Cost Elements                    | Actual Costs<br>Claimed | Allowable<br>per Audit | Audit<br>Adjustment <sup>1</sup> |
|----------------------------------|-------------------------|------------------------|----------------------------------|
| <u>Summary by Cost Component</u> |                         |                        |                                  |
| Administrative Activities        | \$ 26,890               | \$ —                   | \$ (26,890)                      |
| Administrative Appeal            | 41,402                  | —                      | (41,402)                         |
| Interrogations                   | 810,648                 | —                      | (810,648)                        |
| Adverse Comment                  | 315,562                 | 205,281                | (110,281)                        |
| Total program costs              | <u>\$ 1,194,502</u>     | <u>\$ 205,281</u>      | <u>\$ (989,221)</u>              |

<sup>1</sup> See the Finding and Recommendation section.

<sup>2</sup> Salaries, benefits, and indirect costs include reclassified costs of \$84,273 for the City Attorney's Office that were originally claimed as services and supplies costs. The \$84,273 amount consists of \$39,993 for salaries, \$6,479 for benefits, and \$37,801 for indirect costs. The reclassification was discussed with city representatives during the audit exit conference.

# Finding and Recommendation

## **FINDING— Unallowable salaries and benefits and related indirect costs**

The Police Department and the City Attorney’s Office claimed \$719,306 in salaries and benefits and \$475,196 in related indirect costs for the audit period. Salaries and benefits totaling \$597,736 were unallowable because the Police Department and City Attorney’s Office claimed ineligible costs. The related unallowable indirect costs totaled \$391,485.

The following is a summary of claimed, allowable, and unallowable costs for the Police Department and City Attorney’s Office for the audit period:

|                                 | <u>Claimed<br/>Costs</u> | <u>Allowable<br/>Costs</u> | <u>Audit<br/>Adjustment</u> |
|---------------------------------|--------------------------|----------------------------|-----------------------------|
| <u>Salaries and Benefits</u>    |                          |                            |                             |
| Administrative Activities:      |                          |                            |                             |
| Police Department               | \$ 16,192                | \$ —                       | \$ (16,192)                 |
| City Attorney’s Office          | —                        | —                          | —                           |
| Total Administrative Activities | <u>16,192</u>            | <u>—</u>                   | <u>(16,192)</u>             |
| Administrative Appeal:          |                          |                            |                             |
| Police Department               | 16,306                   | —                          | (16,306)                    |
| City Attorney’s Office          | 8,087                    | —                          | (8,087)                     |
| Total Administrative Appeal     | <u>24,393</u>            | <u>—</u>                   | <u>(24,393)</u>             |
| Interrogations:                 |                          |                            |                             |
| Police Department               | 461,310                  | —                          | (461,310)                   |
| City Attorney’s Office          | 27,046                   | —                          | (27,046)                    |
| Total Interrogations            | <u>488,356</u>           | <u>—</u>                   | <u>(488,356)</u>            |
| Adverse Comment:                |                          |                            |                             |
| Police Department               | 179,026                  | 86,677                     | (92,349)                    |
| City Attorney’s Office          | 11,339                   | 34,893                     | 23,554                      |
| Total Adverse Comment           | <u>190,365</u>           | <u>121,570</u>             | <u>(68,795)</u>             |
| Total salaries and benefits     | 719,306                  | 121,570                    | (597,736)                   |
| Related indirect costs          | <u>475,196</u>           | <u>83,711</u>              | <u>(391,485)</u>            |
| Total                           | <u>\$1,194,502</u>       | <u>\$ 205,281</u>          | <u>\$ (989,221)</u>         |
| <u>Recap by Department</u>      |                          |                            |                             |
| Police Department               | \$ 672,834               | \$ 86,677                  | \$ (586,157)                |
| City Attorney’s Office          | 46,472                   | 34,893                     | (11,579)                    |
| Total                           | <u>\$ 719,306</u>        | <u>\$ 121,570</u>          | <u>\$ (597,736)</u>         |

### **Administrative Activities**

For the Administrative Activities cost component, the Police Department claimed \$16,192 in salaries and benefits. We determined that the entire amount was unallowable because the department claimed ineligible activities.

The program's parameters and guidelines allow reimbursement for 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 claimed costs in this category for the following ineligible activities:

- General clerical duties;
- Data entry of case information;
- Typing correspondence; and
- Phone calls with unspecified origin and purpose.

The city's Internal Affairs secretary stated that time claimed in this category was for the setup and closing of cases. More specifically, staff entered information from case logs into the department's computer-based case tracking system. However, the data entry is not a reimbursable task. In addition, typing correspondence and engaging in phone conversations that do not indicate the purpose or the parties involved are also not reimbursable activities under the mandated program.

### **Administrative Appeal**

For the Administrative Appeals cost component, the Police Department and the City Attorney's Office city claimed \$24,393 in salaries and benefits (\$16,306 by the Police Department and \$8,087 by the City Attorney's Office). Total costs claimed were misclassified and should have been claimed under the cost category of Adverse Comment.

The Police Department's source documentation supporting its portion of the claims included review activities referenced as Skelly Hearings. The preparation for and conduct of a Skelly Hearing is not a reimbursable task, as it falls under due process of law. However, the activity of reviewing cases prior to disposition to determine if they should receive an adverse comment is a reimbursable activity. The city clarified that costs indicated as Skelly Hearings were actually for eligible case reviews. Accordingly, we reclassified these costs as Adverse Comment costs.

We also noted that costs claimed under this cost category for the City Attorney's Office pertained to the review of cases. Therefore, we also reclassified these costs as Adverse Comment.

## Interrogations

For the Interrogations cost component, the Police Department and City Attorney's Office claimed \$488,356 in salaries and benefits (\$461,310 by the Police Department and \$27,046 by the City Attorney's Office). We determined that the amounts claimed by the Police Department were unallowable because the department claimed ineligible activities. The amounts claimed by the City Attorney's Office were misclassified and should have been claimed under the cost category of Adverse Comment.

The program's parameters and guidelines state that specifically 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) (Interrogations), state that claimants are not eligible for reimbursement for interrogation activities when an interrogation of a peace officer is in the normal course of duty. The parameters and guidelines allow reimbursement from the State when required by the seriousness of the investigation and to compensate for peace officer 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' Final Staff Analysis to the adopted parameters and guidelines states:

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

We interviewed city employees and reviewed documentation to determine the activities that were included in the reimbursement claim. The city claimed the following ineligible activities under this category.

- Investigation-related—Conducting field investigations, conducting internal affair investigations, conducting internal affair investigations at the division level, and preliminary case reviews.
- Interrogation-related—Interviewing accused and witness officers during normal working hours of the interrogated officer, preparing a synopsis of interviews when the officer does not request a transcription, interviewing civilians, preparing documents related to the interrogation, and preparing for an interrogation.

Section IV(C) (Interrogations) does not specify investigative activities as reimbursable. Further, an interrogation is reimbursable under the mandated program only if it is conducted during the off-duty hours of the interrogated subject or witnessing officer and the city incurs overtime costs as a result. Per discussions with members of the Police Department's Internal Affairs unit, interrogations are rarely conducted during the interrogated officers' off-duty hours. Further, if eligible interrogations were conducted during the audit period, they were not separately identified in the department's time records.

### **Adverse Comment**

For the Adverse Comment cost component, the city claimed \$190,365 in salaries and benefits (\$179,026 by the Police Department and \$11,339 by the City Attorney's Office). In addition, we determined that costs totaling \$24,393 claimed under the Administrative Appeals cost component (\$16,306 by the Police Department and \$8,087 by the City Attorney's Office) and costs totaling \$27,046 claimed by the City Attorney's Office under the Interrogations cost component were for activities that should have been properly classified under the Adverse Comment cost component. Accordingly, reclassified costs totaled \$241,804 (\$195,332 by the Police Department and \$46,472 by the City Attorney's Office).

We determined that \$120,234 was unallowable because the city had insufficient documentation to support costs claimed (\$108,655 by the Police Department and \$11,579 by the City Attorney's Office).

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

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

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

The supporting documentation provided by the Police Department fully supported \$86,677 of claimed costs, although \$108,655 of the department's costs were not supported by any documentation. The department used case logs to track time spent working on reimbursable tasks in this cost category. These case logs were summarized in a case report for each year under audit. We scanned the case reports and scheduled the costs to determine total allowable hours spent working in this cost category. As noted above, the documentation did not fully support the amount claimed by the department in this cost component.

The City Attorney's Office used a case tracking system to indicate times spent working on reimbursable tasks in this cost category. This system was used to prepare memos that summarized the total amount of time spent performing reimbursable tasks during the audit period. We scanned printouts from the case tracking system to confirm the existence of backup for the memos that summarized claimed costs. Allowable costs totaling \$30,209 in this cost component were based on the adverse comment review hours claimed in the summary memos. However, the Office provided inadequate support for \$16,262 claimed.

The parameters and guidelines, Section VI (Supporting Data), state that all costs shall be traceable to source documents that show evidence of the validity of such costs and their relationship to the state-mandated program.

### Summary

The following table summarizes the audit adjustments by fiscal year:

|                        | Fiscal Year         |                     |                     | Total               |
|------------------------|---------------------|---------------------|---------------------|---------------------|
|                        | 2003-04             | 2004-05             | 2005-06             |                     |
| Salaries and benefits: |                     |                     |                     |                     |
| Police Department      | \$ (188,837)        | \$ (150,853)        | \$ (246,467)        | \$ (586,157)        |
| City Attorney's Office | (9,953)             | (1,725)             | 99                  | (11,579)            |
| Subtotal               | (198,790)           | (152,578)           | (246,368)           | (597,736)           |
| Related indirect costs | (114,728)           | (89,908)            | (186,849)           | (391,485)           |
| Audit adjustment       | <u>\$ (313,518)</u> | <u>\$ (242,486)</u> | <u>\$ (433,217)</u> | <u>\$ (989,221)</u> |

### Recommendation

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

## City's Response

We have reviewed the draft audit results for the period covering July 1, 2003 through June 30, 2006. In general, we disagree with the State's narrow interpretation of the parameter's and guidelines. The interpretations are contrary to the intent of the State Statutes as well as to the Statement of Decision.

We disagree with the following reductions:

### **1) Administrative Activities:**

Secretarial time was the only activity the city claimed in this section. We believe that a portion of our time records support costs for various eligible activities:

1. Time for the secretary to create the IA electronic master tracking list, collect, enter and update information regarding the status of each Internal Affairs (IA) cases/investigations was included. These files are used by investigating officers as well as by supervisory staff to review the status of each case. We believe these activities are reasonable and comply with the wording in the Parameter's and Guidelines stating that "Updating the status of the POBAR case".
2. The Parameters and Guidelines also state that "Review of the complaints, notes or records for issues of confidentiality by law enforcement, human relations, and counsel; and the cost of processing, service and retention of copies is also reimbursable. The secretary would have also been responsible for properly filing and document retention.
3. The Parameters and Guidelines also state that the adverse comment and the subject officer's response to the adverse comment must also be filed appropriately. The secretary is responsible for this task.

We will be tracking time for these activities in detail and intend to present the time study results in order to restore a portion of the amount deducted from our audited claims.

### **2) Interrogations:**

The State Controller's Office (SCO) audit disallowed all of the costs claimed under this section. While we tracked time and have extensive time records, each specific activity was not broken down to the level of detail required by the State Auditor. Some activities such as conducting interrogations of peace officers during regular duty were included and pursuant to the SCO's interpretation, were determined to be ineligible. We disagree with this narrow interpretation and believe that this is contrary to the intent of the statutes and Statement of Decision.

The question remains as to how much of the time and cost should be deducted from our claim. Certainly, not all the costs should be reduced as the audit report advises. We believe that a portion of our time records support costs for various eligible activities:

1. providing notice of interrogations to peace officer (including 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 witnesses or confidential information; preparation of notice or agency complaint.

2. tape recording certain interrogations, tape storage, and transcription (as specified by parameters and guidelines).
3. producing transcribed copies of any notes made by a stenographer at an interrogation and copies of reports or complaints made by investigators.

We will be tracking time for these activities in detail and intend to present the time study results in order to restore a portion of the amount deducted from our audited claims.

**3.) Adverse Comment:**

We disagreed with the State Controller's decision to remove the legal secretary's time related to conducting the Administrative Appeals process in the City Attorney's office. A majority of the City Attorney's staff time to review of the cases was found to be an eligible activity. We believe that the secretarial time to provide administrative and clerical support to attorneys should also be allowed.

We believe that the time logs maintained by the Police Department included time for eligible activities that were cut from our claim because the detailed descriptions were not available in our computerized time tracking reports. We intend to conduct a time study to support the restoration of time and costs from our FY 2003-04 through FY 2005-06 claims for the following eligible activities:

1. preparing the adverse comment and providing this to the subject office
2. informing the officer of their rights regarding the adverse comment
3. reviewing the subject officers response to the adverse comment
4. noting the officer's refusal to sign the adverse comment and obtaining the officers initials or signature in this circumstance.

We wish to thank the State Controller staff for their courtesy and professionalism. We would appreciate your ongoing assistance and future cooperation as we develop time studies to ensure that they comply with State requirements and that you accept these documents as adequate documentation of our eligible costs for the audit period.

SCO's Comment

Based on the city's response, we revised the findings to include a pro rata share of time claimed for the City Attorney's legal secretary to provide administrative and clerical support for the allowable activities performed by the City Attorney. Accordingly, allowable costs have increased for the audit period by \$8,488—from \$196,793 to \$205,281. The increase in allowable costs includes \$4,039 for salaries, \$644 for benefits, and \$3,805 for related indirect costs. Further details are noted below under Adverse Comment.

We will address our comments in the same order as they appear in the city's response.

The city objects to our "narrow interpretation" of the parameters and guidelines. Our audit was based on reimbursable activities included in the parameters and guidelines, adopted by the CSM on July 27, 2000, and corrected on August 17, 2000. This mandate has already been plead twice before the CSM. This resulted in the adoption of the original



statement of decision, dated November 30, 1999, and the parameters and guidelines, dated July 27, 2000, and corrected on August 17, 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.4<sup>th</sup> 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.

#### **Administrative Activities**

The city believes that time claimed for the secretary within the city's Police Department to perform certain tasks should be reimbursable. We disagree. In addition, the city did not provide any additional documentation to support its statement or indicate which time records support the activities in question.

Item #1 in the city's response refers to the task of entering case log information (time and task information) into the city's Internal Affairs case tracking system. While the city's investigating officers and supervisory staff may have used this information to determine the status of POBOR cases, the activity itself consisted of key punching data into the system from case logs. The CSM staff analysis of the proposed parameters and guidelines for the POBOR program discussed during the CSM hearing of July 27, 2000, noted on page 901 of the administrative records that "before the test claim legislation was enacted, local law enforcement agencies were . . . maintaining files for those cases." The secretary did not create any reports updating the status of POBOR cases or compile information from the case management system which updated the procedural status of the cases.

The wording provided by the city for item #2 comes from section IVC(5) (Reimbursable Activities–Interrogations) of the parameters and guidelines. This section describes the reimbursable activity of providing transcribed copies of any notes made by a stenographer at an interrogation and copies of reports or complaints made by investigators or other persons *when requested by the officer* (emphasis added). While we concur that the retention of copies under such circumstances is a reimbursable activity, the city's case information did not indicate when

officers requested this information. In addition, we did not see any task information in the city's case logs that described this specific activity. Accordingly, we have no way to determine how much time was spent by the secretary to perform this reimbursable task. If the city chooses to include this activity in their contemplated time study, it must be able to support the number of instances that officers requested this information during the audit period.

The task noted in item #3 for filing adverse comment documents comes from section IVD (Reimbursable Activities–Adverse Comment) of the parameters and guidelines. While we concur that the filing of adverse comment documents is a reimbursable activity, the city's case logs did not describe this specific activity, so we have no way of determining how much time was spent to perform this task. However, this is a task that could be included in the time study being contemplated by the city, provided that the city can subsequently document the number of adverse comment documents that were filed by the secretary during the audit period.

### **Interrogations**

The city believes that conducting interrogations of peace officers during regular duty hours is an eligible activity for reimbursement but is unallowable because of our “narrow” interpretation. Our audit was not based on the statement of decision or on Government Code sections 3300 through 3310 (the test claim legislation). As noted previously in our comments, we based the audit on the parameters and guidelines adopted by CSM on July 27, 2000, and corrected on August 17, 2000. Section IVC (Reimbursable Activities–Interrogations) states 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 other routine or unplanned contact with, a supervisor or any other public safety officer.” Subsection (1) goes on to describe what is reimbursable, which is “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 language included by CSM in the parameters and guidelines appears clear to us that interrogations that occur during a peace officer's normal duty hours do not constitute a reimbursable activity.

The city also believes that their records support time claimed for certain tasks performed within the city's Police Department. We disagree. In addition, the city did not provide any additional documentation to support their statement or indicate which time records support the activities in question.

Item #1 in the city's response refers to the reimbursable activity of providing prior notice to the peace officer regarding the nature of the investigation and identification of the investigating officers. While we concur that this is a reimbursable activity, the city's case logs did not identify time spent performing this task. We also concur that the city performed this activity for any interrogations of the city's peace officers

that occurred during the audit period. If the city includes this task within its contemplated time study, it will need to support the number of interrogation notices that were prepared during the audit period.

Item #2 refers to tape recording certain interrogations, tape storage, and transcription. Section IVC (3) of the parameters and guidelines describes this reimbursable activity as “tape recording the interrogation *when the peace officer employee records the interrogation*. [emphasis added]. . . . Included in the foregoing is the cost of tape and storage and the cost of transcription.” While we concur that this is a reimbursable activity, our review of the city’s case management system disclosed that it is unable to document when peace officers recorded their interrogations, which is the caveat that makes this task reimbursable. In addition, the case management system did not indicate how long interrogations took place or when they began and ended.

Item #3 refers to section IVC(5) of the parameters and guidelines, which describes the reimbursable task of “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 . . . *when requested by the officer* [emphasis added].” While we concur that producing transcribed copies under such circumstances is a reimbursable activity, the city’s case information did not indicate when officers requested this information. In addition, we did not see any task information in the city’s case logs that described this specific activity. Accordingly, we have no way to determine how much time was spent by the secretary to perform this reimbursable task. If the city chooses to include this activity in its contemplated time study, it must be able to support the number of instances that officers requested this information during the audit period.

### **Adverse Comment**

We concur with the city that time claimed for the legal secretary to provide administrative support as an adjunct to allowable hours claimed for the City Attorney’s Office should be allowable. We reviewed the invoices prepared by the City Attorney’s work on Internal Affairs matters during the audit period. We noted that time claimed for the legal secretary for FY 2003-04 and FY 2004-05 included time spent on both mandate and non-mandate activities. Accordingly, we determined the pro rata share of the legal secretary’s time for mandate-related activities, which was 34.16 hours for FY 2003-04 and 103.16 hours for FY 2004-05. The 46.33 hours claimed for FY 2005-06 were all determined to be allowable. As a result, allowable costs for the audit have increased by \$8,488 (\$1,509 for FY 2003-04, \$4,758 for FY 2004-05, and \$2,221 for FY 2005-06).

All of the eligible hours within the Police Department for this cost component were for command staff review of circumstances or documentation leading to an adverse comment. We concur that the four activities noted in the city’s response are appropriate for a time study. In order to apply the time study results to the audit period, the city will need to support the number of adverse comment documents that were presented to the city’s peace officers.

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

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Finance Department

Karen M. Bradley, CPA  
Assistant City Controller

June 23, 2008

Mr. James L. Spano, Chief  
Division of Audits  
State Controller's Office  
PO Box 942850  
Sacramento, California 94250-5874

RE: City of Fresno Peace Officer Bill of Rights AUDIT # S07-MCC-0001

Dear Mr. Spano,

We have reviewed the draft audit results for the periods covering July 1, 2003 through June 30, 2006. In general, we disagree with the State's narrow interpretation of the parameter's and guidelines. The interpretations are contrary to the intent of the State Statutes as well as to the Statement of Decision.

We disagree with the following reductions:

**1) Administrative Activities:**

Secretarial time was the only activity the city claimed in this section. We believe that a portion of our time records support costs for various eligible activities:

1. Time for the secretary to create the IA electronic master tracking list, collect, enter and update information regarding the status of each Internal Affairs (IA) cases/investigations was included. These files are used by investigating officers as well as by supervisory staff to review the status of each case. We believe these activities are reasonable and comply with the wording of the Parameter's and Guidelines stating that "Updating the status of the POBAR case".
2. The Parameters and Guidelines also state that "Review of the complaints, notes or records for issues of confidentiality by law enforcement, human relations, and counsel; and the cost of processing, service and retention of copies is also reimbursable. The secretary would have also been responsible for properly filing and document retention.
3. The Parameters and Guidelines also state that the adverse comment and the subject officer's response to the adverse comment must also be filed appropriately. The secretary is responsible for this task.

Mr. James L. Spano, Chief  
Division of Audits  
State Controller's Office  
June 23, 2008  
Page 2

We will be tracking time for these activities in detail and intend to present the time study results in order to restore a portion of the amount deducted from our audited claims.

**2.) Interrogations:**

The State Controller's Office (SCO) audit disallowed all of the costs claimed under this section. While we tracked time and have extensive time records, each specific activity was not broken down to the level of detail required by the State Auditor. Some activities such as conducting interrogations of peace officers during regular duty were included and pursuant to the SCO's interpretation, were determined to be ineligible. We disagree with this narrow interpretation and believe that this is contrary to the intent of the statutes and Statement of Decision.

The question remains as to how much of the time and cost should be deducted from our claim. Certainly, not all the costs should be reduced as the audit report advises. We believe that a portion of our time records support costs for various eligible activities:

1. providing notice of interrogations to peace officer (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 witnesses or confidential information; preparation of notice or agency complaint.
2. tape recording certain interrogations, tape storage, and transcription (as specified by parameters and guidelines).
3. producing transcribed copies of any notes made by a stenographer at an interrogation and copies of reports or complaints made by investigators.

We will be tracking time for these activities in detail and intend to present the time study results in order to restore a portion of the amount deducted from our audited claims.

**3.) Adverse Comment:**

We disagree with the State Controller's decision to remove the legal secretary's time related to conducting the Administrative Appeals process in the City Attorney's office. A majority of the City Attorney's staff time to review of the cases was found to be an eligible activity. We believe that the secretarial time to provide administrative and clerical support to attorneys should also be allowed.

We believe that the time logs maintained by the Police Department included time for eligible activities that were cut from our claim because the detailed descriptions were not available in our computerized time tracking reports. We intend to conduct a time study to support the

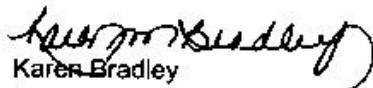
Mr. James L. Spano, Chief  
Division of Audits  
State Controller's Office  
June 23, 2008  
Page 3

restoration of time and costs from our FY 2003-04 through FY 2005-06 claims for the following eligible activities:

1. preparing the adverse comment and providing this to the subject office
2. informing the officer of their rights regarding the adverse comment
3. reviewing the subject officers response to the adverse comment
4. noting the officer's refusal to sign the adverse comment and obtaining the officers initials or signature in this circumstance.

We wish to thank the State Controller staff for their courtesy and professionalism. We would appreciate your ongoing assistance and future cooperation as we develop time studies to ensure that they comply with State requirements and that you accept these documents as adequate documentation of our eligible costs for the audit period.

Sincerely,



Karen Bradley  
Interim Finance Director/City Controller

cc: Kim Jackson, Management Analyst III/Grants Coordinator  
Sharon Shaffer, Deputy Police Chief  
Rene Watahira, Business Manager, Police Department  
Lieutenant Anthony Martinez, Internal Affairs  
Carolyn White, Management Analyst, City Attorney's Office  
Annette Chinn, Cost Recovery Systems

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